

NEW MEXICO  
STATUTES  
1978

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ANNOTATED

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VOLUME 5



2022

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State of New Mexico  
New Mexico Compilation Commission







# NEW MEXICO STATUTES 1978

**ANNOTATED**

**2022  
Volume 5**

- Chapter 16: Parks, Recreation and Fairs**
- Chapter 17: Game and Fish and Outdoor Recreation**
- Chapter 18: Libraries, Museums and Cultural Properties**
- Chapter 19: Public Lands**
- Chapter 20: Military Affairs**
- Chapter 21: State and Private Education Institutions**
- Chapter 22: Public Schools**
- Chapter 22A: Other Public School Laws [Recompiled.]**

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the NMSA

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This volume includes laws enacted through the Third Special Session of the Fifty-Fifth Legislature (2022 (3rd S.S.)) and annotations through 2022-NMSC-012 and 2022-NMCA-024.



NEW MEXICO  
STATUTES  
1978  
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By Chapter, Article, and Section:

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# Preface

## New Mexico Statutes 1978 Annotated 2022

This volume updates New Mexico Statutes Annotated, 1978 Compilation (NMSA 1978), through the legislation enacted at the Third Special Session of the 55th Legislature (2022 (3rd S.S.)). All permanent, general laws have been compiled. Other laws, such as applicability and severability clauses, have been noted in the annotations in the NMSA 1978 and published in the official Session Laws. Appropriations and bond authorizations, which are not compiled in the NMSA 1978, are also published in the official Session Laws.

The effect of amendments to the NMSA 1978 are given in brief form in a note following the amended section. The effective date of amendments and new laws compiled in the NMSA 1978 appears in a note following each section. For a listing of the placement of each section of the 2022 Session Laws, see the Tables of Disposition of Laws on *NMOneSource.com*.

Laws enacted without a specific effective date, or without an emergency clause, take effect pursuant to N.M. Const., Article IV, § 23 ninety (90) days after adjournment of the legislature. The effective date of the 2022 laws that took effect pursuant to Article IV, § 23 is May 18, 2022.

Legislation that was compiled, but had not taken effect at the time that the 2022 laws were printed, appears in italics to call attention to its postponed effectiveness. The effective date of these sections with postponed effective dates may be found in parentheses in the section headings. Sections that have been repealed by the legislature with an effective date after October, 2022 are published with the repeal dates in the heading at the beginning of the sections.

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This act (16-1-1 through 16-1-3 NMSA 1978) may be cited as the "Outdoor Recreation Act."

History: 1953 Comp., 1-484-1, enacted by Laws  
1973, ch. 396, § 1.

#### 16-1-2. State supplemental fund.

There is hereby established the "state supplemental land and water conservation fund" in the office of the state treasurer.

History: 1952 Comp., 1-485-2, enacted by Laws  
1974, ch. 393, § 2.

#### 16-1-3. Administration; state-federal-local cost sharing formula; limitations.

A. The energy, minerals and natural resources department shall administer the state supplemental land and water conservation fund and shall process all applications for grants from the state supplemental land and water conservation fund. Funds from the state supplemental land and water conservation fund shall be made available only upon the condition that the proceeds are matched by federal funds and other funds on the following basis: at least fifty percent federal funds, not more than twenty-five percent state funds and the remainder by funds of political subdivisions.

B. Incorporated municipalities with a population of less than fifteen thousand persons according to the latest federal decennial census or counties sponsoring projects of unincorporated communities, including but not limited to Indian communities, shall be entitled to receive funds from the state supplemental land and water conservation fund as prescribed and approved by the recreation priorities committee. Projects proposed must be in accordance with provisions of the Land and Water Conservation Fund Act of 1965, U.S.C. Section 460, and the regulations contained in the United States department of the interior, bureau of outdoor recreation and



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# CHAPTER 16

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## ARTICLE 1

### Outdoor Recreation Resources

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|------|----------------------------------|------|--|
| Sec. | 16-1-1. Short title.             | Sec. | 16-1-3. Administration; state-federal-local cost sharing formula; limitations. |
|      | 16-1-2. State supplemental fund. |      | 16-1-4. Outdoor recreation plan.   |

#### 16-1-1. Short title.

This act [16-1-1 through 16-1-3 NMSA 1978] may be cited as the "Outdoor Recreation Act."

History: 1953 Comp., § 4-9B-1, enacted by Laws 1973, ch. 388, § 1.

#### 16-1-2. State supplemental fund.

There is hereby established the "state supplemental land and water conservation fund" in the office of the state treasurer.

History: 1953 Comp., § 4-9B-2, enacted by Laws 1973, ch. 388, § 2.

#### 16-1-3. Administration; state-federal-local cost sharing formula; limitations.

A. The energy, minerals and natural resources department shall administer the state supplemental land and water conservation fund and shall process all applications for grants from the state supplemental land and water conservation fund. Funds from the state supplemental land and water conservation fund shall be made available only upon the condition that the proceeds are matched by federal funds and other funds on the following basis: at least fifty percent federal funds, not more than twenty-five percent state funds and the remainder by funds of political subdivisions.

B. Incorporated municipalities with a population of less than fifteen thousand persons according to the latest federal decennial census or counties sponsoring projects of unincorporated communities, including but not limited to Indian communities, shall be entitled to receive funds from the state supplemental land and water conservation fund as prescribed and approved by the recreation priorities committee. Projects proposed must be in accordance with provisions of the Land and Water Conservation Fund Act of 1965, U.S.C. Section 460, and the regulations contained in the United States department of the interior, bureau of outdoor recreation and



grants-in-aid manual. Funds shall be made available from the state supplemental land and water conservation fund only in the event that the United States department of the interior provides fifty percent of the project cost. State funds shall be made available for expenditure by the applicant political subdivision once the project is approved by the United States department of the interior and the applicant demonstrates the availability and source of funds required for its share in the total project cost.

**History:** 1953 Comp., § 4-9B-3, enacted by Laws 1973, ch. 388, § 3; 1977, ch. 254, § 40; 1987, ch. 234, § 10.

**Cross references.** — For provisions of the Federal Land and Water Conservation Fund Act of 1965, see 16 U.S.C. §§ 460d, 460l-4 to 460l-11 and note to 23 U.S.C. § 120.

The 1987 amendment, effective July 1, 1987, in Subsection A, inserted "energy, minerals and" preceding "natural resources" at the beginning; and, in Subsection B, in the second sentence deleted "bureau of outdoor recreation of the" preceding "United States department of the interior."

## 16-1-4. Outdoor recreation plan.

The energy, minerals and natural resources department shall prepare, maintain and keep up to date a comprehensive plan for the development of the outdoor recreation resources of the state and may apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from any federal program respecting outdoor recreation and enter into contracts and agreements with the United States or any appropriate agency thereof, keep financial or other records relating thereto and furnish to appropriate officials and agencies of the United States such reports and information as may be reasonably necessary to enable the officials and agencies to perform their duties under such programs.

**History:** 1953 Comp., § 4-9B-3.1, enacted by Laws 1977, ch. 254, § 41; 1987, ch. 234, § 11.

The 1987 amendment, effective July 1, 1987, inserted "energy, minerals and" preceding "natural resources" near the beginning of the section.

## ARTICLE 2

### State Parks Division

- |  |   |
|--|---|
| <p>Sec. 16-2-1. Repealed.</p> <p>16-2-2. State parks advisory board created; membership; compensation; duties.</p> <p>16-2-2.1. State park volunteers.</p> <p>16-2-3. Meaning of designations.</p> <p>16-2-4. Repealed.</p> <p>16-2-5. Director of division; qualifications.</p> <p>16-2-6. Repealed.</p> <p>16-2-7. Rules and regulations.</p> <p>16-2-7.1. Free state park passes to disabled veterans.</p> <p>16-2-8. Repealed.</p> <p>16-2-9. Concessions in parks; contracts; board of finance approval.</p> <p>16-2-9.1. State park passes; vendors.</p> <p>16-2-10. Secretary and employees prohibited from having interest in concessions.</p> <p>16-2-11. Acquisition of lands for park and recreational purposes; criteria.</p> <p>16-2-12. Acquisition of federal land for park and recreational uses.</p> <p>16-2-13. Title to park and recreational lands; acceptance.</p> <p>16-2-14. Prior donations and grants accepted and confirmed.</p> <p>16-2-15. Secretary's power to authorize transfer of park lands.</p> <p>16-2-15.1. Elephant Butte lake lease lot lands; release of lease with federal government.</p> | <p>Sec. 16-2-16. Procedure for transfer of park lands or recreational areas to state agencies, institutions or public bodies.</p> <p>16-2-17. Repealed.</p> <p>16-2-18. Acceptance of donations of money, equipment or material.</p> <p>16-2-19. State park and recreation revenues; source and disbursement.</p> <p>16-2-19.1. Motorboat fuel tax fund; appropriation.</p> <p>16-2-20. Short title.</p> <p>16-2-21. Purpose of act.</p> <p>16-2-22. Bonding authority.</p> <p>16-2-23. Form of bonds.</p> <p>16-2-24. Sale of bonds.</p> <p>16-2-25. Proceeds from sale of bonds.</p> <p>16-2-26. Construction.</p> <p>16-2-27. Tax exemptions.</p> <p>16-2-28. Refunding.</p> <p>16-2-29. Security; retirement of bonds.</p> <p>16-2-30. Police powers vested in director and state parks employees designated by the secretary.</p> <p>16-2-31. Repealed.</p> <p>16-2-32. Criminal offenses; penalty.</p> <p>16-2-33. State parks division penalty assessment misdemeanors; definition; schedule of assessments.</p> |
|--|---|



## 16-2-1. Repealed.

**Repeals.** — Laws 1987, ch. 234, § 84 repealed 16-2-1 NMSA 1978, as amended by Laws 1977, ch. 254, § 11, relating to the state park and recreation division, effective

July 1, 1987. For creation of state park and recreation division of the energy, minerals and natural resources department, see 9-5A-3 NMSA 1978.

## 16-2-2. State parks advisory board created; membership; compensation; duties.

A. The "advisory board" to the state parks division of the energy, minerals and natural resources department is created. It shall be composed of seven to eleven members appointed by the governor.

B. The advisory board shall provide advice and make recommendations relating to the administration of the state parks division. It shall advise on all matters of policy, regulations, the formulation of a comprehensive statewide recreation plan and such other matters as may be requested by the director of that division.

C. The advisory board shall meet quarterly or at the call of the chairman.

D. Each member of the advisory board shall annually elect a chairman and vice chairman from its membership. The director of the state parks division shall serve as the executive secretary of the board.

**History:** 1978 Comp., § 16-2-2, enacted by Laws 1977, ch. 254, § 113; 1987, ch. 234, § 12; 2005, ch. 228, § 1.

The 2005 amendment, effective June 17, 2005, changed "advisory committee" to "advisory board".

The 1987 amendment, effective July 1, 1987, inserted "advisory" preceding "committee" once in each subsection; in Subsections A and D, inserted "energy, minerals and" preceding "natural resources"; in Subsection B, inserted

"state park and recreation" preceding "division" near the end of the first sentence and made a minor language change in the second sentence.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — State's liability for personal injuries from criminal attack in state park, 59 A.L.R.4th 1236.

### 16-2-2.1. State park volunteers.

A. The state parks division of the energy, minerals and natural resources department may develop a program to recruit, train and accept the services of volunteers who support programs administered by the division. Volunteers may provide services for or in aid of interpretive functions, visitor services, conservation measures and development or other activities in and related to state parks and other conservation and natural resource activities administered by the division. Volunteers shall comply with applicable rules and policies of the department and the division.

B. A volunteer shall not be deemed to be a state employee and shall not be subject to the provisions of law relating to state employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation and state employee benefits.

C. A volunteer traveling at the request of the state parks division may receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] as well as reimbursement for uniforms, supplies and equipment used for the volunteer's work at the park; provided that the director of the division shall not authorize any reimbursement in excess of the value of services rendered to the division by the volunteer.

D. A volunteer may use state vehicles in the performance of division-related duties subject to those rules governing use of state vehicles by paid staff. A volunteer performing work under the terms of this section and who operates a state vehicle shall be treated for the purposes of insurability and tort claims liability as an employee of the state.

E. A volunteer may use state computers in the performance of division-related duties, subject to those rules, policies and directives governing use of state computers by state employees.

**History:** Laws 2005, ch. 39, § 1.

**Effective dates.** — Laws 2005, ch. 39, contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.



### 16-2-3. Meaning of designations.

Wherever in the laws of New Mexico, whether or not the statutes have been compiled in NMSA 1978, reference is made to the "state park and recreation commission" or to the "commission", the term shall mean the state park and recreation division [state parks division] of the energy, minerals and natural resources department. As used in Chapter 16 NMSA 1978, "secretary" means the secretary of energy, minerals and natural resources.

**History:** 1953 Comp., § 4-9-2, enacted by Laws 1977, ch. 254, § 12; 1987, ch. 234, § 13.

**Repeals and reenactments.** — Laws 1977, ch. 254, § 12, repealed 4-9-2, 1953 Comp., relating to the appointment and terms of the members of the state park and recreation commission, and enacted a new section.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1997, ch. 149, § 3 provided that the "state park and recreation division" means the "state parks division". See 9-5A-6.1 NMSA 1978.

**The 1987 amendment,** effective July 1, 1987, substituted "1978" for "1953" near the middle of the first sentence and near the end inserted "energy, minerals and" preceding "natural resources," and added the second sentence.

### 16-2-4. Repealed.

**Repeals.** — Laws 1987, ch. 234, § 84 repealed 16-2-4 NMSA 1978, as amended by Laws 1977, ch. 254, § 13, relating to the office of the state park and recreation

division, effective July 1, 1987. For present comparable provisions, see 16-2-19 NMSA 1978.

### 16-2-5. Director of division; qualifications.

The director of the state park and recreation division [state parks division] of the energy, minerals and natural resources department shall be qualified for that office if he has:

- A. education and practical field experience in the field of parks and recreation; and
- B. demonstrated administrative capabilities in parks management.

**History:** Laws 1935, ch. 57, § 4; 1941 Comp., § 4-104; 1953 Comp., § 4-9-4; Laws 1963, ch. 98, § 4; 1965, ch. 14, § 2; 1977, ch. 254, § 14; 1987, ch. 234, § 14.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1997, ch. 149, § 3 provided that the "state park and recreation division" means the "state parks division". See 9-5A-6.1 NMSA 1978.

**Cross references.** — For appointment of director, see 9-5A-6 NMSA 1978.

**Temporary provisions.** — Laws 2019, ch. 171, § 1, effective April 2, 2019, provided:

A. The legislature finds that:

(1) the transfer of land and buildings of the Mesilla Valley Bosque state park by the commissioner of public lands by quitclaim deed to the state game commission in June 2018 was without required legislative approval;

(2) the land and buildings of the Mesilla Valley Bosque state park are not in excess of the reasonable needs of the state parks division of the energy, minerals and natural resources department for use as a state park; and

(3) the provisions of Sections 13-6-3 and 17-4-3 NMSA 1978 shall not apply to the transfer of property required by Subsection B of this section.

B. The state game commission shall return to the energy, minerals and natural resources department by quitclaim deed for use by the state parks division of the department as a state park all land, buildings and interests in the following thirteen and thirty-nine hundredths acres, more or less, situated in Dona Ana county, New Mexico, and described as follows:

A tract of land situated within the Mesilla Civil Colony Grant in Sections 2 & 3, T.24S., R.1E., and Section 34, T.23S., R.1E., N.M.P.M. of the U.S.R.S. Surveys being U.S.R.S. Tracts Map 12-12, 12-13, 12-14, 12-15, 12-16A,

12-16C, 12-16D, 12-16E & 12-34, and being more particularly described as follows, to wit:

Beginning at a 1/2" iron rod set on the East line of the Picacho Drain for a corner of the tract herein described; whence meander corner No. 20 on the Mesilla Civil Colony Grant bears N.46 deg. 43'29"W., 4155.14 feet;

Thence from the point of beginning and leaving said Picacho Drain, N.58 deg.30'00"E., 597.65 feet to a 1/2" iron rod set for a corner of this tract;

Thence S.31 deg. 30'00"E., 424.07 feet to a 1/2" iron rod set on the West line of a 60 foot wide road for a corner of this tract and point of curvature;

Thence along the West line of said 60 foot wide road the following courses and distances, around the arc of a curve to the left, having a radius of 1055.81 feet, through a central angle of 42 deg. 21'00" and whose long cord bears N.20 deg. 00'18"E., 762.75 feet to a 1/2" iron rod set;

Thence N.01 deg. 08'54"W., 1184.93 feet to a 1/2" iron rod set a point of curvature;

Thence around the arc of a curve to the left, having a radius of 1819.90 feet, through a central angle of 41 deg. 03'48" and whose long cord bears N.21 deg. 39'44"W., 1276.57 feet to a 1/2" iron rod set;

Thence N.42 deg. 11'36"W., 1248.73 feet to a 1/2" iron rod set for a corner of this tract;

Thence N.19 deg. 05'52"W., 152.96 feet to a 1/2" iron rod set on the West line of the Rio Grande for the most Northerly corner of this tract;

Thence along the West line of the Rio Grande the following courses and distances, S.42 deg. 11'36"E., 1389.48 feet to an I.B.C. Pipe found and point of curvature;

Thence around the arc of a curve to the right, having a radius of 1879.90 feet, an arc length of 1347.26 feet, through a central angle of 41 deg. 03'43" and whose long chord bears S.21 deg. 39'42"E., 1318.61 feet to an I.B.C. Pipe found;



Thence S.01 deg.08'54"E., 1184.91 feet to an I.B.C. Pipe found and point of curvature;

Thence around the arc of a curve to the right, having a radius of 1115.81 feet, an arc length 1237.36 feet, through a central angle of 63 deg. 32'14" and whose long chord bears S.30 deg. 35'57"W., 1174.93 feet to an I.B.C. Pipe found;

Thence S.62 deg.21'12"W., 161.86 feet to a 1/2" iron rod set at the Southwest intersection of the Rio Grande and Picacho Drain for Southwest corner of this tract;

Thence along East line of the Picacho Drain the following courses and distances, N.41 deg. 30'00"W., 161.24 feet to a 1/2" iron rod found and point of curvature;

Thence around the arc of a curve to the right, having a radius of 1095.90 feet, an arc length of 202.02 feet,

through a central angle of 10 deg. 33'44" and whose long chord bears N.36 deg. 46'52"W., 201.74 feet to a 1/2" iron rod set;

Thence N.31 deg. 30'00"W., 158.85 feet to the point of beginning, containing 13.392 acres of land, more or less.

C. The real property transferred pursuant to Subsection B of this section shall be used to reestablish Mesilla Valley Bosque state park as that park existed prior to the transfer of the property by quitclaim deed of the commissioner of public lands on June 18, 2018.

The 1987 amendment, effective July 1, 1987, rewrote the section to the extent that a detailed comparison is impracticable.

## 16-2-6. Repealed.

**Repeals.** — Laws 1987, ch. 234, § 84 repealed 16-2-6 NMSA 1978, as amended by Laws 1977, ch. 254, § 16, relating to purchases by the state park and recreation

division, effective July 1, 1987. For present comparable provisions, *see* 16-2-19 NMSA 1978.

## 16-2-7. Rules and regulations.

The secretary shall promulgate and adopt rules for each park as circumstances may demand to the end that each state park may be made as nearly self-supporting as possible. The secretary shall also adopt rules to regulate the construction and maintenance of boat docks for a lake that is a part of a state park.

**History:** Laws 1935, ch. 57, § 7; 1941 Comp., § 4-107; 1953 Comp., § 4-9-7; Laws 1963, ch. 98, § 7; 1977, ch. 254, § 17; 1987, ch. 234, § 15; 1999, ch. 39, § 1.

**Cross references.** — For watercraft regulatory laws, administration and enforcement, *see* 66-12-1 NMSA 1978 et seq.

The 1999 amendment, effective June 18, 1999, deleted "and regulations" following "adopt rules", and added the last sentence.

The 1987 amendment, effective July 1, 1987, substituted "the secretary shall promulgate and adopt" for "the division shall issue and publish rules and regulations pertaining to and governing the development, maintenance, upkeep, management and use of state park and recreation areas and may prescribe different" and deleted the former last sentence, which read "Every such rule or regulations shall be filed in accordance with the State Rules Act."

### 16-2-7.1. Free state park passes to disabled veterans.

A. The state parks division of the energy, minerals and natural resources department shall provide to a fifty percent or more disabled veteran residing in the state:

(1) one day-use pass for unlimited entry into state parks or recreation areas operated by the division; and

(2) one three-day camping pass per year for the use of camping areas operated by the division, whether for consecutive or nonconsecutive days.

B. Proof of disability satisfactory to the division is required to obtain the free passes.

**History:** Laws 1999, ch. 174, § 2; 2007, ch. 13, § 1.

The 2007 amendment, effective July 1, 2007, changed the former provision in Subsection A that provided for a one-day use pass for entry into a state park for a one-hundred percent disabled veteran to provide for passes to

a fifty percent or more disabled veteran; added Paragraph (1) of Subsection A to provide for a one-day use pass; and added Paragraph (2) of Subsection A to provide for a three-day camping pass.

## 16-2-8. Repealed.

**Repeals.** — Laws 1987, ch. 234, § 84 repealed 16-2-8 NMSA 1978, as amended by Laws 1977, ch. 254, § 18 relating to the use of public parks and recreation areas,

effective July 1, 1987. For present comparable provisions, *see* 16-2-7 NMSA 1978.



## 16-2-9. Concessions in parks; contracts; board of finance approval.

The secretary has the power to grant concessions in [the] state parks and recreation areas upon such rentals, fees or percentage of income or profits as he may prescribe, but not for a longer period than thirty years. All concessions shall be evidenced by a written contract, the faithful performance of which shall be secured by such bond as the secretary may prescribe. No contract granting a concession shall be effective until it has been approved by the state board of finance.

**History:** Laws 1935, ch. 57, § 9; 1941 Comp., § 4-109; 1953 Comp., § 4-9-9; Laws 1961, ch. 114, § 1; 1963, ch. 98, § 9; 1973, ch. 81, § 1; 1977, ch. 254, § 19; 1987, ch. 234, § 16.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**The 1987 amendment,** effective July 1, 1987, substituted "secretary" for "director" near the beginning of the first sentence and near the end of the second sentence.

### ANNOTATIONS

**Procedure in granting concession contracts.** — The state park commission (now the state parks division) need not advertise or invite bids from prospective licensees but may negotiate and exercise its discretionary authority in granting concession contracts. 1959-60 Op. Att'y Gen. No. 60-12.

### 16-2-9.1. State park passes; vendors.

The director of the state parks division of the energy, minerals and natural resources department may authorize vendors to sell state park passes, permits and other state park products in compliance with rules adopted by the secretary. A vendor authorized to sell park passes, permits or other state park products may retain a portion of the sale price.

**History:** Laws 2005, ch. 174, § 1.

**Effective dates.** — Laws 2005, ch. 174 contained no effective date provision, but, pursuant to N.M. Const.,

art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 16-2-10. Secretary and employees prohibited from having interest in concessions.

Neither the secretary nor any member of the energy, minerals and natural resources department shall have any interest in, directly or indirectly, or in any manner be connected with any concession granted to any person within any state park or recreation area.

**History:** Laws 1935, ch. 57, § 10; 1941 Comp., § 4-110; 1953 Comp., § 4-9-10; Laws 1963, ch. 98, § 10; 1965, ch. 14, § 3; 1977, ch. 254, § 20; 1987, ch. 234, § 17.

**The 1987 amendment,** effective July 1, 1987, inserted "energy, minerals and" preceding "natural resources."

## 16-2-11. Acquisition of lands for park and recreational purposes; criteria.

A. The state is authorized to acquire lands or interests in lands for state park or state recreational purposes by gift, donation, devise or purchase. Acquired lands or interests in lands shall be held for the use of the state to develop, maintain and operate them as state parks or state recreational areas. In acquiring real property or any interest in real property, the power of eminent domain shall not be used. The criteria for acquisition and development shall be those specified in Subsections B through G of this section.

B. Sites that may be designated as state parks or state recreational areas shall be only those:

- (1) having a diversity of resources, including areas of scientific, aesthetic, geologic, natural or historic value;
- (2) providing recreational opportunities significant enough to assure patronage from a region or preferably from the state as a whole; and
- (3) conforming to the state comprehensive outdoor recreation plan.

C. Lands designated for acquisition or development as state parks or state recreational areas shall be those that:



- (1) are adjacent to existing parks or recreational areas and are necessary for successful park or recreational area protection and development;
- (2) help meet recreation and open space demands of metropolitan area residents by emphasizing park or recreational areas within easy access of population centers;
- (3) preserve the most significant examples of New Mexico natural scenic landscape; or
- (4) meet the pressure on primary vacation regions not adequately supplied with public recreation opportunities.

D. Lands that are acquired or developed as state parks or state recreational areas shall be managed and developed according to the following objectives:

- (1) outdoor recreation shall be recognized as the dominant or primary resources management objective;
- (2) physical development shall promote the outdoor recreation objective through the use of proper design, materials and construction to enhance and promote the use and enjoyment of the recreational resources in the area;
- (3) within economical limits, state parks or state recreational facilities shall be landscaped and developed to achieve an environment that is aesthetically pleasing, ecologically functional and complementary to the native environment;
- (4) use periods for parks or recreational facilities shall be extended by providing a variety of facilities that will attract visitors during all seasons of the year; and
- (5) all significant historic structures contained in state parks or state recreational areas shall be, within economical limits, reconstructed, restored or stabilized to provide for continued user benefit.

E. Factors to be taken into consideration when lands are considered for acquisition or development as state parks or state recreational areas are:

- (1) the character of the land resources, such as soil, vegetation, topography and water, that affects the suitability of the lands for development as parks or recreational areas;
- (2) facilities development to meet the average and slightly higher than average demands rather than the peak demands of summer and the holiday weekends;
- (3) development priority based upon demonstrated use and demand, balance and distribution of existing facilities and the availability of lands suitable for development; and
- (4) resources protection shall also be considered a priority if the resources need urgent attention, but the priority shall be determined by the relative value of the resources involved.

F. The cost of lands to be proposed for acquisition or development as state parks or state recreational areas should be reasonable, with consideration given to the recreational value of the land on which the state park or state recreational area is to be located. No property shall be purchased that involves commitments, privileges or conditions to any private interest, except that property may be purchased that has restrictions limiting its use to that of a state park or state recreational area.

G. All lands considered for acquisition or development as new state parks or state recreational areas shall undergo a feasibility study prior to acquisition or development. Feasibility studies shall include:

- (1) a determination that the proposed area meets the criteria set forth in this section;
- (2) an estimate of the total development cost, including land acquisition, planning and construction and recommendations for methods of financing the development costs;
- (3) an estimate of the annual costs for operation and maintenance;
- (4) an estimate of demand and a projection of visitor use for the proposed area; and
- (5) an analysis of the proposed area as it relates to plans or development by other governmental agencies or the private sector in adjacent areas.

H. The state is authorized, upon the execution of a written agreement between the director of the state parks division of the energy, minerals and natural resources department and the department, service or agency of the United States having jurisdiction of lands of the United States, to develop, protect, maintain and operate in accordance with the agreement federally owned lands as state parks or state recreational areas, but the state may not acquire the fee title to or a permanent right in the lands pursuant to such an agreement.

I. The designation of sites as suitable for state parks or recreational areas, the designation of certain lands for acquisition or development, the consideration of lands for acquisition or studying the feasibility of acquisition or development of lands shall not create a right of action on the part of any person to force action by the state parks division of the energy, minerals and natural resources department or the state.

J. Any acquisition of land or any interest in land for a new state park or recreational area shall be approved by the legislature prior to the execution of a written agreement binding the state to expenditure of funds for acquisition or development of state parks or recreational areas. Lands that are adjacent or contiguous to existing state parks or recreational areas or are necessary for successful park or recreational area protection and development and will become part of the park or recreational area may be acquired without legislative approval if the state parks division consults with local government entities on the acquisition and if the state board of finance approves the acquisition and funds for the acquisition are available to the state parks division of the energy, minerals and natural resources department or the land is donated to the division.

K. Only lands or interests in lands acquired or retained in accordance with the provisions of this section and operated pursuant to the authority of the state parks division of the energy, minerals and natural resources department may use the designation of "state park" or "state recreational area".

**History:** Laws 1935, ch. 57, § 11; 1941 Comp., § 4-111; Laws 1941, ch. 100, § 1; 1953 Comp., § 4-9-11; Laws 1963, ch. 98, § 11; 1977, ch. 254, § 21; 1981, ch. 93, § 1; 1997, ch. 145, § 1; 2005, ch. 154, § 1.

**Cross references.** — For distributions to the public project revolving fund from governmental gross receipts tax, see 7-1-6.38 NMSA 1978.

For New Mexico Youth Conservation Corps Act, see 9-5B-1 to 9-5B-11 NMSA 1978.

For the state parks division, see 9-5A-6.1 NMSA 1978.

**Compiler's notes.** — Laws 2009, ch. 168, § 1 provided that the proceeds from the disposal of the surplus property in McKinley county owned by the state parks division of the energy, minerals and natural resources department are appropriated to the state parks division of the energy, minerals and natural resources department for expenditure in fiscal years 2009 through 2019 for the purpose of matching federal funds or making improvements or purchasing adjacent lands at state parks or at other parks authorized or to be authorized for acquisition by the legislature. Any unexpended or unencumbered balance remaining at the end of fiscal year 2019 shall revert to the general fund.

Laws 2009, ch. 168, § 1 provided that the appropriation in Laws 2009, ch. 168, § 1 is contingent upon legislative ratification and approval, during the first session of the forty-ninth legislature, of the disposal of the surplus McKinley county property. House Joint Resolution 7 (Laws 2009), which was approved during the first session of the forty-ninth legislature and signed on March 20, 2009, authorized the state parks division of the energy, minerals and natural resources department's disposal of the surplus McKinley county property.

Senate Joint Resolution No. 4 (Laws 2001) authorized the state parks division of the energy, minerals and natural resources department to purchase, from willing sellers, lands adjacent to the exterior boundaries of Coyote Creek state park, Oliver Lee memorial state park and Pancho Villa state park that have been identified in the park management plans previously adopted by the division, using funds made available to it by the federal government and other public or private sources to the extent such funds may permit.

Laws 1999, ch. 59, § 1, effective June 18, 1999, provided that the commissioner of public lands may negotiate, on behalf of the state trust beneficiaries, for the acquisition of the Eagle Nest lake, dam and the surrounding land;

and upon completion of successful negotiations, certify to the secretary of finance and administration that the negotiations have been successful, that the trade is in the best interests of the state trust beneficiaries, and that the appraised value of the land is equal to or lower than the appraised value of the acquired property; further provides that in negotiating the acquisition, the commissioner may agree to trade state land in the same area or vicinity for the lake, dam, and surrounding area; and further provides that if the negotiations and acquisitions pursuant to this section are successful, the commissioner of public lands shall lease the Eagle Nest lake, dam and surrounding area to the state parks division of the energy, minerals and natural resources department, on terms that are in the best interests of the state trust beneficiaries, for use as a state park and fishing area.

Laws 1999, ch. 191, §§ 1 to 3 authorized the negotiation by the state game commission for the acquisition of Eagle Nest dam and reservoir and provide for the repeal of the act on February 1, 2000.

**The 2005 amendment**, effective June 17, 2005, deleted the provision in Subsection G which provided that ongoing projects that have received an appropriation as of the effective date of this section are exempted from the requirements of this section and provided in Subsection J that lands that are adjacent to or contiguous to an existing state park or recreational area or that are necessary to protect or develop the park or recreational area may be acquired without legislative approval if the state board of finance approves the acquisition and funds for the acquisition are available.

**The 1997 amendment**, effective July 1, 1999, made minor stylistic changes throughout the section; rewrote Subsection A; rewrote Paragraph E(4); deleted the second sentence in the introductory paragraph of Subsection G relating to a specific appropriation to fund the feasibility study; substituted "land" for "real property" in Subsection J; and added Subsection K.

## ANNOTATIONS

**Status of lake for purposes of state immunity.** — Evidence that park containing lake in which plaintiff's minor child was injured was leased to the Recreation Division with the sole objective of using it for recreation, that fees were charged for its use, and that it contained facilities provided for public use while visiting the park,



established that park fell within the category of public parks for purposes of state tort immunity. *Bell v. N.M. Interstate Stream Comm'n*, 1993-NMCA-164, 117 N.M. 71, 868 P.2d 1269.

**State officials proper defendants in action on lease agreement.** — In an action alleging that state officials, acting under this section and Sections 16-2-12 and 16-2-13 NMSA 1978 in authorizing the development of recreation areas under a lease agreement with the United States, violated federal law, the state officials, and not the state, were the proper defendants, since the state cannot "authorize" officials to violate federal law. *Elephant Butte Irrigation Dist. v. Department of Interior*, 160 F.3d 602 (10th Cir. 1998), cert. denied, 526 U.S. 1019, 119 S. Ct. 1255, 143 L. Ed. 2d 352 (1999).

**County ordinance cannot limit state's authority.** — County land use ordinances attempting to restrict traditional federal and state regulatory authority are preempted by this section which allows the state to acquire lands for park and recreational purposes and, thus, county ordinances are of no consequence. 1994 Op. Att'y Gen. No. 94-01.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Estate conveyed by deed for park or playground purposes, nature of, 15 A.L.R.2d 975.

Land developer: validity and construction of statute or ordinance requiring land developer to dedicate portion of land for recreational purposes, or make payment in lieu thereof, 43 A.L.R.3d 862.

## 16-2-12. Acquisition of federal land for park and recreational uses.

The legislature of New Mexico, taking cognizance that the federal government, under the provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended, has authorized the department of the interior to sell to the states federal land at a price of two dollars fifty cents (\$.25) per acre or to lease to the states land at the price of twenty-five cents (\$.25) per acre a year, for recreational purposes, and the legislature taking further cognizance of the fact that public park and recreation areas are of vital importance in the development and growth of this state, and noting that valuable and scenic land areas within New Mexico may be purchased or leased at minimal cost for development as park and recreational areas from either private or federal ownership, hereby authorizes the state park and recreation division [state parks division] to purchase or lease such lands in the name of the state.

**History:** 1953 Comp., § 4-9-11.1, enacted by Laws 1963, ch. 149, § 1; 1977, ch. 254, § 22.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1997, ch. 149, § 3 provided that the "state park and recreation division" means the "state parks division". See 9-5A-6.1 NMSA 1978.

**Cross references.** — For the Recreation and Public Purposes Act of June 14, 1926, see 43 U.S.C. §§ 869 to 869-4.

### ANNOTATIONS

**State officials proper defendants in action on lease agreement.** — In an action alleging that state

officials, acting under this section and Sections 16-2-11 and 16-2-13 NMSA 1978 in authorizing the development of recreation areas under a lease agreement with the United States, violated federal law, the state officials, and not the state, were the proper defendants, since the state cannot "authorize" officials to violate federal law. *Elephant Butte Irrigation Dist. v. Dep't of Interior*, 160 F.3d 602 (10th Cir. 1998), cert. denied, 526 U.S. 1019, 119 S. Ct. 1255, 143 L. Ed. 2d 352 (1999).

## 16-2-13. Title to park and recreational lands; acceptance.

Title to or right in property to be used for state park or state recreational purposes may be taken in the name of the "State of New Mexico" or in the name of the "Governor of the State of New Mexico and the people thereof". But no such property or rights therein shall be acquired by the state for state park or state recreational purposes until the property or rights therein have been duly accepted by written agreement of the secretary or by act of the state legislature and an appropriate name has been designated for such park or state recreational area.

**History:** Laws 1935, ch. 57, § 12; 1941 Comp., § 4-112; Laws 1941, ch. 100, § 2; 1953 Comp., § 4-9-12; Laws 1963, ch. 98, § 12; 1977, ch. 254, § 23; 1987, ch. 234, § 18.

**The 1987 amendment,** effective July 1, 1987, in the second sentence substituted "secretary" for "state park and recreation director" and made minor changes in language in the sentence.

### ANNOTATIONS

**State officials proper defendants in action on lease agreement.** — In an action alleging that state

officials, acting under this section and Sections 16-2-11 and 16-2-12 NMSA 1978 in authorizing the development of recreation areas under a lease agreement with the United States, violated federal law, the state officials, and not the state, were the proper defendants, since the state cannot "authorize" officials to violate federal law. *Elephant Butte Irrigation Dist. v. Dep't of Interior*, 160 F.3d 602 (10th Cir. 1998), cert. denied, 526 U.S. 1019, 119 S. Ct. 1255, 143 L. Ed. 2d 352 (1999).

## 16-2-14. Prior donations and grants accepted and confirmed.

Lands heretofore donated or granted to the state or its governor and his successors in office, in trust for the state and the people thereof, for state park and recreation purposes, are hereby approved, ratified and accepted as state parks and recreation areas, and the state park and recreation division [state parks division] shall designate appropriate names for each of said state parks and recreation areas.

**History:** Laws 1935, ch. 57, § 13; 1941 Comp., § 4-113; 1953 Comp., § 4-9-13; Laws 1963, ch. 98, § 13; 1977, ch. 254, § 24.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1997, ch. 149, § 3 provided that the "state park and recreation division" means the "state parks division". See 9-5A-6.1 NMSA 1978.

## 16-2-15. Secretary's power to authorize transfer of park lands.

The secretary has the right to authorize the commissioner of public lands to quitclaim to any state educational institution or other state agency, department or public body having authority to hold, and a use therefor, any lands acquired for state park or state recreational purposes for such nominal consideration and upon such conditions and subject to such reservations as in each case may be prescribed by the secretary; provided, however, that disposition of any such lands shall, in any case, relate only to lands held in excess of the reasonable needs of the state park and recreation division [state parks division] of the energy, minerals and natural resources department for public parks and recreational purposes.

**History:** 1941 Comp. Supp., § 4-120, enacted by Laws 1951, ch. 45, § 1; 1953 Comp., § 4-9-14; Laws 1963, ch. 98, § 14; 1977, ch. 254, § 25; 1987, ch. 234, § 19.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1997, ch. 149, § 3 provided that the "state park and recreation division" means the "state parks division". See 9-5A-6.1 NMSA 1978.

**Temporary provisions.** — Laws 2019, ch. 171, § 1, effective April 2, 2019, provided:

A. The legislature finds that:

(1) the transfer of land and buildings of the Mesilla Valley Bosque state park by the commissioner of public lands by quitclaim deed to the state game commission in June 2018 was without required legislative approval;

(2) the land and buildings of the Mesilla Valley Bosque state park are not in excess of the reasonable needs of the state parks division of the energy, minerals and natural resources department for use as a state park; and

(3) the provisions of Sections 13-6-3 and 17-4-3 NMSA 1978 shall not apply to the transfer of property required by Subsection B of this section.

B. The state game commission shall return to the energy, minerals and natural resources department by quitclaim deed for use by the state parks division of the department as a state park all land, buildings and interests in the following thirteen and thirty-nine hundredths acres, more or less, situated in Dona Ana county, New Mexico, and described as follows:

A tract of land situated within the Mesilla Civil Colony Grant in Sections 2 & 3, T.24S., R.1E., and Section 34, T.23S., R.1E., N.M.P.M. of the U.S.R.S. Surveys being U.S.R.S. Tracts Map 12-12, 12-13, 12-14, 12-15, 12-16A, 12-16C, 12-16D, 12-16E & 12-34, and being more particularly described as follows, to wit:

Beginning at a 1/2" iron rod set on the East line of the Picacho Drain for a corner of the tract herein described; whence meander corner No. 20 on the Mesilla Civil Colony Grant bears N.46 deg. 43'29"W., 4155.14 feet;

Thence from the point of beginning and leaving said Picacho Drain, N.58 deg. 30'00"E., 597.65 feet to a 1/2" iron rod set for a corner of this tract;

Thence S.31 deg. 30'00"E., 424.07 feet to a 1/2" iron rod set on the West line of a 60 foot wide road for a corner of this tract and point of curvature;

Thence along the West line of said 60 foot wide road the following courses and distances, around the arc of a curve to the left, having a radius of 1055.81 feet, through a central angle of 42 deg. 21'00" and whose long cord bears N.20 deg. 00'18"E., 762.75 feet to a 1/2" iron rod set;

Thence N.01 deg. 08'54"W., 1184.93 feet to a 1/2" iron rod set a point of curvature;

Thence around the arc of a curve to the left, having a radius of 1819.90 feet, through a central angle of 41 deg. 03'48" and whose long cord bears N.21 deg. 39'44"W., 1276.57 feet to a 1/2" iron rod set;

Thence N.42 deg. 11'36"W., 1248.73 feet to a 1/2" iron rod set for a corner of this tract;

Thence N.19 deg. 05'52"W., 152.96 feet to a 1/2" iron rod set on the West line of the Rio Grande for the most North-erly corner of this tract;

Thence along the West line of the Rio Grande the following courses and distances, S.42 deg. 11'36"E., 1389.48 feet to an I.B.C. Pipe found and point of curvature;

Thence around the arc of a curve to the right, having a radius of 1879.90 feet, an arc length of 1347.26 feet, through a central angle of 41 deg. 03'43" and whose long chord bears S.21 deg. 39'42"E., 1318.61 feet to an I.B.C. Pipe found;

Thence S.01 deg. 08'54"E., 1184.91 feet to an I.B.C. Pipe found and point of curvature;

Thence around the arc of a curve to the right, having a radius of 1115.81 feet, an arc length 1237.36 feet, through a central angle of 63 deg. 32'14" and whose long chord bears S.30 deg. 35'57"W., 1174.93 feet to an I.B.C. Pipe found;

Thence S.62 deg. 21'12"W., 161.86 feet to a 1/2" iron rod set at the Southwest intersection of the Rio Grande and Picacho Drain for Southwest corner of this tract;



Thence along East line of the Picacho Drain the following courses and distances, N.41 deg. 30'00"W., 161.24 feet to a 1/2" iron rod found and point of curvature;

Thence around the arc of a curve to the right, having a radius of 1095.90 feet, an arc length of 202.02 feet, through a central angle of 10 deg. 33'44" and whose long chord bears N.36 deg. 46'52"W., 201.74 feet to a 1/2" iron rod set;

Thence N.31 deg. 30'00"W., 158.85 feet to the point of beginning, containing 13.392 acres of land, more or less.

C. The real property transferred pursuant to Subsection B of this section shall be used to reestablish Mesilla Valley Bosque state park as that park existed prior to the transfer of the property by quitclaim deed of the commissioner of public lands on June 18, 2018.

**The 1987 amendment**, effective July 1, 1987, substituted "secretary" for "state park and recreation director" both places it appears and inserted "of the energy, minerals and natural resources department" following "state park and recreation division" near the end of the section.

#### ANNOTATIONS

**Authority to sell, etc., state property.** — The state park commission (now the state parks division), as well as any other commission or agency of the state, have the authority to sell, or otherwise dispose of, any property owned by the state, subject to the approval of the state board of finance. 1961-62 Op. Att'y Gen. No. 61-123.

### 16-2-15.1. Elephant Butte lake lease lot lands; release of lease with federal government.

The director of the state park and recreation division [state parks division] of the natural resources department shall execute a written release to the United States secretary of the interior of the state's lease of the Elephant Butte lake lease lot lands under contract No. 14-06-500-2087 between the state of New Mexico and the United States, in order that the federal government can sell such land to the private citizens presently leasing said land, who with their successors in interest are hereinafter referred to as landowners, provided that within three years after the effective date of this act the federal government sells such land to the private citizens leasing it; further provided that if this sale does not take place the written release provided in this act shall be null and void; and further provided that:

A. in exchange for release of legal obligation and rights under the contract, the state shall first be reimbursed a reasonable amount for its loss of revenue from the lease by the United States government;

B. in order to insure that the land is not used in an incompatible or conflicting manner with the surrounding park land and that access to the park is maintained, the following provisions shall be included in any agreement with the bureau of reclamation:

(1) a continuous easement on all current roadways and utility crossings shall be retained through the lease lot areas as shall all other existing easements at the time of the agreement;

(2) future use of the property shall be restricted to noncommercial, single-family residential use. Any use or activity that endangers the water or air quality of the park shall not be allowed;

(3) the state shall no longer have any responsibility to provide the lease lot area any of the services now provided by the state park and recreation division [state parks division] of the natural resources department; and

(4) the landowners and any successors in interest shall be obligated by these provisions and any noncompliance shall result in reversion of the property to the bureau of reclamation.

**History:** Laws 1987, ch. 317, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1997, ch. 149, § 3 provided that the "state park and recreation division" means the "state parks division". See 9-5A-6.1 NMSA 1978.

### 16-2-16. Procedure for transfer of park lands or recreational areas to state agencies, institutions or public bodies.

Upon receipt of written notification from the secretary containing a recommendation for transfer to a named grantee, a recitation of the nominal consideration and such reservations and conditions of transfer of specifically described lands as may be required, the commissioner of public lands, in conformity with the notification, shall execute and deliver to the named state educational institution or other state governmental agency, as grantee, a good and sufficient quitclaim deed conveying all the right, title and interest of the state in and to the lands described in the

notification. The commissioner of public lands shall, in due course, transfer any receipts derived as consideration actually paid in the transaction to the state treasurer for credit to the proper fund.

**History:** 1941 Comp., § 4-121, enacted by Laws 1951, ch. 45, § 2; 1953 Comp., § 4-9-15; Laws 1963, ch. 98, § 15; 1977, ch. 254, § 26; 1987, ch. 234, § 20.

The 1987 amendment, effective July 1, 1987, near the beginning of the first sentence substituted "secretary"

for "state park and recreation director," at the end of the second sentence substituted "treasurer for credit to the proper fund" for "park and recreation fund" and made minor changes in language throughout the section.

## 16-2-17. Repealed.

**Repeals.** — Laws 1987, ch. 234, § 84 repealed 16-2-17 NMSA 1978, as amended by Laws 1963, ch. 98, § 16, relating to use of emergency labor units, effective July 1, 1987.

For present comparable provisions, see 16-2-19 NMSA 1978.

## 16-2-18. Acceptance of donations of money, equipment or material.

A. The state is authorized to receive and accept gifts, donations or bequests of money, equipment or material, either for state park and recreation purposes generally or for any designated state park or recreation area or state park or recreation purposes or as an endowment for any particular state park or recreation area, and shall hold, expend and use the money, equipment or material for the purposes designated in the donation, gift, bequest or endowment.

B. The secretary is authorized to enter into agreements and contracts and to cooperate with the federal government in obtaining funds or other assistance for the acquisition, erection, maintenance and operation of state parks and recreation areas.

**History:** Laws 1935, ch. 57, § 15; 1941 Comp., § 4-115; 1953 Comp., § 4-9-17; Laws 1963, ch. 98, § 17; 1977, ch. 254, § 27; 1987, ch. 234, § 21.

The 1987 amendment, effective July 1, 1987, in Subsection B, substituted "secretary" for "state park and recreation director" and made a minor change in language in Subsection A.

cost of construction if such was determined to be feasible. 1963-64 Op. Att'y Gen. No. 63-80.

**Proper to acquire planning funds which become loan if project feasible.** — The parks and recreation commission (now state parks division) has authority to acquire funds from federal or other agencies for use in planning park and recreation facilities under such terms that the funds become a loan if the project is found feasible and construction is started, and a grant if the project is found not to be feasible and abandoned; the use of funds in such manner is a necessary incident to the improvement of the state's parks and recreation areas. 1963-64 Op. Att'y Gen. No. 63-80.

### ANNOTATIONS

**Subsection B includes contracts for feasibility studies** on projects for the parks and recreation areas. The funds contracted for would be included within the

## 16-2-19. State park and recreation revenues; source and disbursement.

All money derived from the operation of state parks or recreation areas or from the governmental gross receipts tax distributions pursuant to Section 7-1-6.38 NMSA 1978 appropriated to the energy, minerals and natural resources department for state park and recreation capital improvements, or from gifts, donations, bequests or endowments, except as the money may be pledged for the retirement of bonds issued under the State Park and Recreation Bond Act [16-2-20 through 16-2-29 NMSA 1978] or appropriated for state park and recreation purposes by the legislature or acquired from any other source whatsoever, shall not at any time or in any event revert or be transferred to general or other state funds; and such funds shall be used solely for the purpose of acquiring, developing, operating and maintaining state parks or recreation areas and maintenance, operation and expenditures of the state park and recreation division [state parks division] of the energy, minerals and natural resources department, the payment of traveling expenses and salaries of officers, park superintendents and employees and the retirement of state park and recreation bonds. Expenditures shall be made in accordance with budgets approved by the department of finance and administration.



**History:** Laws 1935, ch. 57, § 16; 1941 Comp., § 4-116; 1953 Comp., § 4-9-18; Laws 1963, ch. 98, § 18; 1965, ch. 14, § 4; 1965, ch. 280, § 11; 1977, ch. 254, § 28; 1987, ch. 234, § 22; 1995, ch. 141, § 22.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1997, ch. 149, § 3 provided that the "state park and recreation division" means the "state parks division". See 9-5A-6.1 NMSA 1978.

**Cross references.** — For special recreation and museum privileges for veterans and their immediate families on Veteran's Day, see 28-13A-1 NMSA 1978.

**The 1995 amendment,** effective April 5, 1995, in the first sentence, inserted "or from the governmental gross receipts tax distributions pursuant to Section 7-1-6.38

NMSA 1978 appropriated to the energy, minerals and natural resources department for state park and recreation capital improvements", deleted "department of" preceding "energy", and inserted "department" following "natural resources" near the end of the sentence.

**The 1987 amendment,** effective July 1, 1987, in the middle of the first sentence substituted "shall not" for "shall be covered into a fund to be known as the 'state park and recreation fund', hereby created, which shall be a revolving fund and no part of which shall," inserted "of the department of energy, minerals and natural resources" near the end of the first sentence and "and the retirement of state park and recreation bonds" at the end of that sentence and made minor changes in language throughout the section.

### 16-2-19.1. Motorboat fuel tax fund; appropriation.

There is created in the state treasury the "motorboat fuel tax fund". Money in the fund is appropriated to the state park and recreation division [state parks division] of the [energy, minerals, and] natural resources department for use under the regular budgeting procedure of the state. Seventy-five percent of the money in the fund is to be used to construct, purchase, improve and maintain boating and related facilities or equipment in this state under the jurisdiction of the state park and recreation division [state parks division]. Twenty-five percent of the money in the fund is to be used for any boating-related purpose whatsoever under the jurisdiction of the state park and recreation division [state parks division].

**History:** 1978 Comp., § 16-2-19.1, enacted by Laws 1983, ch. 211, § 38; 1987, ch. 234, § 23; 1987, ch. 322, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1997, ch. 149, § 3 provided that the "state park and recreation division" means the "state parks division". See 9-5A-6.1 NMSA 1978.

Laws 1987, ch. 234, § 83 provided that references in law to the "natural resources department" shall be construed to be references to the "energy, mineral and natural resources department".

**Cross references.** — For distribution from gasoline tax, see 7-1-6.8 NMSA 1978.

**1987 amendments.** — Laws 1987, ch. 234, § 23, effective July 1, 1987, in the middle of the second sentence inserting "energy, minerals and" preceding "natural resources," was approved April 9, 1987. However, Laws 1987, ch. 322, § 1, effective June 19, 1987, deleting "to construct, improve and furnish boating and related facilities in this state under the jurisdiction of the state park and recreation division" at the end of the second sentence and adding the last sentence, was approved April 10, 1987. The section was set out as amended by Laws 1987, ch. 322, § 1. See 12-1-8 NMSA 1978.

### 16-2-20. Short title.

This act [16-2-20 through 16-2-29 NMSA 1978] may be cited as the "State Park and Recreation Bond Act."

**History:** 1978 Comp., § 16-2-20, enacted by Laws 1965, ch. 280, § 1.

### 16-2-21. Purpose of act.

The purpose of the State Park and Recreation Bond Act [16-2-20 through 16-2-29 NMSA 1978] is to provide for the use of revenues derived from the operation of state parks or recreation areas or from gifts, donations, bequests or endowments for state park and recreation purposes and to issue bonds to provide for the acquiring, developing, operating and maintaining of state parks or recreation areas.

**History:** 1978 Comp., § 16-2-21, enacted by Laws 1965, ch. 280, § 2.

## 16-2-22. Bonding authority.

Whenever the secretary determines by written order that it is necessary to raise funds to provide for developing, operating and maintaining state parks or recreation areas, the state park and recreation division [state parks division] of the energy, minerals and natural resources department may issue and sell bonds of the state as provided for in the State Park and Recreation Bond Act [16-2-20 through 16-2-29 NMSA 1978]. The purposes for which the bonds are to be issued and the amount of each bond issue shall be approved by the state board of finance before issuance of the bonds.

**History:** 1978 Comp., § 16-2-22, enacted by Laws 1965, ch. 280, § 3; 1977, ch. 254, § 119; 1987, ch. 294, § 24.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1997, ch. 149, § 3 provided that the "state park and recreation division" means the "state parks division". See 9-5A-6.1 NMSA 1978.

The 1987 amendment, effective July 1, 1987, substituted "secretary" for "state park and recreation director" near the beginning of the first sentence and, towards the end, "the state park and recreation division of the energy, minerals, and natural resources department" for "the division" and made minor changes in language in the first sentence.

## 16-2-23. Form of bonds.

The state park and recreation division [state parks division], except as otherwise specifically provided in the State Park and Recreation Bond Act [16-2-20 through 16-2-29 NMSA 1978], shall determine at its discretion the terms, covenants and conditions of state park and recreation bonds, including but not limited to date of issue, denominations, maturities, rate or rates of interest, call features, call premiums, registration, refundability and other covenants covering general and technical aspects of the issuance of the bonds. The bonds shall be in such form as the state park and recreation division shall determine, and successive issues shall be identified by alphabetical, numerical or other proper series or designation. Except with respect to bonds issued in book entry or similar form without the delivery of physical securities, signatures of the governor, state treasurer and director of the state park and recreation division shall be affixed in compliance with the Uniform Facsimile Signature of Public Officials Act [6-9-1 through 6-9-6 NMSA 1978], and the coupons, if any, attached to the bonds shall bear the facsimile signature of the state treasurer in office at the time of the preparation of the bonds.

**History:** 1978 Comp., § 16-2-23, enacted by Laws 1965, ch. 280, § 4; 1977, ch. 254, § 120; 1983, ch. 265, § 34.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1997, ch. 149, § 3 provided that the "state park and recreation division" means the "state parks division". See 9-5A-6.1 NMSA 1978.

## 16-2-24. Sale of bonds.

Bonds issued under this State Park and Recreation Bond Act [16-2-20 through 16-2-29 NMSA 1978] shall be sold at not less than par value plus accrued interest to the date of delivery, and may be sold at public or private sale, as determined by the state park and recreation director. If sold at public sale, the director shall give notice of the time, place and terms of the sale by publication in a newspaper published in Santa Fe, New Mexico, not less than ten days prior to date of sale. Bonds issued under the State Park and Recreation Bond Act shall not be purchased by the state investment officer or state investment council.

**History:** 1978 Comp., § 16-2-24, enacted by Laws 1965, ch. 280, § 5; 1977, ch. 254, § 121.

## 16-2-25. Proceeds from sale of bonds.

Proceeds from the sale of bonds issued under this State Park and Recreation Bond Act [16-2-20 through 16-2-29 NMSA 1978] shall be deposited in a special fund in the state treasury and used solely for the purpose for which the bonds were authorized. Purchasers of the bonds are not



responsible in any way for the application of the proceeds. The cost of preparing, advertising and selling the bonds, including any necessary expense for financial and legal services, shall be paid out of the proceeds.

**History:** 1978 Comp., § 16-2-25, enacted by Laws 1965, ch. 280, § 6.

## 16-2-26. Construction.

This State Park and Recreation Bond Act [16-2-20 through 16-2-29 NMSA 1978] is sole authority for the authorization and issuance by the state park and recreation division [state parks division] of bonds authorized by the state board of finance, and the division may do anything necessary to carry out the powers granted by this State Park and Recreation Bond Act.

**History:** 1978 Comp., § 16-2-26, enacted by Laws 1965, ch. 280, § 7; 1977, ch. 254, § 122.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1997, ch. 149, § 3 provided that the "state park and recreation division" means the "state parks division". See 9-5A-6.1 NMSA 1978.

## 16-2-27. Tax exemptions.

The principal and income of bonds issued under the State Park and Recreation Bond Act [16-2-20 through 16-2-29 NMSA 1978] are exempt from all taxation by the state or any of its political subdivisions, except for inheritance and succession taxes.

**History:** 1978 Comp., § 16-2-27, enacted by Laws 1965, ch. 280, § 8.

## 16-2-28. Refunding.

Any bonds issued under the State Park and Recreation Bond Act [16-2-20 through 16-2-29 NMSA 1978] may be refunded under the terms of written orders issued by the director subject to any contractual limitations involved with outstanding bonds, claims or other obligations. Proceeds of refunding bonds shall be applied to retirement of the bonds to be retired or refunded, or placed in escrow to be applied to payment of the bonds upon presentation for payment by the holders. Refunding bonds shall be issued under all applicable conditions prescribed in the State Park and Recreation Bond Act for the issuance of original bonds.

**History:** 1978 Comp., § 16-2-28, enacted by Laws 1965, ch. 280, § 9; 1977, ch. 254, § 123.

## 16-2-29. Security; retirement of bonds.

The state park and recreation division [state parks division] of the energy, minerals and natural resources department may pledge for the retirement of bonds issued all or any part of the revenues to be produced from any project to be constructed with bond funds, all or any part of the governmental gross receipts tax distributions pursuant to Section 7-1-6.38 NMSA 1978, appropriated to the energy, minerals and natural resources department for state park and recreation area capital improvements and, except as may be prohibited by existing contractual arrangements, may also pledge money derived from the operation of present or future state parks or recreation areas or from gifts, donations, bequests or endowments for state park or recreation purposes or any portion of the same. Bonds are payable solely from the funds enumerated in this section and are not general obligations of the state.

**History:** 1978 Comp., § 16-2-29, enacted by Laws 1965, ch. 280, § 10; 1977, ch. 254, § 124; 1995, ch. 141, § 23.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1997, ch. 149, § 3 provided that the "state park and recreation division" means the "state parks division". See 9-5A-6.1 NMSA 1978.

**The 1995 amendment**, effective April 5, 1995, inserted "of the energy, minerals and natural resources department" and "all or any part of the governmental gross

receipts tax distributions pursuant to Section 7-1-6.38 NMSA 1978, appropriated to the energy, minerals and natural resources department for state park and recreation area capital improvements" in the first sentence, and substituted "funds enumerated in this section" for "above funds" in the second sentence.

### **16-2-30. Police powers vested in director and state parks employees designated by the secretary.**

A. The director of the state parks division and state parks division employees designated by the secretary are vested with general police power and shall be state park law enforcement officers with the authority of conservators of the peace within state parks and recreation areas. It shall be their duty to enforce the laws of the state and the rules and regulations of the energy, minerals and natural resources department within state parks and recreation areas. They shall have the further power of forcibly ejecting from a state park or recreation area a person who knowingly, willfully or wantonly violates a rule or regulation of the department within a state park or recreation area.

B. State park law enforcement officers, in emergency situations, shall be considered on duty and within the scope of their employment for employee benefits when they follow specific instructions from a duly qualified full-time peace officer and aid the peace officer in carrying out his duties. State park law enforcement officers shall respond in emergency situations, subject to the needs of the park to which they are assigned, and they shall have law enforcement powers outside the park so long as they follow specific instructions from the peace officer who requested aid.

C. As used in this section, "emergency" means a sudden, unexpected occurrence or an unforeseen combination of circumstances that calls for immediate action without time for deliberation.

**History:** Laws 1935, ch. 57, § 17; 1941 Comp., § 4-117; 1953 Comp., § 4-9-19; Laws 1963, ch. 98, § 19; 1965, ch. 14, § 5; 1977, ch. 254, § 29; 1987, ch. 234, § 25; 2003, ch. 107, § 1.

**The 2003 amendment**, effective July 1, 2003, substituted "state parks" for "park and recreation" in the section heading; added the Subsection A designation; in Subsection A, substituted "of the state parks division and state parks" for "and such state park and recreation" near the beginning, deleted "as may be" preceding "designated by the", inserted "shall be state park law enforcement

officers" preceding "with the authority", substituted "a person" for "any and all persons" preceding "who knowingly, willfully", substituted "violates a" for "violate any" preceding "rule or regulation"; and added Subsections B and C.

**The 1987 amendment**, effective July 1, 1987, substituted "secretary" for "director", "energy, minerals and natural resources department" for "state park and recreation division" and "of the department" for "of the state park and recreation division" and made minor changes in language throughout the section.

### **16-2-31. Repealed.**

**Repeals.** — Laws 1987, ch. 234, § 84 repealed 16-2-31 NMSA 1978, as enacted by Laws 1983, ch. 18, § 9, relating to attorneys for the state park and recreation division,

effective July 1, 1987. For present comparable provisions, see 16-2-30, 16-2-32 NMSA 1978.

### **16-2-32. Criminal offenses; penalty.**

A person who commits any of the following acts is guilty of a petty misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978:

A. cut, break, injure, destroy, take or remove a tree, shrub, timber, plant or natural object in any state park and recreation area, except in areas designated by the secretary and permitted by rules adopted by the secretary. Such rules shall only permit the removal of a tree, shrub, timber, plant or natural object for scientific study or for noncommercial use by an individual as a souvenir. The quantity of material authorized for removal from any area shall be strictly regulated by park personnel in order to minimize resource damage;

B. kill, cause to be killed or pursue with intent to kill a bird or animal in a state park and recreation area, except in areas designated by the secretary and except in conformity with the provisions of general law and the rules of the state game commission;



C. take a fish from the waters of a state park and recreation area, except in conformity with the provisions of general law and the rules of the state game commission;

D. willfully mutilate, injure, deface or destroy any guidepost, notice, tablet, fence, enclosure or work that is for the protection or ornamentation of a state park and recreation area;

E. light a fire in a state park and recreation area, except in those places authorized for fires by the secretary, or willfully or carelessly permit any fire that is authorized and that the person has lighted or caused to be lighted or under the person's charge to spread or extend to or burn the shrubbery, trees, timber, ornaments or improvements in a state park and recreation area or leave a campfire that the person has lighted or that has been left in the person's charge unattended by a competent person without extinguishing it;

F. place in a state park and recreation area or affix to an object in a state park and recreation area a word, character or device designed to advertise a business, profession, article, thing, exhibition, matter or event without a written license from the secretary permitting the person to do it; or

G. violate a rule adopted by the secretary pursuant to the provisions of Chapter 16, Article 2 NMSA 1978 when the violation has caused or contributed to the cause of an accident resulting in injury or death to a person or disappearance of a person.

**History:** Laws 1935, ch. 57, § 19; 1941 Comp., § 4-119; 1953 Comp., § 4-9-21; Laws 1963, ch. 98, § 21; 1967, ch. 31, § 1; 1977, ch. 254, § 31; 1987, ch. 234, § 26; 1997, ch. 149, § 1; 2013, ch. 136, § 2.

**The 2013 amendment**, effective June 14, 2013, provided that it is a petty misdemeanor when a violation causes an accident resulting in injury or death to a person or the disappearance of a person; in Subsections A through C, deleted "regulations" and added "rules"; and in Subsection G, after "violate a rule", deleted "or regulation"

and after "Article 2 NMSA 1978", added the remainder of the sentence.

**The 1997 amendment**, effective June 20, 1997, rewrote the introductory paragraph; added the exception to Subsection A; rewrote Subsections E and G; and made minor stylistic changes throughout the section.

**The 1987 amendment**, effective July 1, 1987, substituted "secretary" for "state park and recreation division" in Subsections B and E through G and "Chapter 16, Article 2 NMSA 1978" for "this article" in Subsection G and made minor changes in language throughout the section.

## **16-2-33. State parks division penalty assessment misdemeanors; definition; schedule of assessments.**

A. As used in Chapter 16, Article 2 NMSA 1978, "penalty assessment misdemeanor" means a violation of any rule of the state parks division of the energy, minerals and natural resources department promulgated pursuant to Chapter 16, Article 2 NMSA 1978.

B. The term "penalty assessment misdemeanor" does not include a violation that has caused or contributed to the cause of an accident resulting in injury or death to a person or disappearance of a person, nor does it include a violation of Section 16-2-32 NMSA 1978.

C. Whenever a person is arrested for violation of a penalty assessment misdemeanor, the arresting officer shall advise the person of the option either to accept the penalty assessment and pay it to the court or to appear in court. The arresting officer, using a uniform non-traffic citation, shall complete the information section, prepare the penalty assessment and prepare a notice to appear in court specifying the time and place to appear. The arresting officer shall have the person sign the citation as a promise either to pay the penalty assessment as prescribed or to appear in court as specified, give a copy of the citation to the person and release the person from custody. An officer shall not accept custody of payment of any penalty assessment.

D. The arresting officer may issue a warning notice, but shall fill in the information section of the citation and give a copy to the arrested person after requiring a signature on the warning notice as an acknowledgment of receipt. No warning notice issued under this section shall be used as evidence of conviction for purposes of Subsection L of this section.

E. In order to secure release, the arrested person must give a written promise to appear in court or to pay the penalty assessment prescribed or to acknowledge receipt of a warning notice.

F. The magistrate court or metropolitan court in the county where the alleged violation occurred has jurisdiction for any case arising from a penalty assessment misdemeanor issued for violation of a rule of the state parks division promulgated pursuant to Chapter 16, Article 2 NMSA 1978.

G. A penalty assessment citation issued by a law enforcement officer shall be submitted to the appropriate magistrate or metropolitan court within three business days of issuance. If the citation is not submitted within three business days, it may be dismissed with prejudice.

H. It is a misdemeanor for any person to violate a written promise to pay the penalty assessment or to appear in court given to an officer upon issuance of a citation regardless of the disposition of the charge for which the citation was issued.

I. A citation with a written promise to appear in court or to pay the penalty assessment is a summons. If a person fails to appear or to pay the penalty assessment by the appearance date, a warrant for failure to appear may be issued.

J. A written promise to appear in court may be complied with by appearance of counsel.

K. When an alleged violator of a penalty assessment misdemeanor elects to appear in court rather than to pay the penalty assessment to the court, no fine imposed upon later conviction shall exceed the penalty assessment established for the particular penalty assessment misdemeanor.

L. The penalty assessment for a first violation of any rule of the state parks division promulgated to Chapter 16, Article 2 NMSA 1978 is thirty dollars (\$30.00). This penalty assessment is in addition to any magistrate or metropolitan court costs as provided in Subsection B of Section 35-6-4 NMSA 1978. Upon a second conviction or acceptance of a notice of penalty assessment for violation of any rule of the state parks division promulgated pursuant to Chapter 16, Article 2 NMSA 1978, the penalty assessment shall be fifty dollars (\$50.00). Upon a third or subsequent conviction or acceptance of a notice of penalty assessment, the penalty assessment shall be one hundred fifty dollars (\$150).

**History:** Laws 2013, ch. 136, § 1.

**Effective dates.** — Laws 2013, ch. 136 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

## ARTICLE 3

### State Trails System

Sec.	Sec.
16-3-1. Short title.	16-3-6. Trails on federal lands; coordination with national trails system.
16-3-2. Definitions.	16-3-7. Violations; penalties.
16-3-3. Purpose.	16-3-8. Additional means of enforcement.
16-3-4. State trails system created; types of trails; planning.	16-3-9. Limitation of liability of owners of land used for recreational purposes.
16-3-5. Secretary to supervise planning, construction, operation and maintenance of trails system; powers and duties.	

#### 16-3-1. Short title.

This act [16-3-1 through 16-3-9 NMSA 1978] may be cited as the "State Trails System Act."

**History:** 1953 Comp., § 4-9A-1, enacted by Laws 1953, 81A C.J.S. States § 147.  
1973, ch. 372, § 1.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 59 Am. Jur. 2d Parks, Squares, and Playgrounds §§ 5 to 7, 10 to 12.

#### 16-3-2. Definitions.

As used in the State Trails System Act:

A. "local government" means any county, municipality or other political subdivision of the state and includes rural communities and unincorporated towns or villages in the state; and

B. "secretary" means the secretary of energy, minerals and natural resources.



**History:** 1953 Comp., § 4-9A-2, enacted by Laws 1973, ch. 372, § 2; 1977, ch. 254, § 32; 1987, ch. 234, § 27.

The 1987 amendment, effective July 1, 1987, deleted former Subsections A and B, which defined "division" and "director," respectively; redesignated former Subsection C as present Subsection A; and added Subsection B.

### 16-3-3. Purpose.

The purpose of the State Trails System Act is to provide public access to, and the enjoyment and appreciation of, the New Mexico outdoors in order to conserve, develop and use the natural resources of the state for purposes of health and recreation. It is the intent and purpose of the State Trails System Act to encourage horseback riding, hiking, bicycling and other recreational activities.

**History:** 1953 Comp., § 4-9A-3, enacted by Laws 1973, ch. 372, § 3.

### 16-3-4. State trails system created; types of trails; planning.

A. There is created a "state trails system" composed of:

(1) "state scenic trails" which are extended trails so located as to provide maximum potential for the appreciation of natural areas and for the conservation and enjoyment of the significant scenic, historic, natural, ecological, geological or cultural qualities of the areas through which such trails pass;

(2) "state recreation trails" which are trails designed to provide a variety of outdoor recreational uses in or reasonably accessible to urban areas and, where appropriate, shall connect parks, scenic areas, historical points and neighboring communities;

(3) "state historical trails" which are trails designed to identify and interpret routes which were significant in the prehistoric settlement or historical development of the state; and

(4) "special use trails" which are trails that may provide uses also provided by scenic, recreation and historical trails but which shall not be limited to such uses. The secretary may designate special use trails in such locations as he deems appropriate and may limit the use of such trails to such special users as he determines. In designating special use trails, the secretary shall give due regard to the interests of users who have needs of a special nature which are not fulfilled by other trail types comprising the state trails system.

B. State trails shall be supplemented by support facilities deemed necessary and feasible by the secretary. These facilities shall comply with health and environment department [department of environment] standards and regulations.

C. In the planning and designation of trails, the secretary shall give due regard to the interests of federal or state agencies, counties, municipalities, private landowners and interested individuals and recreational and conservation organizations. The secretary shall give full consideration to the inclusion of trails from all categories within the system.

D. The secretary shall prescribe the uses and limits of each type of trail.

E. Separate trails may be established for motorized vehicles but shall not be trails designated for horseback riding, hiking or bicycling.

F. Before making a final designation of any trail, the secretary shall:

(1) hold a public hearing after proper notice within the affected county and area; and

(2) as a result of the hearing, adopt a finding approving or disapproving the trail based upon evidence as to the adverse effects that the trail has on the holders of any interest in the lands in the proximity of the trail.

**History:** 1953 Comp., § 4-9A-4, enacted by Laws 1973, ch. 372, § 4; 1977, ch. 254, § 33; 1987, ch. 234, § 28.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 1991, ch. 25, § 16 repealed former 9-7-4 NMSA 1978, relating to the health and environment department and enacted a new 9-7-4 NMSA 1978, which created the

department of health. Laws 1991, ch. 25, § 4 created the department of environment.

The 1987 amendment, effective July 1, 1987, substituted "secretary" for "division" in Subsections A(4), B, C, D, and F; in Subsection B, in the second sentence substituted "health and environment department" for "environmental improvement agency"; and made minor changes in language throughout the section.

### **16-3-5. Secretary to supervise planning, construction, operation and maintenance of trails system; powers and duties.**

**A. The secretary shall:**

(1) adopt and regularly review and revise in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] such rules and regulations as may be necessary to carry into effect and enforce the provisions of the State Trails System Act;

(2) plan, establish, acquire, purchase, develop, construct, enlarge, improve, maintain, equip, operate, protect and police the state trails system;

(3) acquire by lease, deed or contract rights-of-way or easements for trails across private, municipal, county, state or federal lands. In selecting the rights-of-way, every consideration shall be given to minimizing the adverse effects upon the adjacent landowner or user. Acquisition shall be, wherever possible, in the form of an easement obtained by gift, exchange or purchase with donated funds. When such devices fail, the secretary may authorize the expenditure of state appropriations for acquisition in fee. Any agreement for acquisition of rights in land shall be for terms of not less than twenty-five years whenever possible; and

(4) coordinate trail development by assisting counties, municipalities and other political subdivisions in the formation of their trail plans. In carrying out this responsibility, the secretary shall review records of easements and other interests in lands which are available for use as trails, including public lands, utility easements, flood plains, railroad rights-of-way, arroyos, other rights-of-way and surplus public proprietary lands as may be adaptable for such use, and shall ensure that uniform construction standards, compatible with allowed usage, are made available to local governments.

B. The secretary may abandon any portion or all of a trail or easement acquired for trail purposes which is no longer needed for such purposes, or he may transfer any trail or easement to a local government having jurisdiction over the area in which the trail or easement is located for so long as the local government agrees to maintain and operate the trail.

C. The secretary shall notify the owner of the land through which any trail or easement passes prior to entering into any agreement with a local government for the operation of a trail and shall secure the consent of the landowner prior to the transfer of any trail or easement to a local government.

D. The secretary shall review all formal declarations of railroad right-of-way abandonments by the interstate commerce commission for possible inclusion into the state trails system.

E. Within the boundaries of a right-of-way, the secretary may acquire on behalf of the state lands in fee title, any interest in lands in the form of scenic or other easements or any interest in lands under cooperative or other agreement. Acquisition of land or of any interest in land may be by gift, purchase, exchange or by the assumption of obligations. Acquisition may be through the use of funds obtained by donation, federal grants, proceeds of the sale of bonds, legislative appropriation or otherwise. In acquiring real property or any interest therein, the power of eminent domain shall not be used.

F. The secretary shall prepare and publish trail plans and standards and make them available to participating local governments and interested members of the public upon request. The secretary shall also prepare a state trails map and shall make copies available to members of the public upon request.

G. The secretary shall prepare and publish a comprehensive intermediate and long-range state trails plan on a continuing basis in accordance with the state comprehensive outdoor recreation plan. Included in these plans shall be an inventory of existing trails and potential trail routes on all lands within the state. Such plans may include general routes or corridors within which specific trails or segments of trails may be considered for inclusion in the state trails system.

H. The secretary shall annually submit a written report on recreational, scenic, historical and special use trails to the governor by December 31. Copies of the annual reports shall be furnished to participating local governments and shall be made available to interested members of the public upon request.

**History:** 1953 Comp., § 4-9A-6, enacted by Laws 1973, ch. 372, § 6; 1977, ch. 254, § 35; 1987, ch. 234, § 29.

**The 1987 amendment**, effective July 1, 1987, substituted "secretary" for "division" throughout the section;

in Subsection A(3), deleted from the end of the second sentence "and his operations"; and made minor language changes throughout the section.



### 16-3-6. Trails on federal lands; coordination with national trails system.

A. The secretary may establish and designate state recreational, scenic, historical and special use trails on lands under the jurisdiction of a federal agency when, in the opinion of the federal agency and the secretary, such lands may be so developed under the provisions of federal law and the provisions of Section 16-3-4 NMSA 1978.

B. Nothing in the State Trails System Act shall preclude a component of the state trails system from being a part of the national trails system. The secretary shall coordinate the state trails system with the national trails system and is directed to encourage and assist any federal studies for inclusion of New Mexico trails in the national trails system. The secretary may enter into written cooperative agreements for joint federal-state administration of any New Mexico component of the national trails system, provided such agreements for administration of land uses are not less restrictive than those set forth in the State Trails System Act.

**History:** 1953 Comp., § 4-9A-7, enacted by Laws 1973, ch. 372, § 7; 1977, ch. 254, § 36; 1987, ch. 234, § 30.

**The 1987 amendment,** effective July 1, 1987, substituted "secretary" for "division" throughout the section, "16-3-4 NMSA 1978" for "4-9A-4 NMSA 1953" at the end of Subsection A and "the State Trails System Act" for "this article" at the beginning of the first sentence in Subsection B.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — "Compliance with state standards" as requirement to granting right-of-way over federal public lands under § 505(a)(iv) of the Federal Land Policy and Management Act of 1976 (43 USCS § 1765(a)(iv)), 60 A.L.R. Fed. 386.

### 16-3-7. Violations; penalties.

Each person is guilty of a misdemeanor who shall:

A. willfully mutilate, deface or destroy any guidepost, notice, tablet, fence or other work which is for the protection or ornamentation of any state trail;

B. place along any trail or affix to any object in the right-of-way, without a written license from the secretary, any word, character or device designed to advertise any business, trade, profession, article, thing, matter or event; or

C. violate any rule or regulation adopted by the secretary in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] to regulate the use of and prevent damage to lands within and adjacent to the state trails system.

**History:** 1953 Comp., § 4-9A-8, enacted by Laws 1973, ch. 372, § 8; 1977, ch. 254, § 37; 1987, ch. 234, § 31.

**The 1987 amendment,** effective July 1, 1987, substituted "secretary" for "division" in Subsections B and C.

### 16-3-8. Additional means of enforcement.

As an additional means of enforcing the provisions of the State Trails System Act and rules and regulations adopted by the secretary pursuant to that act, the secretary may seek injunctive relief, in the district court of the county where the violation occurs, against any violation or threatened violation of the act or any rules and regulations adopted pursuant thereto, and such relief shall be subject to the continuing jurisdiction and supervision of the district court and the court's powers of contempt. Any party aggrieved by any final judgment of the district court under this section may appeal to the court of appeals as in other civil actions.

**History:** 1953 Comp., § 4-9A-9, enacted by Laws 1973, ch. 372, § 9; 1977, ch. 254, § 38; 1987, ch. 234, § 32.

**The 1987 amendment,** effective July 1, 1987, in the first sentence substituted "secretary" for "division" both

places it appears, deleted the former second sentence, which read "The attorney general shall represent the division," and made minor language changes in the first sentence.

### 16-3-9. Limitation of liability of owners of land used for recreational purposes.

No person or corporation, or their successors in interest, who has granted a right-of-way or easement across his land to the energy, minerals and natural resources department for use in the state

trails system shall be liable to any user of the trail for injuries suffered on the right-of-way or easement unless the injuries are caused by the willful or wanton misconduct of the grantor.

**History:** 1953 Comp., § 4-9A-10, enacted by Laws 1973, ch. 372, § 10; 1977, ch. 254, § 39; 1987, ch. 234, § 33.

The 1987 amendment, effective July 1, 1987, substituted "energy, minerals and natural resources department" for "division" and made a minor language change.

a motorcycle over the trails on a landowner's property, the landowner has no duty to maintain the trails and has no duty to warn of dangerous trail conditions not created by the landowner. *Moore v. Burn Constr. Co.*, 1982-NMCA-087, 98 N.M. 190, 646 P.2d 1254.

#### ANNOTATIONS

**No duty to maintain trails or warn of dangerous conditions.** — Where a traveler has a right to ride

## ARTICLE 4

### El Rio Chama Scenic and Pastoral River and Rio Grande Valley State Park

Sec. 16-4-1. Short title.  
16-4-2. Declaration of policy.  
16-4-3. Definitions.  
16-4-4. Designation.  
16-4-5. Management.  
16-4-6. Land use and acquisition.  
16-4-7. Inclusion in national system.  
16-4-8. Violations; injunctions.  
16-4-9. Short title.

Sec. 16-4-10. Declaration of policy and funding intent.  
16-4-11. Definitions.  
16-4-12. Designation of boundaries.  
16-4-13. Management.  
16-4-14. Land use and acquisition.  
16-4-15. Violations; injunctions.  
16-4-16. Joint powers.  
16-4-17. Repealed.

#### 16-4-1. Short title.

This act [16-4-1 through 16-4-8 NMSA 1978] may be cited as "El Rio Chama Scenic and Pastoral Act."

**History:** 1953 Comp., § 75-34A-1, enacted by Laws 1977, ch. 242, § 1.

#### 16-4-2. Declaration of policy.

The preservation, protection and maintenance of the natural and scenic beauty of a designated portion of the Chama river and its immediate corridor is in the public interest and is compatible with the multiple use of New Mexico's natural resources. The designation of El Rio Chama scenic and pastoral river will enable the people of the area to enjoy the recreational, environmental and wildlife benefits of the river. Therefore, the legislature declares it to be in the public interest, in furtherance of sound environmental policy and for the good of the people, to establish a scenic and pastoral river known as El Rio Chama.

**History:** 1953 Comp., § 75-34A-2, enacted by Laws 1977, ch. 242, § 2.

#### 16-4-3. Definitions.

As used in El Rio Chama Scenic and Pastoral Act [16-4-1 through 16-4-8 NMSA 1978]:

A. "corridor" means those lands immediately adjacent to the riverbed essentially from rim to rim or four hundred feet back from the river banks of the Rio Chama, whichever is less;

B. "pastoral" means those free-flowing segments of the river which are affected by the works of man but which still possess natural and scenic value. Included are areas with developed or partially developed shorelines;



C. "river" means a flowing body of water or any segment, portion or tributary thereof within the corridor, including rivers, streams, creeks, branches or small lakes;

D. "scenic" means those sections of the river that are free of impoundments, with shorelines remaining largely undeveloped, but which may be accessible in places by primitive roads; and

E. "secretary" means the secretary of energy, minerals and natural resources.

**History: 1953 Comp., § 75-34A-3, enacted by Laws 1977, ch. 242, § 3; 1987, ch. 234, § 34.**

**The 1987 amendment**, effective July 1, 1987, added Subsection E.

## 16-4-4. Designation.

The Chama river and its immediate corridor, from the boundary line between section 10 and 15, township 27 north, range 2 east just south of the El Vado dam downstream approximately thirty miles to where it is crossed by the U.S. forest service boundary in section 24, township 24 north, range 3 east, is designated as a scenic and pastoral river.

**History: 1953 Comp., § 75-34A-4, enacted by Laws 1977, ch. 242, § 4.**

## 16-4-5. Management.

A. The secretary shall administer the state-administered segment of El Rio Chama Scenic and Pastoral River and shall develop, by rule and regulation and after public hearings, a management plan and guidelines to realize the scenic and pastoral objectives of El Rio Chama Scenic and Pastoral Act [16-4-1 through 16-4-8 NMSA 1978]. The plan shall be prepared in cooperation with the appropriate federal agencies and shall include among other things:

(1) consideration for cooperative management arrangements between state and federal authorities; and

(2) measures to control recreational use of the designated river to protect the river's natural values.

B. The secretary shall seek the assistance and aid of the state game commission for resource and recreation management within the state-administered segment of El Rio Chama Scenic and Pastoral River.

C. The secretary shall report annually to the governor and to the legislature concerning the development and the administration of the cooperative federal-state management plan.

**History: 1953 Comp., § 75-34A-5, enacted by Laws 1977, ch. 242, § 5; 1987, ch. 234, § 35.**

**The 1987 amendment**, effective July 1, 1987, substituted "secretary" for "state park and recreation

commission" once in each subsection and made a minor language change in Subsection A.

## 16-4-6. Land use and acquisition.

A. The secretary shall not condemn any land or interests in lands within El Rio Chama Scenic and Pastoral River under state jurisdiction.

B. The secretary may acquire, in furtherance of the objectives of El Rio Chama Scenic and Pastoral Act [16-4-1 through 16-4-8 NMSA 1978] and on behalf of the state, land, improvements or any interest within the boundaries of El Rio Chama Scenic and Pastoral River by purchase, lease, exchange or gift and enter into agreements with private landholders concerning the same at fair market value.

C. The secretary may accept and receive gifts and bequests of money or other property, including funds from the federal government, for purposes consistent with El Rio Chama Scenic and Pastoral Act.

D. El Rio Chama Scenic and Pastoral River shall be administered in such a manner as to protect and enhance the scenic and natural values which caused the river to be designated as a state scenic and pastoral river.

E. Nothing in El Rio Chama Scenic and Pastoral Act shall be construed as being incompatible with existing state property laws. Nothing shall be construed to be incompatible with regulation of river flow for flood control or beneficial uses of water.

**History:** 1953 Comp., § 75-34A-6, enacted by Laws 1977, ch. 242, § 6; 1987, ch. 234, § 36.

**The 1987 amendment,** effective July 1, 1987, substituted "secretary" for "state park and recreation commission" at the beginning of Subsections A, B and C.

### 16-4-7. Inclusion in national system.

Nothing in El Rio Chama Scenic and Pastoral Act [16-4-1 through 16-4-8 NMSA 1978] shall preclude the designated river from becoming part of the national wild and scenic rivers system. The secretary shall encourage and assist any federal studies for inclusion of El Rio Chama Scenic and Pastoral River in the national system and may enter into written cooperative agreements for joint federal and state administration of El Rio Chama Scenic and Pastoral River as a component of the national system. Such agreements shall recognize the established rights and culture of the area.

**History:** 1953 Comp., § 75-34A-7, enacted by Laws 1977, ch. 242, § 7; 1987, ch. 234, § 37.

**The 1987 amendment,** effective July 1, 1987, substituted "secretary" for "state park and recreation

commission" near the beginning of the second sentence and made minor language changes.

### 16-4-8. Violations; injunctions.

Any person may be restrained and enjoined from engaging or continuing in an act which violates any provision of El Rio Chama Scenic and Pastoral Act [16-4-1 through 16-4-8 NMSA 1978] or any rule or regulation adopted pursuant to that act.

**History:** 1953 Comp., § 75-34A-8, enacted by Laws 1977, ch. 242, § 8; 1987, ch. 234, § 38.

**The 1987 amendment,** effective July 1, 1987, deleted "by proceedings instituted in the name of the state by the state attorney general or any district attorney of the state

or by a special attorney of the state park and recreation commission at the request of the commission" following "any person may be restrained and enjoined" and made a minor language change at the end of the section.

### 16-4-9. Short title.

This act [16-4-9 through 16-4-17 NMSA 1978] may be cited as the "Rio Grande Valley State Park Act."

**History:** Laws 1983, ch. 18, § 1.

### 16-4-10. Declaration of policy and funding intent.

A. The preservation, protection and maintenance of the natural and scenic beauty of a designated portion of the Rio Grande and its immediate corridor is in the public interest. The designation of the Rio Grande Valley state park will enable people to enjoy the recreational, environmental, educational and wildlife benefits of the river. Therefore, the legislature declares it to be in the public interest, in furtherance of sound environmental policy and for the good of the people to establish the Rio Grande Valley state park.

B. It is the intent of the Rio Grande Valley State Park Act [16-4-9 through 16-4-17 NMSA 1978] that the state parks division of the energy, minerals and natural resources department not bear the operating costs for the Rio Grande Valley state park except for the area within the Rio Grande nature center state park. The state may expend funds within the boundaries of the entire Rio Grande Valley state park as it deems appropriate.



**History:** Laws 1983, ch. 18, § 2; 2005, ch. 31, § 1.

The 2005 amendment, effective June 17, 2005, provided that the energy, minerals and natural resources department not bear operating costs of the Rio Grande

Valley state park except within the Rio Grande nature center state park and allowed the state to expend funds within the Rio Grande Valley state park as appropriate.

## 16-4-11. Definitions.

As used in the Rio Grande Valley State Park Act [16-4-9 through 16-4-17 NMSA 1978]:

- A. "conservancy district" means the middle Rio Grande conservancy district;
- B. "operating party" means the party designated by the secretary to manage the state park; and
- C. "secretary" means the secretary of energy, minerals and natural resources.

**History:** Laws 1983, ch. 18, § 3; 1987, ch. 234, § 39.

The 1987 amendment, effective July 1, 1987, deleted former Subsection B, which defined "division";

redesignated former Subsection C as current Subsection B and, in that subsection, substituted "secretary" for "division"; and added Subsection C.

## 16-4-12. Designation of boundaries.

The Rio Grande valley state park shall include lands owned and controlled by the middle Rio Grande conservancy district in the floodway of the Rio Grande, adjacent levees, service roads, riverside drains and conservancy district lands contiguous to the river in Bernalillo county, with the following exceptions:

- A. private land in and adjacent to the floodway of the river;
- B. lands held by public agencies other than the conservancy district;
- C. lands of the Sandia and Isleta Indian pueblos in Bernalillo county;
- D. lands within the municipal boundaries of the village of Corrales unless the governing body of the village of Corrales subsequently requests inclusion; and
- E. a two-hundred foot strip on either side of the final center line of existing and proposed bridges whose alignment has been or may be approved by the urban transportation policy planning board of the middle Rio Grande council of governments.

**History:** Laws 1983, ch. 18, § 4.

## 16-4-13. Management.

A. The provisions of the Rio Grande Valley State Park Act [16-4-9 through 16-4-17 NMSA 1978] shall not take effect until the secretary has fully executed a management agreement with an operating party, and shall cease to be in effect if the management agreement is terminated. The management agreement shall include a map delineating the boundaries of the park. The park shall be established when the management agreement is signed by the secretary and the designated representative of the operating party. A provision of the management agreement shall require twelve months' written notice prior to any termination taking effect.

B. The operating party shall administer the Rio Grande Valley state park. The operating party shall develop, after public hearings, a management plan for approval by the secretary which is consistent with the provisions of the feasibility study previously prepared that satisfies the requirements of Subsection G of Section 16-2-11 NMSA 1978, to realize the objectives of the Rio Grande Valley State Park Act. The plan shall be prepared in cooperation with the appropriate federal, state and local agencies and shall include among other things:

- (1) consideration for cooperative management arrangements between state, federal, conservancy, flood control and municipal authorities;
- (2) measures to control recreational use of the designated river to protect the river's natural values; and
- (3) measures to minimize any adverse impact to the park caused by public transportation or other public improvement projects to be located in close proximity to the park.

C. The operating party may seek the assistance and aid of the game and fish department for resource and wildlife management within the Rio Grande Valley state park.

**History:** Laws 1983, ch. 18, § 5; 1987, ch. 234, § 40.

The 1987 amendment, effective July 1, 1987, substituted "secretary" for "division" near the beginning of both Subsections A and B, "secretary" for "representative of the division" in the third sentence in Subsection A and "game and fish division of the energy, minerals and natural resources department" for "department of game and fish" in Subsection C.

complaint alleging specifically that the defendant city failed to include in the operating plan measures to minimize the adverse impact of its bridge project, in violation of the Rio Grande Valley State Park Act. *State ex rel. Vill. of Los Ranchos de Albuquerque v. City of Albuquerque*, 1993-NMCA-147, 119 N.M. 169, 889 P.2d 204.

#### ANNOTATIONS

**Hearing on complaint alleging violations of act.**

— The plaintiff village was entitled to a hearing on its

### 16-4-14. Land use and acquisition.

A. The secretary shall not condemn any land or interests in lands within the Rio Grande Valley state park under state jurisdiction.

B. The operating party may acquire, in furtherance of the objectives of the Rio Grande Valley State Park Act [16-4-9 through 16-4-17 NMSA 1978] and on behalf of the state, land, improvements or any interest within the boundaries of the Rio Grande Valley state park by purchase, lease, exchange or gift and enter into agreements with private landholders concerning the same at fair market value.

C. The secretary or operating party may accept and receive gifts and bequests of money or other property, including funds from the federal government, for purposes consistent with the Rio Grande Valley State Park Act.

D. The Rio Grande Valley state park shall be administered in such a manner as to protect and enhance the scenic and natural values of the Rio Grande.

E. Nothing in the Rio Grande Valley State Park Act shall be construed as being incompatible with existing state property laws. Nothing shall be construed to be incompatible with regulation of river flow for flood control, sediment control or beneficial uses of water or with the need for life saving, fire suppression, public health or emergency flood management.

F. Future public utility crossings, including but not limited to sewer lines, sewer outfalls, and water lines and facilities, are permitted uses in the park, subject to the following: such facilities shall be placed underground or in existing easements, provided that if such placement is determined by the utility not to be practical due to unusual environmental, economic or technical problems, the utilities shall make such findings and present them to the secretary for approval of placing the proposed facilities above ground or outside existing easements. The utility shall also demonstrate to the secretary that location of the proposed facility outside the park would cause undue hardship to the utility.

G. The Rio Grande Valley State Park Act shall not prohibit existing or future drainage or flood control projects approved by a county, municipality or flood control agency. Such projects shall be reviewed by the secretary, and the secretary, the operating party and the county, municipality or flood control agency shall cooperate to minimize adverse impact on the park caused by such projects.

**History:** Laws 1983, ch. 18, § 6; 1987, ch. 234, § 41.

The 1987 amendment, effective July 1, 1987, substituted "secretary" for "division" in Subsections A, C, F, and G.

### 16-4-15. Violations; injunctions.

Any person may be restrained and enjoined from engaging or continuing in an act which violates any provision of the Rio Grande Valley State Park Act [16-4-9 through 16-4-17 NMSA 1978] or any rule or regulation of the secretary or any additional rule or regulation adopted pursuant to the Rio Grande Valley State Park Act.



**History:** Laws 1983, ch. 18, § 7; 1987, ch. 234, § 42.

The 1987 amendment, effective July 1, 1987, deleted "by proceedings instituted in the name of the state or the operating party by the attorney general or any district attorney of the state or by a special attorney of the division

or the operating party at the request of the division or the operating party" following "any person may be restrained and enjoined" at the beginning and substituted "secretary" for "division" near the end.

## 16-4-16. Joint powers.

The operating party, subsequent to satisfying the provisions of Subsection A of Section 5 [16-4-13 NMSA 1978] of the Rio Grande Valley State Park Act, and the conservancy district shall enter into a joint powers agreement to effectuate the provisions of the Rio Grande Valley State Park Act [16-4-9 through 16-4-17 NMSA 1978]; provided, however, that nothing in the Rio Grande Valley State Park Act shall be construed in such a way as to obstruct or interfere with the duties, operations, obligations, construction of new works or functions of the middle Rio Grande conservancy district as provided in Chapter 73, Articles 14 and 18 NMSA 1978 or the duties and obligations of the state of New Mexico under the Rio Grande Compact [72-15-23 NMSA 1978] or agreements or contracts between the conservancy district and federal agencies such as the United States department of interior, the bureau of reclamation and the United States army corps of engineers.

In the event the operating party and the conservancy district fail to negotiate a mutually acceptable joint powers agreement within one year from complying with the provisions of Subsection A of Section 5 of the Rio Grande Valley State Park Act, the operating party and the conservancy district shall submit any unresolved disputes to a mutually agreeable impartial arbitrator for binding arbitration.

**History:** Laws 1983, ch. 18, § 8.

## 16-4-17. Repealed.

**Repeals.** — Laws 2005, ch. 31, § 2 repealed 16-4-17 NMSA 1978, as enacted by Laws 1983, ch. 18, § 9, relating to state appropriations, effective June 17, 2005. For

provisions of former section, see the 2004 NMSA 1978 on *NMOneSource.com*.

# ARTICLE 5

## Cumbres and Toltec Scenic Railroad

Sec.

16-5-1. Execution of compact.

16-5-1.1. Short title.

16-5-2. Ratification of compact.

16-5-3. Cumbres and Toltec scenic railroad commission created.

16-5-4. Appointment of members.

16-5-5. Payment of the expenses of commission.

16-5-6. Exemptions.

Sec.

16-5-7. Commission powers.

16-5-8. Definitions.

16-5-9. Authority of commission to incur indebtedness.

16-5-10. Railroad loan retirement fund.

16-5-11. Authorization to set and collect user fees.

16-5-12. Tax exemption of interest charged on loan.

16-5-13. Liberal interpretation.

## 16-5-1. Execution of compact.

The legislature hereby approves and the governor is authorized to enter into a compact on behalf of this state with the state of Colorado in the form substantially as follows:

### CUMBRES AND TOLTEC SCENIC RAILROAD COMPACT

The state of New Mexico and the state of Colorado, desiring to provide for the joint acquisition, ownership and control of an interstate narrow gauge scenic railroad, known as the Cumbres and Toltec scenic railroad, within Rio Arriba county in New Mexico and Archuleta and Conejos

counties in Colorado, to promote the public welfare by encouraging and facilitating recreation and by preserving, as a living museum for future generations, a mode of transportation that helped in the development and promotion of the territories and states, and to remove all causes of present and future controversy between them with respect thereto, and being moved by considerations of interstate comity, have agreed upon the following articles:

#### Article I

The states of New Mexico and Colorado agree jointly to acquire, own and make provision for the operation of the Cumbres and Toltec scenic railroad.

#### Article II

The states of New Mexico and Colorado hereby ratify and affirm the agreement of July 1, 1970, entered between the railroad authorities of the states.

#### Article III

The states of New Mexico and Colorado agree to make such amendments to the July 1, 1970 agreement and such other contracts, leases, franchises, concessions or other agreements as may hereafter appear to both states to be necessary and proper for the control, operation or disposition of the said railroad.

#### Article IV

The states of New Mexico and Colorado agree to the consideration of the enactment of such laws or constitutional amendments exempting the said railroad or its operations from various laws of both states as both states shall hereafter mutually find necessary and proper.

#### Article V

Nothing contained herein shall be construed so as to limit, abridge or affect the jurisdiction or authority, if any, of the interstate commerce commission over the said railroad, or the applicability, if any, of the tax laws of the United States to the said railroad or its operations.

**History:** 1953 Comp., § 69-12-4, enacted by Laws 1972, ch. 19, § 1.

Mexico and Colorado, is immune from property taxes in the two states. 1990 Op. Att'y Gen. No. 90-18.

#### ANNOTATIONS

**Bi-state agency immune from property tax.** — The Cumbres and Toltec Railroad, a bi-state agency of New

### 16-5-1.1. Short title.

Sections 16-5-1 through 16-5-7 NMSA 1978 and Sections 1 through 7 of this act [16-5-1.1, 16-5-8 through 16-5-13 NMSA 1978] may be cited as the "Cumbres and Toltec Scenic Railroad Act".

**History:** Laws 1989, ch. 26, § 1.

### 16-5-2. Ratification of compact.

The legislature hereby ratifies the "Cumbres and Toltec Scenic Railroad Compact" as it is set forth in Section 16-5-1 NMSA 1978 (being Laws 1972, Chapter 19, Section 1) signed at the city and county of Santa Fe, state of New Mexico, on the 11th day of December, A.D. 1974, by Bruce King, as governor of the state of New Mexico, pursuant to Section 16-5-1 NMSA 1978 and signed



at the city and county of Denver, state of Colorado, on the 26th day of December, A.D. 1974, by John D. Vanderhoof, as governor of the state of Colorado, under authority of and in conformity with the provisions of Chapter 254 of the Session Laws of Colorado 1973. The consent of congress was given by Public Law 93-467, approved October 24, A.D. 1974, by the senate and house of representatives.

**History:** 1953 Comp., § 69-12-4.1, enacted by Laws 1977, ch. 350, § 1.

### 16-5-3. Cumbres and Toltec scenic railroad commission created.

There is created the "Cumbres and Toltec scenic railroad commission," an interstate agency authorized by the Cumbres and Toltec Scenic Railroad Compact. The commission shall be composed of four members, two of whom serve for the state of New Mexico and two of whom serve for the state of Colorado.

**History:** 1953 Comp., § 69-12-5, enacted by Laws 1977, ch. 350, § 2.

**Repeals and reenactments.** — Laws 1977, ch. 350, § 2, repealed 69-12-5, 1953 Comp., relating to the effective date of the compact, and enacted a new section.

### 16-5-4. Appointment of members.

The two New Mexico members of the Cumbres and Toltec scenic railroad commission shall be appointed by the governor and shall serve at his pleasure. The members shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978], but shall receive no other compensation, perquisite or allowance.

**History:** 1953 Comp., § 69-12-6, enacted by Laws 1977, ch. 350, § 3.

### 16-5-5. Payment of the expenses of commission.

The New Mexico share of the expenses of the commission and the reimbursement of the New Mexico members may be paid out of funds appropriated by the legislature and other revenue and user fees collected pursuant to Section 16-5-11 NMSA 1978 not needed for railroad loan retirement. Fees and revenues collected by the commission are appropriated to the commission.

**History:** 1953 Comp., § 69-12-7, enacted by Laws 1977, ch. 350, § 4; 2005, ch. 156, § 1.

**The 2005 amendment,** effective June 17, 2005, provided that expenses of the commission may be paid from

user fees and other revenues not needed for railroad loan retirement and are appropriated to the commission.

### 16-5-6. Exemptions.

The Cumbres and Toltec scenic railroad commission is exempt from compliance with the Personnel Act [Chapter 10, Article 9 NMSA 1978] and the Public Purchases Act.

**History:** 1953 Comp., § 69-12-8, enacted by Laws 1977, ch. 350, § 5.

**Compiler's notes.** — Former 13-1-1 NMSA 1978 was the short title for the Public Purchases Act (former 13-1-1 through 13-1-27 NMSA 1978), referred to in this section. Sections 13-1-1 to 13-1-20, and 13-1-23 to 13-1-27 NMSA

1978, were repealed Laws 1984, ch. 65, § 175, leaving only 13-1-21 and 13-1-22 NMSA 1978 of the former Public Purchases Act remaining. See now the Procurement Code, 13-1-28 NMSA 1978 et seq.

### 16-5-7. Commission powers.

The Cumbres and Toltec scenic railroad commission shall have all powers necessary to effectuate the provisions of the Cumbres and Toltec Scenic Railroad Compact.

**History:** 1953 Comp., § 69-12-9, enacted by Laws 1977, ch. 350, § 6.

### 16-5-8. Definitions.

As used in the Cumbres and Toltec Scenic Railroad Act [16-5-1 through 16-5-13 NMSA 1978]:

- A. "commission" means the Cumbres and Toltec scenic railroad commission; and
- B. "railroad" means the Cumbres and Toltec scenic railroad.

**History:** Laws 1989, ch. 26, § 2.

### 16-5-9. Authority of commission to incur indebtedness.

- A. The commission has authority to incur indebtedness for the following purposes:
  - (1) expenditures to make emergency repairs, replacements or additions to the railroad's equipment or facilities; and
  - (2) capital expenditures for development, improvement and acquisition of facilities and equipment for the railroad.
- B. Before the authority to incur indebtedness may be exercised, a majority of the commission members shall vote in favor of a resolution that:
  - (1) specifies the amount of indebtedness to be incurred;
  - (2) specifies in detail the purposes for the loan; and
  - (3) authorizes the chairman of the commission to execute all documents on behalf of the commission to incur the indebtedness by negotiating a loan from a financial institution.
- C. The total indebtedness existing at any time under the authority granted in this section shall not exceed two hundred fifty thousand dollars (\$250,000).
- D. Any indebtedness incurred under the authority of this section shall not create a debt of the state or pledge the general credit of the state or commission. It shall not constitute personal indebtedness of any member of the commission. Except as provided in Subsection E of this section, the indebtedness shall not be secured by any type of security interest in the real or personal property of the railroad, nor shall that property be subject to any legal process to satisfy a judgment for the indebtedness in the event of nonpayment of the indebtedness.
- E. The commission may pledge as security for the repayment of indebtedness incurred and outstanding under the authority of this section all of the railroad user fees authorized to be charged under Section 5 [16-5-11 NMSA 1978] of the Cumbres and Toltec Scenic Railroad Act.

**History:** Laws 1989, ch. 26, § 3.

### 16-5-10. Railroad loan retirement fund.

- A. There is created the "railroad loan retirement fund". Railroad user fees authorized pursuant to the Cumbres and Toltec Scenic Railroad Act may be deposited in the fund by the commission. The commission shall by resolution authorize the placement of the fund in an appropriate financial institution and shall also authorize the investment of money in the fund. Income earned from investment of the fund shall become part of the fund.
- B. The money in the railroad loan retirement fund is irrevocably pledged to the retirement of any indebtedness incurred by the commission under the authority of Section 16-5-9 NMSA 1978. During the time that any indebtedness is outstanding, the commission shall not reduce or eliminate any user fees that were in effect at the time the indebtedness was incurred.



**History:** Laws 1989, ch. 26, § 4; 2005, ch. 156, § 2. deposited in the railroad retirement fund by the commission.  
**The 2005 amendment**, effective June 17, 2005, provided in Subsection A that railroad user fees may be

### 16-5-11. Authorization to set and collect user fees.

The commission may establish user fees to be charged to passengers on the railroad. The fee schedule may provide for different fees for different classes of passengers.

**History:** Laws 1989, ch. 26, § 5.

### 16-5-12. Tax exemption of interest charged on loan.

Any interest charged and collected by a financial institution for extending a loan to the commission is exempt from all taxes imposed by the state and its political subdivisions.

**History:** Laws 1989, ch. 26, § 6.

### 16-5-13. Liberal interpretation.

The Cumbres and Toltec Scenic Railroad Act [16-5-1 through 16-5-13 NMSA 1978] shall be liberally construed to carry out its purpose.

**History:** Laws 1989, ch. 26, § 7.

## ARTICLE 6

### State and County Fairs

Sec.

- 16-6-1. State fair commission; members; appointment; number; qualification; terms; oath; bond.
- 16-6-2. Payment of premiums on bonds.
- 16-6-3. Disqualification of commissioners; organization of commission; secretary and treasurer.
- 16-6-3.1. Budget review requirements.
- 16-6-4. Powers and duties of commission; annual fair; exhibits; premiums.
- 16-6-5. State fair commission administratively attached to tourism department.
- 16-6-6. Annual meeting; election of officers; financial report to governor.
- 16-6-7. Annual appropriation; Albuquerque contribution.
- 16-6-8. Repealed.
- 16-6-9. Appropriation; how paid to the commission.
- 16-6-10. Fair commission; expenses.
- 16-6-11. Corporate powers of fair commission.
- 16-6-12. Contracts; financial interest by commissioner; effect; penalty.
- 16-6-13. Additional powers of fair commission; definitions.
- 16-6-14. Creating New Mexico state fair, a separate and independent legal entity.
- 16-6-15. Additional powers.
- 16-6-16. Issuance of negotiable bonds; terms.
- 16-6-17. Powers to secure bonds.

Sec.

- 16-6-18. Moneys of New Mexico state fair.
- 16-6-19. Validity of bonds.
- 16-6-20. Prohibitions against obligating state of New Mexico.
- 16-6-21. Bonds obligations of New Mexico state fair.
- 16-6-22. Supplemental nature of act, construction and purpose.
- 16-6-23. Eastern New Mexico state fair; purposes; exhibits.
- 16-6-24. Reorganization of Chaves county cotton carnival.
- 16-6-25. Authorization for holding of an annual bi-state fair in Curry county.
- 16-6-26. Bi-state fair association.
- 16-6-27. Bond issue election; ballot; notice; voters; sale of bonds.
- 16-6-28. Declaration that bi-state fair association buildings are necessary public buildings.
- 16-6-29. Contesting validity of proceedings; limitation.
- 16-6-30. Tax levy; redemption fund; procedure for redeeming bonds.
- 16-6-31. Ownership and maintenance of real and personal property.
- 16-6-32. Advisory committee created; appointments; staggered terms of members; duties.

### 16-6-1. State fair commission; members; appointment; number; qualification; terms; oath; bond.

A. The governor shall appoint, with the advice and consent of the senate, a "state fair commission", consisting of seven members, for terms of five years each; provided that the first appointments shall be made of two commissioners for one-year terms, two for two-year terms, one for a three-year term, one for a four-year term and one for a five-year term. All state fair commissioners shall be bona fide residents of the state. No less than two commissioners shall be engaged in the business of livestock raising, and no less than two commissioners shall be engaged in agricultural vocations and pursuits other than livestock raising.

B. Before entering upon the duties of his office, each state fair commissioner shall take and subscribe an oath that he will faithfully and impartially discharge the duties of his office, which oath shall be filed in the office of the secretary of state. Each commissioner shall furnish a good and sufficient surety bond as provided in the Surety Bond Act [10-2-13 through 10-2-16 NMSA 1978].

C. No member of the commission shall be removed during the term for which he is appointed, except for cause, following notice and an opportunity for a hearing, unless the notice and hearing are, in writing, expressly waived.

**History:** Laws 1913, ch. 46, § 2; Code 1915, § 5005; C.S. 1929, § 127-101; Laws 1941, ch. 71, § 1; 1941 Comp., § 48-2101; Laws 1953, ch. 81, § 1; 1953 Comp., § 45-20-1; Laws 1971, ch. 167, § 1; 1994, ch. 143, § 4.

The 1994 amendment, effective July 1, 1994, subdivided the section and added Subsection C; in Subsection A, inserted "with the advice and consent of the senate" near the beginning of the first sentence and rewrote the second sentence which read, "All such commissioners shall be bona fide residents of the state of New Mexico; provided, however, that the commissioners now serving will continue until the expiration of their appointed terms", and made stylistic changes; and, in Subsection B,

substituted "as provided in the Surety Bond Act" for "in the sum of two thousand five hundred dollars (\$2,500) for the faithful performance of his duties".

#### ANNOTATIONS

**Status of commission members under Workmen's Compensation Act.** — Prior to 1972, members of the New Mexico state fair commission were public officers, not employees, and not entitled to benefits under the Workmen's Compensation Act. 1968 Op. Att'y Gen. No. 68-109.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 C.J.S. Agriculture § 14.

### 16-6-2. [Payment of premiums on bonds.]

The premiums on all bonds required to be furnished by the officers or members of the said commission shall be paid out of the funds of the said commission.

**History:** Laws 1913, ch. 46, § 14; Code 1915, § 5006; C.S. 1929, § 127-102; 1941 Comp., § 48-2102; 1953 Comp., § 45-20-2.

### 16-6-3. Disqualification of commissioners; organization of commission; secretary and treasurer.

A. If any state fair commissioner changes his residence to any place outside the state, such change of residence shall operate ipso facto to vacate the office he holds.

B. The secretary and treasurer shall qualify by furnishing the commission with a good and sufficient bond pursuant to the Surety Bond Act [10-2-13 through 10-2-16 NMSA 1978], conditioned for the faithful performance of his duties as secretary and treasurer and that he will faithfully account for and pay over to the person entitled thereto all money that comes into his hands as such officer. The secretary and treasurer shall hold office for a period of one year and until his successor is elected and qualified.

**History:** Laws 1913, ch. 46, § 3; Code 1915, § 5007; C.S. 1929, § 127-103; 1941 Comp., § 48-2103; 1953 Comp., § 45-20-3; 1994, ch. 143, § 5.

**Cross references.** — For corporations authorized to issue surety bonds, see 46-6-1 NMSA 1978 et seq.

The 1994 amendment, effective July 1, 1994, added the section heading; subdivided the section; in Subsection A, inserted "state fair" and made stylistic changes; and, in Subsection B, substituted "pursuant to the Surety Bond Act" for "in the sum of twenty thousand dollars in some



surety company authorized to do business in this state", deleted "which said bond shall be filed with the secretary

of state" following "officer" at the end of the first sentence, and made stylistic changes.

### 16-6-3.1. Budget review requirements.

Beginning with the eighty-third fiscal year, the state fair commission is required to submit to the department of finance and administration for review a monthly budget status report, a list of all checks issued and all supporting documentation for each expenditure.

**History:** 1978 Comp., § 16-6-3.1, enacted by Laws 1994, ch. 143, § 6.

### 16-6-4. Powers and duties of commission; annual fair; exhibits; premiums.

A. The state fair commission shall have power and authority to hold annually on suitable grounds a state fair at which shall be exhibited livestock, poultry, vegetables, fruits, grains, grasses and other farm products, minerals, ores and other mining exhibits, mining machinery and farm implements and all other things that the commissioners or a majority thereof deem consonant with the purposes of a state fair for the purposes of advancing the agricultural, horticultural and stock raising, mining, mechanical and industrial pursuits of the state and shall have the care of its property and be entrusted with the entire direction of its business and its financial affairs consistent with the provisions of Sections 16-6-15 and 16-6-16 NMSA 1978.

B. The state fair commission or its designees, among other duties, shall:

(1) prepare, adopt, publish and enforce all necessary rules for the management of the New Mexico state fair and its meetings and exhibitions and for the guidance of its officers, employees and exhibitors;

(2) determine the duties, compensation and tenure of office of all of its officers and employees and may remove from office or discharge any person appointed or employed by it at will;

(3) have the power to appoint all necessary fairgrounds police to keep order on the grounds and in the buildings of the state fair. The fairgrounds police so appointed shall be vested with the same authority for such purposes as peace officers;

(4) have the power to charge entrance fees and admissions and lease stalls, stands and restaurant sites, give prizes and premiums, arrange entertainments and do all things that by the commission may be considered proper for the conduct of the state fair not otherwise prohibited by law;

(5) prohibit the sale or consumption of alcoholic beverages on the grounds of the state fair except in controlled access areas within the licensed premises;

(6) meet with the director of the alcohol and gaming division of the regulation and licensing department and other parties in interest to designate the controlled access areas on which the sale and consumption of alcoholic beverages may be permitted;

(7) annually request funding to support the operations and maintenance of the African American performing arts center and exhibit hall housed on the state fairgrounds; and

(8) provide staff to support the operations and maintenance of the African American performing arts center and exhibit hall.

C. As used in this section, "alcoholic beverages" means distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin and aromatic bitters bearing the federal internal revenue strip stamps or any similar alcoholic beverage, including blended or fermented beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half of one percent alcohol, but excluding medicinal bitters.

**History:** Laws 1913, ch. 46, § 4; Code 1915, § 5008; C.S. 1929, § 127-104; 1941 Comp., § 48-2104; 1953 Comp., § 45-20-4; Laws 1961, ch. 34, § 1; 1975, ch. 108, § 1; 1993, ch. 68, § 2; 2019, ch. 82, § 1.

**Cross references.** — For sale, service and consumption of alcoholic beverages on the state fair grounds and on the grounds of golf courses, see 60-6A-31 NMSA 1978.

**The 2019 amendment,** effective June 14, 2019, required the state fair commission to annually request

funding to support the operations and maintenance of the African American performing arts center and exhibit hall, and to provide staff to support the operations and maintenance of the African American performing arts center and exhibit hall; in Subsection B, after "commission", added "or its designees"; added paragraph designations "(1)" through "(6)", and added Paragraphs B(7) and B(8); added subsection designation "C."; and in Subsection C, after "As used in this", changed "subsection" to "section".

**The 1993 amendment**, effective July 1, 1993, inserted the Subsection A and B designations; substituted "Sections 16-6-15 and 16-6-16 NMSA 1978" for "Sections 45-20-14 and 45-20-15 NMSA 1953" at the end of Subsection A; added the final two sentences in Subsection B; and made minor stylistic changes throughout the section.

#### ANNOTATIONS

**Holding other offices.** — Members of the legislature may not serve on the following boards and commissions: (1) livestock board; (2) state police board; (3) capitol buildings improvement commission; (4) board of regents - El

Rito normal; (5) state fair commission; (6) miners' hospital of New Mexico. 1959-60 Op. Att'y Gen. No. 59-140.

**State fair commission need not advertise nor invite bids from prospective concessionaires** but may negotiate the award of a concession contract; provided, however, the commission obtains fair market value in exchange for the concessionaire's right to do business on the state fairgrounds. 1980 Op. Att'y Gen. No. 80-07.

**Commission may choose any reasonable method of making services available.** — The commission may choose any reasonable method it deems appropriate and expedient to ensure the availability of food and beverage services to the general public attending functions at the state fair or on the state fairgrounds. 1980 Op. Att'y Gen. No. 80-07.

**Granting liquor concessions.** — The state fair commission has authority to grant concessions for the sale of liquor upon the state fair grounds, if the provisions of law are complied with. 1914 Op. Att'y Gen. 14-1303.

**Carrying general liability insurance.** — State fair commission is empowered under this section to carry general liability insurance. 1941-42 Op. Att'y Gen. No. 41-3852.

### 16-6-5. State fair commission administratively attached to tourism department.

The state fair commission is administratively attached, as defined in the Executive Reorganization Act [9-1-1 through 9-1-10 NMSA 1978], to the tourism department.

**History:** 1953 Comp., § 45-20-4.1, enacted by Laws 1977, ch. 245, § 18; 1991, ch. 21, § 32.

**The 1991 amendment**, effective March 27, 1991, substituted "tourism department" for "commerce and

industry department" in the catchline and in the text of the section.

### 16-6-6. [Annual meeting; election of officers; financial report to governor.]

The commission shall hold annual meetings on the first Monday in January of each year, at which meeting the chairman and the secretary and treasurer shall be selected and such other business shall be transacted as the interests of said state fair shall require. On the first Monday in January in each year after said fair is held, the state fair commission shall prepare and transmit to the governor of the state, a full financial statement, signed by each member of the commission, showing all funds received and disbursed, all assets and liabilities, being a full and detailed account of its transactions and containing such statistics and information as may be of value to the various industries of the state.

**History:** Laws 1913, ch. 46, § 5; Code 1915, § 5009; C.S. 1929, § 127-105; 1941 Comp., § 48-2105; 1953 Comp., § 45-20-5.

### 16-6-7. [Annual appropriation; Albuquerque contribution.]

For the purpose of carrying out the provisions of this article, the sum of five thousand dollars (\$5,000) is appropriated annually; provided, that the sum of five thousand dollars [(\$5,000)] herein appropriated shall be paid only upon condition that the citizens of Albuquerque shall annually raise, contribute and cause to be made available to the commission herein created a like sum of five thousand dollars [(\$5,000)].

**History:** Laws 1913, ch. 46, § 6; Code 1915, § 5010; C.S. 1929, § 127-106; 1941 Comp., § 48-2106; 1953 Comp., § 45-20-6.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.



**Compiler's notes.** — This section would appear to have been abrogated by Laws 1917, ch. 109, § 4, which read: "The appropriations herein made or heretofore made by any legislature of the state, except as to unexpended portions carried forward shall cease and determine on and after December 1, 1919."

The words "this article" were substituted by the 1915 compiler for "this act" and refer to the 1915 Code, ch. 100,

§§ 5005 to 5017, compiled herein as 16-6-1 to 16-6-4, 16-6-6 to 16-6-9, 16-6-11, 16-6-12 NMSA 1978.

#### ANNOTATIONS

**Appropriating state funds to state fair is constitutional** for such fair is an instrumentality and under the control of the state. 1937-38 Op. Att'y Gen. 37-1560.

### 16-6-8. Repealed.

**Repeals.** — Laws 2003, ch. 273, § 25 repealed 16-6-8 NMSA 1978, as enacted by Laws 1913, ch. 46, § 7, relating to disbursement of funds, effective July 1, 2003. For

provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

### 16-6-9. Appropriation; how paid to the commission.

The secretary of finance and administration, on the request in writing of such board of commissioners, shall, and it is hereby made his duty to, draw his warrant in favor of the treasurer of said commission upon the state treasurer for the payment of the appropriations provided in this article, and the said state treasurer shall pay such warrants out of any money on hand, appropriated for the purposes herein set forth.

**History:** Laws 1913, ch. 46, § 8; Code 1915, § 5012; C.S. 1929, § 127-108; 1941 Comp., § 48-2108; 1953 Comp., § 45-20-8; Laws 1977, ch. 247, § 156.

**Compiler's notes.** — The words "this article" were substituted by the 1915 compiler for "this act" and refer to

the 1915 Code, ch. 100, §§ 5005 to 5017, compiled herein as 16-6-1 to 16-6-4, 16-6-6 to 16-6-9, 16-6-11, 16-6-12 NMSA 1978.

### 16-6-10. Fair commission; expenses.

Members of the state fair commission shall receive no salary, but each member shall receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978].

**History:** 1953 Comp., § 45-20-9, enacted by Laws 1961, ch. 110, § 1; 2003, ch. 215, § 2.

**Repeals and reenactments.** — Laws 1961, ch. 110, § 1, repealed 45-20-9, 1953 Comp., relating to compensation for commissioners, and enacted a new section.

**The 2003 amendment,** effective July 1, 2003, substituted "per diem and mileage pursuant to the Per Diem

and Mileage Act" for "fifteen dollars (\$15.00) per diem while engaged in the performance of his official duties for the commission. Members shall also receive reimbursement for travel expenses at the rate of eight cents (\$.08) a mile for attending meetings or traveling in connection with their duties" at the end of the section.

### 16-6-11. [Corporate powers of fair commission.]

The members of the New Mexico state fair commission and their successors in office, shall constitute a body corporate under the name and style of the "New Mexico State Fair" with the right as such of suing [suing] and being sued, of contracting and being contracted with, of making and using a common seal, and altering the same at pleasure.

**History:** Laws 1913, ch. 46, § 11; Code 1915, § 5015; C.S. 1929, § 127-110; 1941 Comp., § 48-2110; 1953 Comp., § 45-20-10.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**State fair's negligence liability.** — The state fair was not immune from suit alleging its negligence in permitting an activity to be conducted on its premises which would result in a dangerous traffic condition

developing on adjoining streets. *Bober v N.M. State Fair*, 1991-NMSC-031, 111 N.M. 644, 808 P.2d 614.

**Constitutionality of county appropriations to commission or fair.** — Though counties cannot, under N.M. Const., art. IX, § 14, make a donation to the state fair commission, a corporation, they may make appropriations with which to install displays at the state fair which, presumably, will be of benefit to the counties. 1915-16 Op. Att'y Gen. 15-1578.

**Counties may appropriate money for constructing building** in which to show exhibits installed by the counties at the state fair. 1915-16 Op. Att'y Gen. 15-1676.

**Tort liability of fair and employees.** — Though the state fair is a body corporate with right to sue and to be sued, liability for torts of its employees does not follow therefrom, but can only be imposed by a statute in clear and unambiguous language. 1941-42 Op. Att'y Gen. 41-3852 (opinion rendered prior to present Tort Claims Act, Section 41-4-1 NMSA 1978 et seq.).

**Where state fair not liable.** — The New Mexico state fair, as a corporate body of the state of New Mexico, is not liable for its torts. 1964 Op. Att'y Gen. No. 64-70 (opinion rendered prior to adoption of current version of Tort Claims Act, Section 41-4-1 NMSA 1978 et seq.).

**Tort liability of fair and employees.** — Though the state fair is a body corporate with right to sue and be sued, liability for torts of its employees does not follow therefrom, but can only be imposed by a statute in clear and unambiguous language. 1941-42 Op. Att'y Gen. No. 3852 (opinion rendered prior to present Tort Claims Act, Section 41-4-1 NMSA 1978 et seq.).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Liability of owner or operator for injury to patron of fair, carnival, or the like, from operation of sideshows, games, or similar concessions, 24 A.L.R.3d 945.

## 16-6-12. [Contracts; financial interest by commissioner; effect; penalty.]

No commissioner shall either directly or indirectly be financially interested in any contract made by the commission and any such contract in which a commissioner shall be interested either directly or indirectly, shall be void. Any violation of the provisions of this article, shall be punishable by imprisonment in the state prison for one year.

**History:** Laws 1913, ch. 46, § 12; Code 1915, § 5016; C.S. 1929, § 127-111; 1941 Comp., § 48-2111; 1953 Comp., § 45-20-11.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The words "this article" were substituted by the 1915 compiler for "this act" and refer to the 1915 Code, ch. 100, §§ 5005 to 5017, compiled herein as 16-6-1 to 16-6-4, 16-6-6 to 16-6-9, 16-6-11, 16-6-12 NMSA 1978.

## 16-6-13. [Additional powers of fair commission; definitions.]

The following terms, wherever used or referred to in this act [16-6-13 through 16-6-22 NMSA 1978], shall have the following meaning unless a different meaning clearly appears from the context:

A. the term "bonds" shall mean any bonds of the New Mexico state fair issued pursuant to this act;

B. the term "project" shall mean and include buildings, structures, improvements and equipment of every kind, nature and description, which may be required by or convenient for the purpose of the New Mexico state fair, including, without limiting the generality of the foregoing, administration, exhibition, recreation, or parts thereof, or additions thereto, heat, light, or systems, or parts thereof, or extensions thereto; greenhouses, farm exhibition building, stock pens, stable, grounds or parts thereof; or additions thereto; or any one, or more than one, or all of the foregoing, or any combination thereof; or such other buildings, pens, stalls or improvements as the fair commission shall by a majority of the members deem necessary to carry out the provisions of this act and of Chapter 46, Laws of 1913 (Sections 16-6-1 to 16-6-4, 16-6-6 to 16-6-9, 16-6-11, 16-6-12 NMSA 1978), and all amendments thereof;

C. the term "to acquire" shall include to purchase, to erect, to build, to construct, to reconstruct, to repair, to replace, to extend, to better, to equip, to develop, to improve and to embellish a project;

D. the term "Recovery Act" shall mean the act of the congress of the United States of America, approved June 16, 1933, entitled: "An act to encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works and for other purposes," and acts amendatory thereof and acts supplemental thereto, and revisions thereof, and any further acts of the congress of the United States to encourage public works or to reduce unemployment and providing for the making of loans or grants or both;

E. the term "federal agency" shall mean the United States of America, the president of the United States of America, the federal emergency administrator of public works, or such other agency or agencies as may have been designated or may be designated or created to make loans or grants or both pursuant to the Recovery Act;

F. the term "commission" shall mean the fair commission as appointed by the governor under Chapter 46 of the Laws of 1913.



**History:** Laws 1935, ch. 69, § 1; 1941 Comp., § 48-2112; 1953 Comp., § 45-20-12.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The National Industrial Recovery Act of June 16, 1933, referred to in Subsections D and E, was declared unconstitutional. Present provisions

relating to economic recovery are compiled as 15 U.S.C. § 712a et seq.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Exemption from taxation of property of agricultural fair society or association, 89 A.L.R.2d 1104.

### 16-6-14. [Creating New Mexico state fair, a separate and independent legal entity.]

The New Mexico state fair, is hereby constituted and confirmed a body politic and corporate and separate and confirmed as a governmental instrumentality for the purpose of carrying out the provisions of Chapter 46, Laws of 1913 (Sections 16-6-1 to 16-6-4, 16-6-6 to 16-6-9, 16-6-11, 16-6-12 NMSA 1978), and all amendments thereto and the provisions of this act [16-6-13 through 16-6-22 NMSA 1978]. A corporate purpose of New Mexico state fair, in addition to any other purposes thereof, shall be to acquire any project. The powers of the said New Mexico state fair delegated to it by this act and the Act of Chapter 46, Laws of 1913, and all amendments thereto, shall be vested in and exercised by a majority of the members of the commission, and a majority of all the members of such commission shall be a quorum for the transaction of any business authorized by this act, but a lesser number may adjourn and compel the attendance of absent members.

**History:** Laws 1935, ch. 69, § 2; 1941 Comp., § 48-2113; 1953 Comp., § 45-20-13.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Where donation of horse race profits illegal.** — It is not legal for the state fair to donate the proceeds, in excess of costs, from horse races to the community chest. 1955-56 Op. Att'y Gen. No. 6279.

#### ANNOTATIONS

**New Mexico state fair is a legal entity** which is a part of the state of New Mexico. 1964 Op. Att'y Gen. No. 64-70.

### 16-6-15. Additional powers.

In addition to the powers that it may now have, the New Mexico state fair shall have power to:

A. acquire, by purchase, gift or the exercise of the right of eminent domain, and hold and dispose of real or personal property or rights or interests therein except as limited by Section 13-6-2.1 NMSA 1978, which provisions requiring state board of finance approval of certain actions are applicable to the state fair. The right of eminent domain shall be exercised in the same manner as is provided for the exercise of such power by the state or any county, municipality or school district;

B. build, construct, improve, repair or maintain buildings, structures, improvements, grounds and equipment that may be required by or convenient for the purpose of operating a state fair;

C. acquire any project and to own, operate and maintain such project;

D. accept grants of money, materials or property of any kind from a federal agency upon such terms and conditions as the federal agency may impose;

E. borrow money and issue bonds and provide for the payment of the same and for the rights of the holders thereof; provided that the commission shall not issue bonds, negotiate loans or renegotiate loans without the prior approval of the state board of finance; and

F. perform all acts and do all things necessary or convenient to carry out the powers granted in Chapter 16, Article 6 NMSA 1978, or heretofore granted, to obtain loans or grants or both from any federal agency and to accomplish the purposes of that article and secure the benefits of the Recovery Act.

**History:** Laws 1935, ch. 69, § 3; 1941 Comp., § 48-2114; 1953 Comp., § 45-20-14; Laws 1975, ch. 108, § 2; 1989, ch. 380, § 4; 2004, ch. 119, § 1; 2019, ch. 82, § 2.

**The 2019 amendment**, effective June 14, 2019, provided the statutory citation for Chapter 16, Article 6 NMSA 1978; redesignated Subsections D through G as

Subsections C through F, respectively; and in Subsection F, after "granted in", deleted "this" and added "Chapter 16", and after "Article", added "6 NMSA 1978".

**The 2004 amendment**, effective May 19, 2004, amended Subsection A to delete after "eminent domain" "whenever sought to be exercised under the provisions of

this article" and deleted after "as is" "now or may hereafter be".

**The 1989 amendment**, effective June 16, 1989, substituted the present catchline for "Powers additional to the powers granted by Sections 45-20-1 through 45-20-8, 45-20-10 and 45-20-11 NMSA 1953"; in Subsection A added all of the language of the first sentence beginning with "except" and substituted "this article" for "this act" in the second sentence; substituted "this article" for "this act" in Subsection F; and made minor stylistic changes throughout the section.

#### ANNOTATIONS

**Bonds not general obligations.** — Bonds issued under the provisions of this act (Sections 16-6-13 to 16-6-22 NMSA 1978) are not general obligations of the state. 1935-36 Op. Att'y Gen. 80.

**Where levy not mandatory.** — It was not mandatory for the state tax commission (now the property tax

division of the taxation and revenue department) to make a levy for the year 1935 for the state fair. 1935-36 Op. Att'y Gen. 80.

**No provision for tax levy.** — No provision is made in this act (Sections 16-6-13 to 16-6-22 NMSA 1978) for any tax levy. 1935-36 Op. Att'y Gen. 80.

**State fair commission need not advertise nor invite bids from prospective concessionaires** but may negotiate the award of a concession contract; provided, however, the commission obtains fair market value in exchange for the concessionaire's right to do business on the state fairgrounds. 1980 Op. Att'y Gen. No. 80-07.

**Commission may choose any reasonable method of making services available.** — The commission may choose any reasonable method it deems appropriate and expedient to ensure the availability of food and beverage services to the general public attending functions at the state fair or on the state fairgrounds. 1980 Op. Att'y Gen. No. 80-07.

### 16-6-16. Issuance of negotiable bonds; terms.

The New Mexico state fair, with the prior approval of the state board of finance, is authorized from time to time to issue negotiable bonds. The bonds shall be authorized by resolution of the state fair commission. The bonds may be issued in one or more series, may bear such date or dates, may be in such denomination or denominations, may mature at such time or times not exceeding thirty years from the respective dates thereof, may mature in such amount or amounts, shall bear interest in accordance with the Public Securities Act [6-14-1 through 6-14-3 NMSA 1978], may be in such form as the state fair commission may determine and may be executed in such manner, may be payable in such medium of payment at such place or places and may be subject to such terms of redemption with or without premium as such resolution or other resolutions may provide. The bonds may be sold at public sale or may be sold at a private sale to the New Mexico finance authority. The bonds shall be negotiable instruments notwithstanding the form or tenor thereof. The New Mexico state fair may issue refunding bonds to refund, refinance, pay or discharge outstanding bonds, notes, loans or other obligations of the state fair on the same terms and conditions as provided for the issuance of other bonds by the New Mexico state fair.

**History:** Laws 1935, ch. 69, § 4; 1941 Comp., § 48-2115; Laws 1953, ch. 37, § 1; 1953 Comp., § 45-20-15; Laws 1957, ch. 98, § 1; 1975, ch. 108, § 3; 1983, ch. 106, § 1; 1996, ch. 27, § 1; 1998 (1st S.S.), ch. 17, § 3; 2001, ch. 152, § 1.

**The 2001 amendment**, effective July 1, 2001, reduced the maximum number of years a bond may mature from fifty to thirty years and deleted "for not less than par value and in the manner provided by law for sale of municipal bonds" following "at public sale" in the fourth sentence.

**The 1998 amendment**, effective on the day after the day the New Mexico finance authority makes the grant to the board of regents of the university of New Mexico authorized in § 1 of the act, deleted "hereby" preceding "authorized" in the first sentence; inserted "state fair" in the second sentence; in the fourth sentence, substituted

"may" for "shall" near the beginning and added "or may be sold at a private sale to the New Mexico finance authority" at the end; and added the last sentence.

**The 1996 amendment**, effective May 15, 1996, substituted "six million dollars (\$6,000,000)" for "three million five hundred thousand dollars (\$3,500,000)" at the end of the first sentence.

#### ANNOTATIONS

**State appropriation to fair constitutional.** — A bill appropriating state funds to state fair is constitutional, for such fair is an instrumentality and under the control of the state. 1937-38 Op. Att'y Gen. 62.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Governmental unit's power to issue bonds as implying power to refund them, 1 A.L.R.2d 134.

### 16-6-17. Powers to secure bonds.

New Mexico state fair in connection with the issuance of the bonds, or in order to secure the payment of such bonds and interest thereon, shall have power by resolution of its commission:

A. to fix and maintain fees, rentals and other charges, of stalls, rentals of pens, rentals of space for concessions, automobile parking fees, rental of stables and rental of other buildings or stalls as may be on said grounds, but in no case shall any fee be charged for exhibits of agricultural, dairy,



horticultural, culinary, apiary and handwork products of the state of New Mexico, unless the same be for sale (which fees and charges shall be uniform to all those similarly situated);

B. to provide that bonds issued hereunder shall be secured by a first, exclusive and closed lien on the income and revenue derived from, and shall be payable from, fees, rentals and other charges as set out in preceding subsections;

C. to pledge and assign to, or in trust for the benefit of, the holder or holders of the bonds issued hereunder, an amount of the income and revenue derived from fees, rentals and other charges set out in Paragraph A of this section, which shall be sufficient to pay when due, the bonds issued hereunder to acquire such project, and interest thereon, and to create and maintain reasonable reserves therefor;

D. to covenant with or for the benefit of the holder or holders of bonds issued hereunder to acquire any project, with such bondholder or holders, that so long as any such bonds shall remain outstanding and unpaid, New Mexico state fair will fix, maintain and collect, as may be agreed upon;

E. to covenant with or for the benefit of the holder or holders of bonds issued hereunder to acquire any project, that so long as any such bonds shall remain outstanding and unpaid, New Mexico state fair will set aside and pledge, for the purpose of paying the principal of and interest on any such bonds issued hereunder, such an amount of any appropriation of state funds made to and received by New Mexico state fair as may be agreed upon with said bondholder or holders;

F. to covenant that so long as any of the bonds issued hereunder shall remain outstanding and unpaid, it will not, except upon such terms and conditions as may be determined, voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or other charge having priority to or being on a parity with the lien of the bonds issued hereunder upon any of the income and revenues derived from fees, rentals and other charges, as set out in Paragraph A of this section; or convey or otherwise alienate the project to acquire which bonds shall have been issued, or the real estate upon which such project shall be located, except at a price sufficient to pay all the bonds then outstanding issued hereunder to acquire such project and interest accrued thereon, and then only in accordance with any agreements with the holder or holders of such bonds; or mortgage or otherwise voluntarily create or cause to be created any encumbrance or charge on any property, real, personal or mixed, of said New Mexico state fair;

G. to covenant as to the procedure by which the terms of any contract with a holder or holders of such bonds may be amended or abrogated, the amount or percentage of bonds the holder or holders of which must consent thereto and the manner in which such consent may be given;

H. to vest in a trustee or trustees the right to receive all or any part of the income and revenue pledged and assigned to, or for the benefit of, the holder or holders of bonds issued hereunder, and to hold, apply and dispose of the same and the right to enforce any covenant made to secure or pay or in relation to the bonds; to execute and deliver a trust agreement or trust agreements which may set forth the powers and duties and the remedies available to such trustee or trustees and limiting the liabilities thereof and describing what occurrences shall constitute events of default and prescribing the terms and conditions upon which such trustee or trustees or the holder or holders of bonds of any specified amount or percentage of such bonds may exercise such rights and enforce any and all such covenants and resort to such remedies as may be appropriate;

I. to vest in a trustee or trustees or the holder or holders of any specified amount or percentage of bonds the right to apply to any court of competent jurisdiction for and have granted the appointment of a receiver or receivers of the income and revenue pledged and assigned to or for the benefit of the holder or holders of such bonds, which receiver or receivers may have and be granted such powers and duties as such court may order or decree for the protection of the bondholders;

J. to make covenants with any federal agency to perform any and all acts and to do any and all such things as may be necessary or convenient or desirable in order to secure its bonds, or as may in the judgment of the board tend to make the bonds more marketable, notwithstanding that such acts or things may not be enumerated herein, it being the intention hereof to give New Mexico state fair pursuant to this act [16-6-13 through 16-6-22 NMSA 1978] power to make all covenants,

to perform all acts and to do all things, not inconsistent with the constitution of the state of New Mexico, in the issuance of the bonds and for their security, including any and all powers granted to a private corporation under the laws of the state of New Mexico.

**History:** Laws 1935, ch. 69, § 5; 1941 Comp., § 48-2116; 1953 Comp., § 45-20-16.

### **16-6-18. Moneys of New Mexico state fair.**

No moneys derived from the sale of the bonds or otherwise borrowed by such institution under provisions of this act [16-6-13 through 16-6-22 NMSA 1978], shall be required to be paid into the state treasury but shall be deposited by the treasurer or other fiscal officer of the New Mexico state fair in a separate bank account or accounts in such bank or banks or trust company or trust companies as may be designated by the commission, and all deposits of such moneys shall, if required by the commission, be secured by obligations of the United States of America, of a market value equal at all times to the amount of the deposit; and all banks and trust companies are hereby authorized to give such security. Such money shall be disbursed as may be directed by the commission and in accordance with the terms of any agreements with the holder or holders of any bonds. This section shall not be construed as limiting the power of the New Mexico state fair to agree in connection with the issuance of any of its bonds as to the custody and disposition of the moneys received from the sale of such bonds or the income and revenue of New Mexico state fair pledged and assigned to or in trust for the benefit of the holder or holders thereof.

**History:** Laws 1935, ch. 69, § 6; 1941 Comp., § 48-2117; 1953 Comp., § 45-20-17.

its funds in usual method required of other state agencies. 1937-38 Op. Att'y Gen. 249.

#### **ANNOTATIONS**

**Handling of state fair funds.** — The state fair is a body politic and corporate and is not required to handle

### **16-6-19. Validity of bonds.**

The bonds bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment therefor any or all the persons whose signatures appear thereon shall have ceased to be commissioners. The validity of the bonds shall not be dependent on nor affected by the validity or regularity of any proceedings to acquire the project financed by the bonds or taken in connection therewith.

**History:** Laws 1935, ch. 69, § 7; 1941 Comp., § 48-2118; 1953 Comp., § 45-20-18.

### **16-6-20. Prohibitions against obligating state of New Mexico.**

Nothing in this act [16-6-13 through 16-6-22 NMSA 1978] contained shall be construed to authorize New Mexico state fair to contract a debt on behalf of, or in any way to obligate, the state of New Mexico.

**History:** Laws 1935, ch. 69, § 8; 1941 Comp., § 48-2119; 1953 Comp., § 45-20-19.

### **16-6-21. Bonds obligations of New Mexico state fair.**

All bonds issued pursuant to this act [16-6-13 through 16-6-22 NMSA 1978] shall be obligations of the New Mexico state fair, and such bonds shall be payable in accordance with the terms thereof and shall not be obligations general, special or otherwise of the state of New Mexico. Such bonds shall not constitute a debt, legal or moral, of the state of New Mexico, and shall not be enforceable against the state.



**History:** Laws 1935, ch. 69, § 9; 1941 Comp., § 48-2120; 1953 Comp., § 45-20-20.

## **16-6-22. Supplemental nature of act, construction and purpose.**

The powers conferred by this act [16-6-13 through 16-6-22 NMSA 1978] shall be in addition to and supplemental to the powers conferred by any other law, general or special.

**History:** Laws 1935, ch. 69, § 11; 1941 Comp., § 48-2121; 1953 Comp., § 45-20-21.

## **16-6-23. [Eastern New Mexico state fair; purposes; exhibits.]**

An annual eastern New Mexico state fair may be held in Chaves county, at which shall be exhibited livestock, poultry, vegetables, fruits, grains and other agricultural products, minerals, ores and other mining exhibits, machinery, farm implements and all other things which may be in the interest of advancing agricultural, horticultural, stock raising, mining, mechanical and other industrial pursuits of eastern New Mexico, and the state generally, and any county of the state may erect, maintain, furnish or donate exhibits consonant with the purposes and in furtherance of the interest of said fair.

**History:** Laws 1931, ch. 6, § 1; 1941 Comp., § 48-2122; 1953 Comp., § 45-20-22.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **ANNOTATIONS**

**Leasing of state fair property.** — The eastern New Mexico state fair would have the authority to lease the

property owned by it to anyone and on such terms and conditions as it deems proper, provided that its articles of incorporation do not preclude this, and provided further that the terms of such lease provide a return reasonably in line with the value of the property leased and does not amount to a gift. 1957-58 Op. Att'y Gen. No. 57-256.

## **16-6-24. [Reorganization of Chaves county cotton carnival.]**

The directors of the Chaves county cotton carnival, a nonprofit corporation organized and existing under and by virtue of the laws of the state of New Mexico, may by resolution accept the provisions of Section One [16-6-23 NMSA 1978] of this act and upon filing with the secretary of state a certified copy of such resolution shall thereupon be and is hereby constituted and designated as the eastern New Mexico state fair and entitled to all rights, benefits and privileges as such and may change its corporate name to eastern New Mexico state fair by amending its articles of incorporation in the manner now by law provided for such amendments.

**History:** Laws 1931, ch. 6, § 2; 1941 Comp., § 48-2123; 1953 Comp., § 45-20-23.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **ANNOTATIONS**

**Authority of eastern New Mexico state fair.** — The eastern New Mexico state fair would have all the

authority of any other nonprofit organization thus organized within the state of New Mexico. 1957-58 Op. Att'y Gen. No. 57-256.

## **16-6-25. [Authorization for holding of an annual bi-state fair in Curry county.]**

That an annual bi-state fair may be held in Curry county, New Mexico, at which shall be exhibited livestock, poultry, vegetables, fruits, grains and other agricultural products; minerals, ores and other mining exhibits; machinery, farm implements and all other things which may be in the interest of advancing agricultural, horticultural, stock raising, mining, mechanical and other industrial pursuits of New Mexico generally, and any county of the state may erect, maintain, furnish or donate exhibits consonant with the purposes, and in furtherance of the interest of said fair.

**History:** 1941 Comp., § 48-2124, enacted by Laws 1947, ch. 152, § 1; 1953 Comp., § 45-20-24.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## **16-6-26. [Bi-state fair association.]**

The directors of the Curry county fair association, a nonprofit corporation organized and existing by virtue of the laws of the state of New Mexico, may by resolution accept the provisions of this act [16-6-25 through 16-6-30 NMSA 1978] and upon filing with the secretary of state a certified copy of such resolution, is thereupon and is hereby constituted and designated as the bi-state fair association and entitled to all rights, benefits and privileges as such, and may change its corporate name to the bi-state fair association by amending its articles of incorporation in the manner now by law provided for such amendments.

**History:** 1941 Comp., § 48-2125, enacted by Laws 1947, ch. 152, § 2; 1953 Comp., § 45-20-25.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## **16-6-27. [Bond issue election; ballot; notice; voters; sale of bonds.]**

The board of county commissioners of Curry county, New Mexico, may submit to the voters of said county at any regular election or at any special election called for that purpose the question of issuing bonds in a sum not to exceed one hundred thousand dollars (\$100,000) for the purpose of erecting a building or buildings at the bi-state fair grounds, such building or buildings to be used for the holding of the bi-state fair. The proposition to be voted upon shall be submitted to the voters by separate ballot and shall be in substantially the following form:

"For the issuance of bi-state fair association bonds in the sum of \$. . . . .; Against the issuance of bi-state fair association bonds in the sum of \$. . . . ."

The board of county commissioners shall give notice of such election by publication for at least three consecutive weeks in any newspaper published in said county; which notice shall set forth the time and place of holding such election, the fair building or buildings proposed to be built, the amount of bonds to be voted, the rate of interest to be paid on such bonds and the length of time for which the bonds shall be issued, which shall not be less than five (5) nor more than twenty (20) years, and no issue of bonds shall be made under this act [16-6-25 through 16-6-30 NMSA 1978] in excess of one hundred thousand dollars (\$100,000).

Only the qualified electors of the county who paid a property tax during the preceding year shall be entitled to vote at such election, and if a majority of all votes at such election shall be in favor of the issue of said bonds, then said board shall issue bonds to the amount voted, but no bond shall bear interest at a rate in excess of six (6) per centum. Said bonds shall be known as the bi-state fair association bonds of Curry county, New Mexico, shall be signed by the chairman of the board of county commissioners, and countersigned by the county treasurer. They shall have interest coupons attached providing for the payment of interest either annually or semiannually. The board shall have power by contract to provide a place for the payment of the principal and interest of said bonds, and the terms upon which said interest shall be paid.

The county treasurer shall advertise for the sale of said bonds to the highest bidder in not less than two weekly issues in some newspaper published in the county, and said bonds shall be sold for no less than par and accrued interest and the proceeds thereof placed to the credit of the county in a fund to be known as the bi-state fair association fund, which fund shall be disbursed upon warrants drawn as in the case of the general funds of the county.

Provided, that said bonds or any part thereof may be sold to the state of New Mexico at private sale, without advertisement for not less than par and accrued interest.

The county treasurer shall stand charged upon his official bond for all bonds that may be delivered to him, and with all monies that may be received by him under the provisions of this act.

**History:** 1941 Comp., § 48-2126, enacted by Laws 1947, ch. 152, § 3; 1953 Comp., § 45-20-26.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.



### 16-6-28. [Declaration that bi-state fair association buildings are necessary public buildings.]

That the legislature of the state of New Mexico hereby declares that buildings of the bi-state fair association are necessary public buildings.

**History:** 1941 Comp., § 48-2127, enacted by Laws 1947, ch. 152, § 4; 1953 Comp., § 45-20-27.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 16-6-29. [Contesting validity of proceedings; limitation.]

Any person or corporation may institute in the district court of Curry county an action or suit to contest the validity of all proceedings taken including all acts prior or subsequent to said bond election, but no suit or action shall be maintained unless the same be instituted within ten days after the holding of said bond election.

**History:** 1941 Comp., § 48-2128, enacted by Laws 1947, ch. 152, § 5; 1953 Comp., § 45-20-28.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 16-6-30. [Tax levy; redemption fund; procedure for redeeming bonds.]

Upon the issuance of bi-state fair association bonds the board of county commissioners shall forthwith levy a tax sufficient to pay the interest and to discharge said bonds, as and when same are due and payable.

It shall be the duty of the county treasurer to keep said interest and redemption fund separate and distinct, and when there are sufficient monies in his hands to the credit of said fund to pay in full the principal and interest of any bonds issued under this act [16-6-25 through 16-6-30 NMSA 1978], to immediately call in and pay as many of such bonds, with accrued interest thereon, as such funds in his hands will liquidate. Such bonds shall be paid in order of their number, and when it is desired to redeem any of such bonds the county treasurer shall cause to be published in two weekly issues of some daily or weekly newspaper published in the county a notice stating that certain bi-state fair association bonds of Curry county by numbers and amounts will be paid on presentation, and that at the expiration of fifteen (15) days after the last publication of notice herein provided such bonds shall cease to bear interest, and when any bonds or coupons issued under this act are redeemed, it shall be the duty of the county treasurer to certify his action to the board of county commissioners, who shall cancel the bonds by punching holes through all the signatures of the bonds and coupons, so that they can be plainly identified.

**History:** 1941 Comp., § 48-2129, enacted by Laws 1947, ch. 152, § 6; 1953 Comp., § 45-20-29.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 16-6-31. [Ownership and maintenance of real and personal property.]

It shall hereafter be lawful for counties of this state to own, maintain, operate and sell, real and personal property for the purpose of maintaining and conducting county fairs for the teaching and advancement of agricultural, horticultural and domestic arts, and the breeding and improvement of neat cattle, horses, sheep, goats and hogs.

**History:** Laws 1923, ch. 152, § 1; C.S. 1929, § 33-5405; 1941 Comp., § 48-2201; 1953 Comp., § 45-21-1.

#### ANNOTATIONS

**Records subject to inspection.** — Since the legislature has specifically granted counties the authority to conduct county fairs, a county fair board is an arm of the county and its records are county records which are

subject to inspection as provided in 14-2-1 and former 14-2-2 NMSA 1978. 1964 Op. Att'y Gen. No. 64-109.

**County fair board.** — Control and use of county fairgrounds and buildings lies with the board of county commissioners and although no suggestion is made under this act (Laws 1923, ch. 152) for a county fair board, there is no prohibition against delegation of supervisory power to a county fair board should such be properly decided by the commissioners. 1957-58 Op. Att'y Gen. No. 57-317.

**Effect on incorporated municipality.** — An incorporated municipality may not constitute (construct) or cooperate in the erection of a county fair building (in the absence of specific legislative authority) which has been

approved at a provided for county bond election. 1957-58 Op. Att'y Gen. No. 57-27.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 C.J.S. Agriculture § 14.

## **16-6-32. Advisory committee created; appointments; staggered terms of members; duties.**

A. The "African American performing arts center advisory committee" is created and is administratively attached to the state fair commission.

B. The committee shall consist of five members, including:

- (1) two members from the African American performing arts center foundation appointed by the executive director of the African American performing arts center and exhibit hall;
- (2) one member from the cultural affairs department appointed by the governor;
- (3) one member from the office on African American affairs appointed by the governor; and
- (4) one community member who has knowledge of the academic, cultural and historical context of performance art within the African American experience appointed by the director of the Africana studies program at the university of New Mexico.

C. Staggered membership terms shall be established so that two members of the initial committee are appointed for two years, three members are appointed for three years and subsequent appointments of each member are for two-year terms.

D. Vacancies in an appointed member's term shall be filled for the remainder of the unexpired term in the same manner as the original appointment was made.

E. The committee shall annually elect a chair, vice chair and secretary from among its membership. A majority of the members constitutes a quorum for the conduct of business.

F. The committee shall meet at the call of the chair at least annually. Meetings of the committee shall be held in Albuquerque or at other sites within the state at the direction of the chair.

G. Members shall receive no compensation for serving on the committee but shall be paid per diem and mileage as provided for in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978].

H. The committee shall make recommendations to the African American performing arts center foundation and the executive director and artistic director of the African American performing arts center and exhibit hall regarding staffing, operations, maintenance, programming and exhibitions of the African American performing arts center and exhibit hall.

I. As used in this section, "performance art" means any creative activity performed for an audience that uses an individual's voice, body or inanimate objects to convey an artistic expression, including live or recorded theatrical productions, movies, music, dance, puppetry and spoken word.

**History:** Laws 2019, ch. 82, § 3.

**Effective dates.** — Laws 2019, ch. 82 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.



## CHAPTER 17

### Game and Fish and Outdoor Recreation

#### Art.

1. State Game Commission, 17-1-1 to 17-1-29
2. Hunting and Fishing Regulations, 17-2-1 to 17-2-46
- 2A. Statewide System for Hunting Activities, 17-2A-1 to 17-2A-3
3. Licenses and Permits, 17-3-1 to 17-3-49
4. Propagation of Fish and Game, 17-4-1 to 17-4-35
5. Trappers and Fur Dealers, 17-5-1 to 17-5-9
6. Habitat Protection, 17-6-1 to 17-6-11
7. Shooting Range Fund, 17-7-1 to 17-7-3
8. Sport Shooting Range, 17-8-1 to 17-8-6
9. Wildlife Corridors, 17-9-1 to 17-9-4
10. Wildlife Trafficking, 17-10-1 to 17-10-6
11. Wildlife Conservation and Public Safety, 17-11-1 to 17-11-5

#### ARTICLE 1

#### State Game Commission

##### Sec. 17-1-1. Declaration of policy.

- 17-1-1. Declaration of policy.
- 17-1-2. State game commission; appointment; term.
- 17-1-3. Members to serve without compensation; per diem and mileage.
- 17-1-4. Organization; annual and called meetings; secretary.
- 17-1-5. Employment and discharge of director and other employees; department of game and fish created.
- 17-1-5.1. Conservation services division; duties.
- 17-1-6. Transfer of duties and obligations.
- 17-1-7. Position of reserve conservation officer created.
- 17-1-8. Qualifications of reserve conservation officers.
- 17-1-9. Powers and duties of reserve conservation officers.
- 17-1-10. Issuance of reserve conservation officer commissions; revocation.
- 17-1-11. Conservation officers; official duties; insurance.
- 17-1-12. Repealed.
- 17-1-13. Seal of director.
- 17-1-14. General powers and duties of state game commission; game protection fund; liability suspense account.

##### Sec. 17-1-15. Disbursement of money; limitation on expenditures.

- 17-1-15. Disbursement of money; limitation on expenditures.
- 17-1-16. Short title.
- 17-1-17. Purpose of act.
- 17-1-18. Bonding authority.
- 17-1-19. Bonds; form; terms.
- 17-1-20. Sale of bonds.
- 17-1-21. Proceeds from sale of bonds.
- 17-1-22. Security; retirement of bonds.
- 17-1-22.1. Game and fish capital outlay fund; created; transfer of money; state board of finance approval.
- 17-1-23. Construction.
- 17-1-24. Tax exemptions.
- 17-1-25. Refunding.
- 17-1-26. Commission's power to establish rules and regulations; predatory animals; eradication.
- 17-1-27. Hearings on rules and regulations; petition; publication of notice of hearing.
- 17-1-28. Assent to act of congress concerning wildlife restoration projects.
- 17-1-29. Distribution of moneys received from United States government.

#### 17-1-1. [Declaration of policy.]

It is the purpose of this act and the policy of the state of New Mexico to provide an adequate and flexible system for the protection of the game and fish of New Mexico and for their use and development for public recreation and food supply, and to provide for their propagation, planting, protection, regulation and conservation to the extent necessary to provide and maintain an adequate supply of game and fish within the state of New Mexico.

**History:** Laws 1921, ch. 85, § 1; C.S. 1929, § 57-101; Laws 1931, ch. 117, § 1; 1941 Comp., § 43-101; 1953 Comp., § 53-1-1.

**Compiler's notes.** — The words "this act" were substituted by the 1931 amendment to this section for the words

"this bill", which appeared in the 1921 act. If referring to the 1921 act, they would refer to 17-1-1 to 17-1-4, 17-1-14, 17-1-27 and 17-2-6 NMSA 1978. If referring to the 1931 act, they would refer to 17-1-1, 17-1-5, 17-1-15, 17-1-26, 17-2-1, 17-2-5, 17-2-7, 17-2-9 and 17-2-10 NMSA 1978.

**Cross references.** — For transfer of radio communication property of remote sites from department of game and fish to communications division of department of general services, see 15-2-4 NMSA 1978.

For public lands generally, see Chapter 19 NMSA 1978.

For the Off-Highway Motorcycle Act, see 66-3-1001 NMSA 1978.

For water law generally, see Chapter 72 NMSA 1978.

For animals generally, see Chapter 77 NMSA 1978.

#### ANNOTATIONS

**Wild game elk.** — The game and fish laws in Chapter 17 are expressly intended to cover free-roaming, wild game elk; the animal statutes in Article 18 of Chapter 30 of the Criminal Code do not apply. *State v. Parson*, 2005-NMCA-083, 137 N.M. 773, 115 P.3d 236.

**Allocation of licenses based on residency, impermissible discrimination.** — The allocation of licenses for bighorn, oryx and ibex by the state game commission on the basis of residency discriminates impermissibly against nonresidents under the federal constitution. *Terk v. Gordon*, No. 74-387-M (D.N.M., filed Aug. 25, 1977), *aff'd*, 436 U.S. 850, 98 S. Ct. 3063, 56 L. Ed. 2d 751 (1978).

**Fee structure, although discriminatory, not offensive.** — The present fee structure in 17-3-13 NMSA 1978, which discriminates against nonresidents, is not offensive to either the privileges and immunities clause, U.S. Const., art. IV, § 2, or the U.S. Const., amend. XIV. *Terk v. Gordon*, No. 74-387-M (D.N.M., filed Aug. 25, 1977), *aff'd*, 436 U.S. 850, 98 S. Ct. 3063, 56 L. Ed. 2d 751 (1978).

**The state's power over public waters is plenary.** *State ex rel. State Game Comm'n v. Red River Valley Co.*, 1945-NMSC-034, 51 N.M. 207, 182 P.2d 421.

**State's powers are dedicated to fishing and recreation.** — Since public waters of the state by legislative enactment are dedicated to public uses of fishing and recreation, Conchas Lake is covered by these provisions. *State ex rel. State Game Comm'n v. Red River Valley Co.*, 1945-NMSC-034, 51 N.M. 207, 182 P.2d 421.

**Enclosing public waters cannot prevent fishing or hunting.** — Fact that an adjoining landowner encloses waters which belong to the public does not make thereof a privately owned enclosure, and its treatment as such by the state would involve granting of a special "right" or "privilege" which is prohibited by the constitution, so that a license holder could not be prevented from fishing or hunting on the enclosure. *State ex rel. State Game Comm'n v. Red River Valley Co.*, 1945-NMSC-034, 51 N.M. 207, 182 P.2d 421.

**Carrying firearms before hunting season opens may be prohibited.** — Powers granted to state game commission include authority to prohibit the carrying of firearms in hunting areas for specified periods of time before opening of the big game season. 1947-48 Op. Att'y Gen. No. 5135.

**Law reviews.** — For student article, "Preventing the Extinction of Candidate Species: The Lesser Prairie-Chicken in New Mexico", see 49 Nat. Resources J. 525 (2009).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Waste of fish, constitutionality and construction of statutes for prevention of, 38 A.L.R. 1198.

Applicability of state fishing license laws or other public regulations as to fishing in private lake or pond, 15 A.L.R.2d 754.

Validity of regulation or prohibition of fishing to protect public water supply, 56 A.L.R.2d 790.

### 17-1-2. State game commission; appointment; term.

To carry out the purpose of Chapter 17 NMSA 1978 and all other acts for like purpose, there is created a "state game commission" of seven members, not more than four of whom shall be of the same political party at the time of their appointment. The members of the commission shall be appointed by the governor with the advice and consent of the senate. The term of office for each member of the commission shall be four years. At the time of making the first appointments, the governor shall designate the commissioners' terms as being one, two, three or four years so that the term of no more than two commissioners shall expire each year.

In making appointments to the state game commission, one member shall be appointed from each of the following districts:

- A. district one: Curry, De Baca, Roosevelt, Chaves, Lincoln, Otero, Eddy and Lea counties;
- B. district two: Catron, Socorro, Grant, Hidalgo, Luna, Sierra and Dona Ana counties;
- C. district three: San Juan, McKinley, Cibola, Valencia, Sandoval, Los Alamos and Rio Arriba counties;
- D. district four: Santa Fe, Taos, Colfax, Union, Mora, Harding, Quay, San Miguel, Guadalupe and Torrance counties; and
- E. district five: Bernalillo county.

The remaining two members shall be appointed at-large. At least one member of the commission shall manage and operate a farm or ranch that contains at least two species of wildlife on that part which is deeded land requiring licensing prior to legal pursuit under the provisions of Section 17-3-2 NMSA 1978. At least one member shall have a demonstrated history of involvement in wildlife and habitat protection issues and whose activities or occupation are not in conflict with wildlife and habitat advocacy. The state game commission as provided in Chapter 17 NMSA 1978 shall have the same authority, powers and duties as now vested in the state game commission by law, and each member of the state game commission shall serve until his successor has been appointed and qualified.



**History:** Laws 1921, ch. 35, § 2; C.S. 1929, § 57-102; 1941 Comp., § 43-102; Laws 1945, ch. 26, § 1; 1953 Comp., § 53-1-2; Laws 1985, ch. 107, § 1; 1991, ch. 103, § 1.

The 1991 amendment, effective April 2, 1991, substituted "seven members" for "five members" and "four of whom" for "three of whom" in the first sentence; substituted "four years" for "five years" at the end of the third sentence; deleted "and five" preceding "years" and substituted "no more than two commissioners" for "one commissioner" and made a related stylistic change in the fourth sentence; and, following Subsection E, substituted the next three sentences for "provided that each existing member of the commission on the effective date of this 1985 act shall complete the term for which he was appointed, and, upon completion of such term, appointment shall be made in such manner so as to comply with the provisions of this section."

**Appropriations.** — Laws 2009, ch. 125, § 42, effective June 19, 2009, appropriated \$200,000 from the game

protection fund to the department of game and fish for expenditure in fiscal years 2009 through 2013 to purchase aircraft for aerial surveys.

Laws 2009, ch. 125, § 42, effective June 19, 2009, appropriated \$500,000 from the game and fish bond retirement fund to the department of game and fish for expenditure in fiscal years 2009 through 2013 to purchase aircraft for aerial surveys.

Laws 2009, ch. 125, § 43, effective June 19, 2009, appropriated \$250,000 from the habitat management fund to the department of game and fish for expenditure in fiscal year 2009 for construction and renovations to the Lake Roberts dam and spillway in Grant County.

#### ANNOTATIONS

A district judge may serve as a member of the state game commission. 1945-46 Op. Att'y Gen. No. 4735.

### 17-1-3. Members to serve without compensation; per diem and mileage.

The members of the state game commission shall receive no pay for their services as members of the commission, but shall be allowed per diem and mileage pursuant to the provisions of the Per Diem and Mileage Act [10-8-1 NMSA 1978]. All salaries, per diem and contingent expenses incurred by the department of game and fish or the state game commission shall be paid upon warrants of the secretary of finance and administration, supported by vouchers of the director of the department of game and fish.

**History:** Laws 1921, ch. 35, § 3; C.S. 1929, § 57-103; 1941 Comp., § 43-103; 1953 Comp., § 53-1-3; Laws 1977, ch. 247, § 160; 1979, ch. 273, § 6.

### 17-1-4. [Organization; annual and called meetings; secretary.]

Within sixty days after this act [17-1-1 to 17-1-4, 17-1-14, 17-1-27 and 17-2-6 NMSA 1978] shall take effect, the state game commission shall meet at the capitol and organize by electing from its membership a chairman, and thereafter one meeting shall be held annually, and others at the call of the governor, or a majority of the commission. The state game warden [director of the department of game and fish] shall be secretary of the commission.

**History:** Laws 1921, ch. 35, § 4; C.S. 1929, § 57-104; 1941 Comp., § 43-104; 1953 Comp., § 53-1-4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws

1955, ch. 59, § 2 transferred the duties of the state game warden. See 17-1-6 NMSA 1978.

### 17-1-5. Employment and discharge of director and other employees; department of game and fish created.

A. The state game commission shall employ a director who shall, under such authorization that the game commission shall approve, employ such conservation officers, clerks and other employees as he shall deem proper and necessary to enforce and administer the laws and regulations relating to game and fish, and who shall prescribe their duties respectively, and who with the advice and consent of the state game commission shall fix the compensation of all the employees of the "department of game and fish," which is hereby created.

B. The state game commission may at any time discharge the director for reasons that the state game commission shall deem sufficient. The director may dismiss employees in accordance with the provisions of the Personnel Act [10-9-1 NMSA 1978].

**History:** Laws 1931, ch. 117, § 5; 1941 Comp., § 43-105; 1953 Comp., § 53-1-5; Laws 1955, ch. 59, § 1; 1973, ch. 186, § 3.

#### ANNOTATIONS

**Officers of the state game commission are state officers.** *Allen v. McClellan*, 1967-NMSC-114, 77 N.M. 801, 427 P.2d 677, *overruled on other grounds*, N.M.

*Livestock Bd. v. Dose*, 1980-NMSC-022, 94 N.M. 68, 607 P.2d 606.

**Department of game and fish is not a constitutional agency.** 1957-58 Op. Att'y Gen. No. 57-268.

**Citizenship requirement for wildlife law enforcement officers.** — By operation of state law, wildlife law enforcement officers can be required to hold New Mexico and United States citizenship. 1979 Op. Att'y Gen. No. 79-30.

### 17-1-5.1. Conservation services division; duties.

- A. The "conservation services division" is created within the department of game and fish.
- B. The conservation services division is responsible for:
  - (1) management, enhancement, research and conservation of public wildlife habitat;
  - (2) the lease, purchase, enhancement and management of state wildlife habitat;
  - (3) assisting landowners in improving wildlife habitats;
  - (4) development of educational programs related to conservation of wildlife and the environment, including the expanded dissemination of wildlife publications; and
  - (5) communication and consultation with federal and other state agencies, local governments and communities, private organizations and affected interests responsible for habitat, wilderness, recreation, water quality and environmental protection to ensure comprehensive conservation services for hunters, anglers and nonconsumptive wildlife users.

**History:** Laws 1994, ch. 129, § 1.

**Cross references.** — For Wildlife Conservation Act, see 17-2-37 NMSA 1978 et seq.

### 17-1-6. [Transfer of duties and obligations.]

The director shall fulfill all the duties and obligations heretofore imposed upon the state game warden, and shall exercise all the powers heretofore granted to the state game warden. The conservation officers appointed by the director shall assume those duties and powers heretofore imposed upon or granted to deputy game wardens.

**History:** 1953 Comp., § 53-1-5.1; enacted by Laws 1955, ch. 59, § 2.

**Cross references.** — For designation of state game commission employees to enforce antilittering statute, see 30-8-5 NMSA 1978.

### 17-1-7. [Position of reserve conservation officer created.]

There is hereby created within the department of game and fish the position of reserve conservation officer, which shall be a nonsalaried position.

**History:** 1953 Comp., § 53-1-5.2, enacted by Laws 1955, ch. 181, § 1.

### 17-1-8. [Qualifications of reserve conservation officers.]

Reserve conservation officer commissions shall be issued only to the following:

- A. persons who have successfully completed a school of at least twenty-five hours, conducted by the department of game and fish, covering procedures and techniques of wildlife management, law enforcement, public relations and such other subjects as may be deemed desirable by the department of game and fish.
- B. the director may substitute a minimum of six months experience as an employee of a state or federal conservation agency or a state livestock law enforcement board in lieu of the aforementioned schooling. Any substitution made under the provisions of this paragraph shall be limited to



personnel currently employed by one of the aforementioned conservation agencies. Any appointments the director may make under the provisions of this paragraph will terminate automatically with the termination of employment by said agency of the individual so appointed or the individual's transfer from the state.

**History:** 1953 Comp., § 53-1-5.3, enacted by Laws 1955, ch. 181, § 2.

#### ANNOTATIONS

**Instruction but not classroom school is required.**

— The statute does not require the "school" to be of the classroom type; the "school" of experience can ensure qualified reserve conservation officers as well as a classroom. If the persons in question have actual instruction

as employees of the department in the subject areas of procedures and techniques of wildlife management, law enforcement, public relations and other subjects deemed desirable by the department, those persons have attended "school" in those subjects, an on-the-job training school conducted by the department. Mere employment by the department without instruction in each of those areas will not satisfy the statutory requirements. 1959-60 Op. Att'y Gen. No. 60-214.

### 17-1-9. Powers and duties of reserve conservation officers.

A. Under the supervision of the department of game and fish and subject to such restrictions as may be provided by the state game commission, reserve conservation officers shall have authority to enforce laws and valid regulations of the state game commission relating to game and fish and perform such duties with respect to wildlife management and conservation education as may be assigned to them from time to time by the department of game and fish. When on duty, reserve conservation officers shall be covered by the Workmen's [Workers'] Compensation Act [52-1-1 NMSA 1978]. Reserve conservation officers shall have only the rights of private citizens in the enforcement of laws other than those relating to game and fish.

B. For the purpose of calculating the amount of reserve conservation officer's disability or death benefits pursuant to the Workmen's [Workers'] Compensation Act, the officer's average weekly wages shall be deemed to be the base wage of a wildlife management officer II as classified by the personnel board.

**History:** 1953 Comp., § 53-1-5.4, enacted by Laws 1955, ch. 181, § 3; 1985, ch. 33, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 17-1-10. [Issuance of reserve conservation officer commissions; revocation.]

Reserve conservation officer commissions shall be issued annually to such persons meeting the qualifications prescribed in Section 2 [17-1-8 NMSA 1978], as may be deemed necessary or desirable by the director of the department of game and fish. Such commissions may be revoked at any time by said director at his discretion [discretion].

**History:** 1953 Comp., § 53-1-5.5, enacted by Laws 1955, ch. 181, § 4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 17-1-11. Conservation officers; official duties; insurance.

Conservation officers shall, in emergency situations, be considered on duty and within the scope of their employment for purposes of employee benefits, when they follow specific instructions from a duly qualified full-time peace officer and in aid of such peace officer in the carrying out of his duties. The state game commission shall expand current insurance coverage to provide protection in such situations.

**History:** 1953 Comp., § 53-1-5.6, enacted by Laws 1977, ch. 280, § 5.

## 17-1-12. Repealed.

**Repeals.** — Laws 1978, ch. 132, § 6, repealed 53-1-6 1953 Comp. (17-1-12 NMSA 1978), relating to bond of game and fish director, effective March 6, 1978.

## 17-1-13. [Seal of director.]

The state warden [director of the department of game and fish] shall keep a seal of office which shall be used to authenticate all papers and documents issued and executed by him as such officer.

**History:** Laws 1912, ch. 85, § 46; Code 1915, § 2469; C.S. 1929, § 57-254; 1941 Comp., § 43-107; 1953 Comp., § 53-1-7.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 1955, ch. 59, § 2 transferred the duties of the state game warden. See 17-1-6 NMSA 1978.

## 17-1-14. General powers and duties of state game commission; game protection fund; liability suspense account.

A. The state game commission shall have general control over the collection and disbursement of all money collected or received under the state laws for the protection and propagation of game and fish, which money shall be paid over to the state treasurer to the credit of the game protection fund, unless otherwise provided by law, and the fund, including all earned income, shall not be transferred to another fund. Prior to depositing money into the game protection fund, the department of game and fish shall ensure that an amount adequate to cover the cost of refunds allowed by the provisions of Chapter 17 NMSA 1978 is held in a liability suspense account. All refunds shall be made from the liability suspense account. Money not needed to cover the cost of refunds shall be deposited in the game protection fund at the end of each month. Chapter 17 NMSA 1978 shall be guaranty to the person who pays for hunting and fishing licenses and permits that the money in that fund shall not be used for any purpose other than as provided in Chapter 17 NMSA 1978.

B. The state game commission shall have authority to:

(1) establish and, through the director of the department of game and fish, to operate fish hatcheries for the purpose of stocking public waters of the state and to furnish fish fry and fingerlings to stock private waters, receipts from such sources to go into the game protection fund;

(2) declare closed seasons in any specified locality and on any species of game or fish threatened with undue depletion from any cause;

(3) establish game refuges for the purpose of providing safe sanctuaries in which game may breed and replenish adjacent hunting ranges, it being the purpose of this provision to establish small refuges rather than large preserves or to close large areas to hunting;

(4) purchase lands for game refuges where suitable public lands do not exist, to purchase lands for fish hatcheries and to purchase lands to be maintained perpetually as public hunting grounds, particularly lands suitable for waterfowl hunting, all such lands to be paid for from the game protection fund;

(5) receive by gift or bequest, in the name and on behalf of the state, lands suitable for game refuges, hunting grounds, fish hatcheries or for any other purpose necessary to carry out the provisions of Chapter 17 NMSA 1978;

(6) apply for and accept any state, federal or private funds, grants or donations from any source for game and fish programs and projects;

(7) designate certain areas as rest grounds for migratory birds, in which hunting shall be forbidden at all times or at such times as the state game commission shall provide, it being the purpose of this provision not to interfere unduly with the hunting of waterfowl but to provide havens in which they can rest and feed without molestation;

(8) close any public stream or lake or portion thereof to fishing when such action is necessary to protect a recently stocked water, to protect spawning waters or to prevent undue depletion of the fish;



(9) propagate, capture, purchase, transport or sell any species of game or fish needed for restocking any lands or streams of the state;

(10) after reasonable notice and hearing, suspend or revoke any license or permit issued pursuant to the provisions of Chapter 17 NMSA 1978 and withhold license privileges from any person procuring a license through misrepresentation, violating any provisions of Chapter 17 NMSA 1978 or hunting without a proper license;

(11) adopt rules establishing procedures that provide reasonable notice and a hearing before the state game commission for the suspension, revocation or withholding of license privileges for a definite period of time for a person charged with violating the provisions of Chapter 17 NMSA 1978, subject to such judicial review as may be provided by law;

(12) conduct studies of programs for the management of endangered and nongame species of wildlife;

(13) establish licenses, permits and certificates not otherwise provided for in Section 17-3-13 NMSA 1978 and charge and collect just and reasonable fees for them; provided the fees shall not exceed the costs of administration associated with the licenses, permits or certificates;

(14) permit, regulate or prohibit the commercial taking or capturing of native, free-ranging amphibians or reptiles not specifically protected by law, except for rattlesnake roundups, collection of fish bait and lizard races;

(15) adopt rules to control, eradicate or prevent the spread of a contagious disease, pest or parasite, including chronic wasting disease, to or among game animals. The rules shall include provisions for:

(a) notification to the department of game and fish of the diagnosis or suspected presence of a contagious disease;

(b) examination by the state veterinarian or the state veterinarian's designee of suspected infected game animals;

(c) quarantine, treatment or destruction of an infected game animal;

(d) disinfection and isolation of a licensed private park where an infected game animal has been; and

(e) indemnification and destruction of a protected game animal;

(16) as necessary, designate areas of the state in which bear-proof garbage containers are required on public and private lands to reduce potential human-bear interactions;

(17) pursuant to appropriation by the legislature, expend money from the game protection fund and the habitat management fund for the improvement, maintenance, development and operation of property for fish and wildlife habitat management; and

(18) adopt rules to recruit, train and accept the services of volunteers for education and outreach activities, hunter and angler services and wildlife conservation activities administered by the department of game and fish; provided that a volunteer:

(a) shall comply with all policies and procedures of the director of the department of game and fish; and

(b) shall not be deemed to be a state employee and shall not be subject to the provisions of law relating to state employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation and state employee benefits.

C. The director of the department of game and fish shall exercise all the powers and duties conferred upon the state game and fish warden by all previous statutes now in force not in conflict with Chapter 17 NMSA 1978.

D. The state game commission shall have authority to prohibit all hunting in periods of extreme forest fire danger, at such times and places as may be necessary to reduce the danger of destructive forest fires.

E. The hunting, pursuing, capturing, killing or wounding of any game animals, birds or fish in or upon any game refuge, rest ground or closed water or closed area or during any closed season established or proclaimed by the state game commission in accordance with the authority conferred in Chapter 17 NMSA 1978 constitutes a misdemeanor and shall be punishable as prescribed in Chapter 17 NMSA 1978.



**History:** Laws 1921, ch. 35, § 7; C.S. 1929, § 57-107; 1941 Comp., § 43-108; 1953 Comp., § 53-1-8; Laws 1973, ch. 278, § 1; 1977, ch. 290, § 1; 1983, ch. 155, § 1; 1992, ch. 29, § 1; 1993, ch. 331, § 1; 2001, ch. 66, § 1; 2002, ch. 70, § 1; 2003, ch. 124, § 1; 2005, ch. 38, § 1; 2005, ch. 177, § 1; 2013, ch. 135, § 1; 2015, ch. 35, § 1.

**Cross references.** — For transfer of duties of state game warden to director, see 17-1-6 NMSA 1978.

For lieutenant governor's deer enhancement permit, see 17-3-16.3 NMSA 1978.

For artificial wildlife being used and defined as game animals or birds for the purpose of prosecution, see 17-2-2.1 NMSA 1978.

For disposition of proceeds from sale of seized game or fish, see 17-2-21 to 17-2-23 NMSA 1978.

For conducting hunter training program, see 17-2-34 NMSA 1978.

For depositing license fees in game protection fund, see 17-3-7; 17-3-20 and 17-5-7 NMSA 1978.

For depositing federal funds in game protection fund, see 17-4-31 NMSA 1978.

For destroying commission's boundary markers, see 17-4-32 NMSA 1978.

For duty to administer laws regulating trappers and fur traders, see 17-5-4 NMSA 1978.

For revocation of trappers' and fur dealers' licenses, see 17-5-9 NMSA 1978.

For expenditure of funds to carry out Habitat Protection Act, see 17-6-7 NMSA 1978.

For shooting range fund and administration thereof, see 17-7-1 to 17-7-3 NMSA 1978.

For present penalty for violation of this chapter or regulations of the commission, see 17-2-10 NMSA 1978.

**The 2015 amendment**, effective June 19, 2015, provided the authority for the state game commission to adopt rules regarding the services of recreation and wildlife volunteers; and added Paragraph (18) of Subsection B.

**The 2013 amendment**, effective June 14, 2013, provided for a definite period of revocation of license privileges; in the title, added "liability suspense account"; in Subsection A, added the second and third sentences; in Paragraph (10) of Subsection B, after "withhold license privileges", deleted "for a definite period not to exceed three years"; and in Paragraph (11) of Subsection B, after "withholding of license privileges", deleted "of" and added "for a definite period of time for".

**The 2005 amendment**, effective June 17, 2005, provided in Subsection A that money collected by the commission shall be paid to the state treasurer to the credit of the game protection fund unless otherwise provided by law; and added Subsection B(17) to provide that the commission, pursuant to appropriation by the legislature, shall have authority to expend money from the game protection fund and the habitat management fund for fish and wildlife habitat management.

**The 2003 amendment**, effective June 20, 2003, redesignated the former last sentence of Subsection A and former Paragraphs A(1) through A(15) as present Subsections B and Paragraphs B(1) through B(15); added Paragraph B(16); and redesignated former Subsections B, C and D as present Subsections C, D and E.

**The 2002 amendment**, effective May 15, 2002, added Paragraph A(15).

**The 2001 amendment**, effective June 15, 2001, substituted "rules" for "regulations" in Paragraph A(11) and added Paragraph A(14).

## ANNOTATIONS

**Allocation of licenses based on residency, impermissible discrimination.** — The allocation of licenses for bighorn, oryx and ibex by the state game commission on the basis of residency discriminates impermissibly

against nonresidents under the federal constitution. *Terk v. Gordon*, No. 74-387-M (D.N.M., filed Aug. 25, 1977), *aff'd*, 436 U.S. 850, 98 S. Ct. 3063, 56 L. Ed. 2d 751 (1978).

**Fee structure, although discriminatory, is not offensive.** — The present fee structure in 17-3-13 NMSA 1978, which discriminates against nonresidents, is not offensive to either the privileges and immunities clause, U.S. Const., art. IV, § 2, or the U.S. Const., amend. XIV. *Terk v. Gordon*, No. 74-387-M (D.N.M., filed Aug. 25, 1977), *aff'd*, 436 U.S. 850, 98 S. Ct. 3063, 56 L. Ed. 2d 751 (1978).

**Money in the game protection fund may be used only for the purposes provided in the game and fish laws.** 1975 Op. Att'y Gen. No. 75-38.

**Game and fish department funds may not be legally spent for out-of-state travel** by state game and fish department personnel for purposes of advertising New Mexico's game and fish resources. 1957-58 Op. Att'y Gen. No. 58-216.

**There are no provisions for reimbursement of license fees in any circumstances;** therefore, persons who have purchased a second license illegally are not entitled to reimbursement for the second license. 1975 Op. Att'y Gen. No. 75-38.

**Interest credited to game protection fund, not general fund.** — Any interest earned on the investment of money in the game protection fund must be credited to that fund, not the state general fund. 1982 Op. Att'y Gen. No. 82-01.

**Use of fire suppression fund appropriated to game and fish department.** — A fire suppression fund appropriated to the department of game and fish was not to actually be transferred to the forest conservation commission (now abolished). The department of game and fish was simply authorized to contract with the forest conservation commission to perform fire suppression activities reasonably necessary for the protection of game and fish. The formula to be utilized in providing and paying for such services was a contractual matter between these two agencies. 1961-62 Op. Att'y Gen. No. 61-54.

**"Public waters" are all unappropriated waters from natural streams.** — The term "public waters" as used in this section is synonymous with the definition of public waters given by the New Mexico supreme court in the case of *State ex rel. State Game Comm'n v. Red River Valley Co.*, 1945-NMSC-034, 51 N.M. 207, 182 P.2d 421 where the court stated: "All of our unappropriated waters from every natural stream, perennial or torrential, within the state of New Mexico, Article 16, Section 2, New Mexico Constitution, are public waters. These waters belong to the public until beneficially appropriated. And since the right to fish in public waters, by the test of any rule, is universally recognized, it cannot be said that the right to fish and to use the unappropriated public waters in question is less secure in the public because we determine their character as public by immemorial custom, and Spanish or Mexican law which we have adopted and follow in this respect." 1959-60 Op. Att'y Gen. No. 59-57.

**Public waters may be stocked.** — The waters of our streams, whether perennial or torrential in nature, are public waters such as may be stocked by the fish and game commission. 1961-62 Op. Att'y Gen. No. 61-38.

**Municipal reservoirs and waters on Indian and military reservations where fishing fee is charged may not be stocked.** — It is not legally proper for the department of game and fish to consider as public waters within the meaning of this section municipal reservoirs and waters on Indian and military reservations where public fishing is permitted, but only on condition of payment of a fee(s) in addition to possession of a valid fishing license. 1957-58 Op. Att'y Gen. No. 57-319.

Indian and military reservations are not instrumentalities of the state of New Mexico, and the lands adjacent



thereto are not subject to state control as are the lands of the municipalities. This is true even though the waters running through such property are "public waters" as declared in *State ex rel. State Game Comm'n v. Red River Valley Co.*, 1945-NMSC-034, 51 N.M. 207, 182 P.2d 421. In such instance, the general public would be trespassing upon land not open to the free access of the public. 1959-60 Op. Att'y Gen. No. 59-57.

**Small municipal charge for use of lake does not prevent stocking.** — A small charge by a municipality sufficient to cover sanitation and maintenance expense for recreational purposes does not change the character of a lake from that of "public waters," and it may be stocked by the state game commission at state expense. 1959-60 Op. Att'y Gen. No. 59-57.

**Private waters may be stocked.** — If stocking in private, lawfully posted water would not be to such an extent as to deprive the citizenry of a source of public recreation, it may be done. 1957-58 Op. Att'y Gen. No. 57-246.

**Private waters may be stocked only with fry and fingerlings and for consideration.** — By use of the terms "fry" and "fingerlings," the legislature thereby excluded the stocking of any fish larger than fry or fingerlings in private waters. Hence, the authorization to stock fish in private waters is limited to fry or fingerlings, and then for a consideration. 1957-58 Op. Att'y Gen. No. 57-246.

**Section lists purposes for which waters may be closed to fishing.** — The three purposes for which a public stream or lake or portion thereof may be closed to fishing are set forth in Subsection G (now Subsection B(8)) of this section. These purposes are when it is necessary to protect recently stocked water, to protect spawning waters

or to prevent undue depletion of fish. 1957-58 Op. Att'y Gen. No. 58-119.

**Purpose for which waters may be closed are exclusive.** — The state game commission is not authorized under this section to close any public stream or lake or portion thereof to fishing, when such action is not for the purpose of protecting a recently stocked water or to protect spawning waters, or to prevent undue depletion of the fish in such waters. 1957-58 Op. Att'y Gen. No. 58-119.

**Fishing in Elephant Butte Lake.** — The commission is authorized to issue permits to fish in Elephant Butte Lake. 1921-22 Op. Att'y Gen. No. 60.

**Disposition of land for federal fish hatchery.** — The state game commission has no authority to dispose of land owned by it to United States for a fish hatchery. 1931-32 Op. Att'y Gen. No. 59 (issued prior to enactment of 17-4-3 NMSA 1978).

**Dictates of experience and local regulations govern handling of explosives.** — The department of game and fish in transporting and storing explosives about the state and through cities and towns must adopt precautionary measures following the dictates of good judgment, based on experience in handling explosives, and local regulations. 1957-58 Op. Att'y Gen. No. 57-42.

**Law reviews.** — For student article, "Preventing the Extinction of Candidate Species: The Lesser Prairie-Chicken in New Mexico", see 49 Nat. Resources J. 525 (2009).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 35 Am. Jur. 2d Fish and Game §§ 29, 31.

Power of game or fish commission to open or close season, 34 A.L.R. 832.

36A C.J.S. Fish §§ 26, 37; 38 C.J.S. Game § 50.

## 17-1-15. Disbursement of money; limitation on expenditures.

All disbursements of moneys, including salaries, by the state game commission shall be by warrant of the secretary of finance and administration, supported by itemized voucher, certified to be correct by the state game director, and shall be paid out of moneys in the game protection fund.

Expenditures by the state game commission shall be limited to funds available in the game protection fund, and neither the state game commission nor any employee thereof shall incur or authorize any obligation for the payment of which sufficient funds are not then available in the game protection fund.

The state shall not be liable for any obligation created by the state game commission or any employee thereof, except to the extent of such game protection fund.

Neither the state game commission nor any employee thereof shall issue any voucher, nor shall the secretary of finance and administration approve any such voucher, for the payment of which moneys are not then available in the game protection fund.

**History:** Laws 1931, ch. 117, § 6; 1941 Comp., § 43-109; 1953 Comp., § 53-1-9; Laws 1977, ch. 247, § 162.

**Cross references.** — For public purchases, see 13-1-28 to 13-1-199 NMSA 1978.

## 17-1-16. Short title.

This act [17-1-16 to 17-1-25 NMSA 1978] may be cited as the "Game and Fish Bond Act".

**History:** 1978 Comp., § 17-1-16, enacted by Laws 1964 (1st S.S.), ch. 18, § 1.

**Compiler's notes.** — Laws 1964 (1st S.S.), ch. 18, compiled as 17-1-16 to 17-1-25 NMSA 1978, was not compiled

in the 1953 Comp. but was set out as 15.1 in the appendix of bond issue laws following Chapter 11, 1953 Comp.

**17-1-17. Purpose of act.**

The purpose of the Game and Fish Bond Act is to provide for use of revenues derived from fees for hunting and fishing licenses to issue bonds to provide for fish hatcheries and rearing facilities, game and fish habitat acquisition, development and improvement projects and other similar capital outlay projects.

**History:** 1978 Comp., § 17-1-17, enacted by Laws 1964 (1st S.S.), ch. 18, § 2.

**17-1-18. Bonding authority.**

Whenever the state game commission, by vote of a majority of its full membership entered in its minutes, determines by resolution that it is necessary to raise funds to provide for fish hatcheries and rearing facilities, game and fish habitat acquisition, development and improvement projects or other similar capital outlay projects, the commission may issue and sell bonds of the state of New Mexico as provided in the Game and Fish Bond Act, provided that, the total amount of such bonds issued under the authority of this act shall not exceed two million dollars (\$2,000,000). The purposes stated by the commission and the amount of each bond issue shall be approved by the state board of finance before issuance of the bonds. The commission shall report annually to the legislature any bonds issued pursuant to this act and the purpose for which issued.

**History:** 1978 Comp., § 17-1-18, enacted by Laws 1964 (1st S.S.), ch. 18, § 3; 1968, ch. 47, § 1; 1976 (S.S.), ch. 52, § 1.

**ANNOTATIONS**

**Authorized amount.** — The 1976 amendments to the Game and Fish Bond Act authorized the state game commission to issue and sell up to \$2,000,000 worth of bonds. 1976 Op. Att'y Gen. No. 76-17.

**17-1-19. Bonds; form; terms.**

Bonds issued under the Game and Fish Bond Act shall be payable in consecutive order over a period of not more than twenty years from the date of issue. They shall be issued in denominations determined by the state game commission and shall be sold at a net effective interest rate not exceeding the maximum net effective interest rate permitted by the Public Securities Act [6-14-1 NMSA 1978], as hereafter amended and supplemented. The form of the bonds shall be determined by the state game commission, and, except with respect to bonds issued in book entry or similar form without the delivery of physical securities, signatures of the governor, the state treasurer and the chairman of the state game commission shall be affixed in compliance with the Uniform Facsimile Signature of Public Officials Act [6-9-1 NMSA 1978]. The form and terms of the bonds shall be approved by the state board of finance before issuance of the bonds.

**History:** 1978 Comp., § 17-1-19, enacted by Laws 1964 (1st S.S.), ch. 18, § 4; 1968, ch. 47, § 2; 1976 (S.S.), ch. 52, § 2; 1983, ch. 265, § 35.

**17-1-20. Sale of bonds.**

Bonds issued under the Game and Fish Bond Act shall be sold at public or private sale as determined by the state game commission. If sold at public sale, the chairman of the commission shall give notice of the time, place and terms of the sale by publication in a newspaper of general circulation published in Santa Fe, New Mexico, not less than twenty days nor more than sixty days prior to the sale date.

**History:** 1978 Comp., § 17-1-20, enacted by Laws 1964 (1st S.S.), ch. 18, § 5; 1968, ch. 47, § 3; 1976 (S.S.), ch. 52, § 3.



### **17-1-21. Proceeds from sale of bonds.**

Proceeds from the sale of bonds issued under the Game and Fish Bond Act shall be deposited in a special fund in the state treasury and used solely for the purposes for which the bonds were authorized. The cost of preparing, advertising and selling the bonds, including any necessary expense for financial and legal services, shall be paid out of the proceeds. Purchasers of the bonds are not responsible in any way for the application of the proceeds.

**History:** 1978 Comp., § 17-1-21, enacted by Laws 1964 (1st S.S.), ch. 18, § 6.

### **17-1-22. Security; retirement of bonds.**

A. There is created in the state treasury the "game and fish bond retirement fund". The state game commission shall place into the game and fish bond retirement fund the sum of one dollar (\$1.00) from each license enumerated in this subsection that is sold after April 1, 1976:

- (1) resident, fishing;
- (2) resident, game hunting;
- (3) resident, deer;
- (4) resident, game hunting and fishing;
- (5) resident, trapper;
- (6) nonresident, fishing;
- (7) nonresident, game hunting;
- (8) temporary fishing, five days; and
- (9) nonresident, deer.

Such payments to the game and fish bond retirement fund shall be effective for all bonds issued under the Game and Fish Bond Act up to the maximum limitation on the amount of bonds provided in that act.

B. Money in the game and fish bond retirement fund is first pledged for the payment of principal and interest on all state game commission bonds which have been issued and are outstanding prior to June 17, 1983. Money in the game and fish bond retirement fund is further pledged for the payment of principal and interest on all state game commission bonds issued as of June 17, 1983. The issuance and sale of bonds under the Game and Fish Bond Act constitutes an irrevocable contract between the state game commission and the owner of any bond, and so long as any bond remains outstanding the fees pledged for payment shall not be reduced.

C. Bonds issued under the Game and Fish Bond Act are payable solely from the game and fish bond retirement fund, and they are not general obligations of the state.

D. The state game commission shall continue to place in the game and fish bond retirement fund the sum of one dollar (\$1.00) from each of the licenses enumerated in Subsection A of this section, even after the fund is sufficient to pay the principal and interest of the outstanding bonds and after all bonds issued have been retired.

**History:** 1978 Comp., § 17-1-22, enacted by Laws 1964 (1st S.S.), ch. 18, § 7; 1968, ch. 47, § 4; 1976 (S.S.), ch. 52, § 4; 1983, ch. 143, § 1; 2011, ch. 186, § 1.

**The 2011 amendment**, effective April 1, 2012, eliminated the distinction between small game hunting and general hunting licenses.

### **17-1-22.1. Game and fish capital outlay fund; created; transfer of money; state board of finance approval.**

A. There is created in the state treasury the "game and fish capital outlay fund".

B. Upon request of the state game commission, approved by the state board of finance, the state treasurer shall transfer to the game and fish capital outlay fund all money in the game and fish bond retirement fund except the amount necessary to meet all principal and interest payments on state game commission bonds due in the ensuing twelve months.

C. Money in the game and fish capital outlay fund may be expended by the department of game and fish to provide for fish hatcheries and rearing facilities, game and fish habitat acquisition, development and improvements and other similar capital projects.

D. Projects to be funded pursuant to Subsection C of this section shall be approved by the state game commission and the state board of finance prior to any money being encumbered for the project.

E. At any time that the game and fish bond retirement fund is insufficient to pay the principal and interest on all bonds which have been issued and are outstanding, the unencumbered balance in the game and fish capital outlay fund shall be transferred to the game and fish bond retirement fund.

**History:** 1978 Comp., § 17-1-22.1, enacted by Laws 1983, ch. 143, § 2.

### **17-1-23. Construction.**

The Game and Fish Bond Act is full authority for authorization and issuance by the state game commission of bonds authorized by the state board of finance, and the commission may do anything necessary to carry out the powers granted by the Game and Fish Bond Act.

**History:** 1978 Comp., § 17-1-23, enacted by Laws 1964 (1st S.S.), ch. 18, § 8.

### **17-1-24. Tax exemptions.**

The principal and income of bonds issued under the Game and Fish Bond Act are exempt from all taxation by the state or any of its political subdivisions except for inheritance and succession taxes.

**History:** 1978 Comp., § 17-1-24, enacted by Laws 1964 (1st S.S.), ch. 18, § 9.

### **17-1-25. Refunding.**

Any bonds issued under the Game and Fish Bond Act may be refunded under the terms of resolutions adopted by the state game commission, subject to any contractual limitations involved with any outstanding bonds, claims or other obligations. The proceeds of refunding bonds shall be applied to retirement of the bonds to be retired or refunded, or placed in escrow to be applied to payment of the bonds upon presentation for payment by the holders. Refunding bonds shall be issued under all applicable conditions prescribed in the Game and Fish Bond Act for issuance of the original bonds.

**History:** 1978 Comp., § 17-1-25, enacted by Laws 1964 (1st S.S.), ch. 18, § 10.

### **17-1-26. [Commission's power to establish rules and regulations; predatory animals; eradication.]**

The state game commission is hereby authorized and directed to make such rules and regulations and establish such service as it may deem necessary to carry out all the provisions and purposes of this act, and all other acts relating to game and fish, and in making such rules and regulations and in providing when, to what extent, if at all, and by what means game animals, birds and fish may be hunted, taken, captured, killed, possessed, sold, purchased and shipped, the state game and fish commission [state game commission] shall give due regard to the zones



of temperatures, and to the distribution, abundance, economic value and breeding habits of such game animals, birds and fish.

The state game commission is hereby authorized to spend such reasonable amounts as in its judgment is desirable and necessary annually from their funds not otherwise needed for the eradication of predatory animals.

**History:** Laws 1931, ch. 117, § 2; 1941 Comp., § 43-111; Laws 1947, ch. 53, § 1; 1953 Comp., § 53-1-11.

**Compiler's notes.** — The words "this act" refer to Laws 1931, ch. 117, compiled as 17-1-1, 17-1-5, 17-1-15, 17-1-26, 17-2-1, 17-2-5, 17-2-7, 17-2-9 and 17-2-10 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. The reference to the "state game and fish commission" should have been to the "state game commission". See 17-1-2 NMSA 1978.

**Cross references.** — For penalty for violating game and fish regulations, see 17-2-10 NMSA 1978.

For promulgation of hunter training program rules and regulations, see 17-2-34 NMSA 1978.

For regulations concerning endangered species, see 17-2-41 to 17-2-43 NMSA 1978.

For shooting preserve regulations, see 17-3-36 NMSA 1978.

For regulations concerning nonpredatory fur-bearing animals, see 17-5-3 and 17-5-4 NMSA 1978.

For regulations under Habitat Protection Act, see 17-6-3 NMSA 1978.

For regulations as to shooting ranges, see 17-7-3 NMSA 1978.

#### ANNOTATIONS

**Constitutionality.** — Laws 1931, ch. 117, is a proper exercise of police power of state and is not an unconstitutional delegation of legislative power, except as to § 3(a), compiled as 17-2-1A NMSA 1978, authorizing the commission to define game birds, animals and fish. *State ex rel. Sofeco v. Heffernan*, 1936-NMSC-069, 41 N.M. 219, 67 P.2d 240.

**Redelegation of duties is not authorized.** — The state game commission is not authorized to redelegate

any of its delegated powers to anyone not under its immediate control. 1937-38 Op. Att'y Gen. No. 111.

**Commission must oppose agency charging fishing fees.** — The state game commission is charged with the duty of regulating fishing in the public streams and lakes and to oppose any individual agency from charging or collecting fees for such fishing. 1937-38 Op. Att'y Gen. No. 111.

**Commission may fix open fishing season not specified by statute.** — The state game commission may fix the open fishing season except where it is fixed specially by statute. 1935-36 Op. Att'y Gen. No. 49.

**Commission may prohibit carrying of firearms before open hunting season.** — Powers granted to state game commission include authority to prohibit the carrying of firearms in hunting areas for specified period of time before opening of the big game season. 1947-48 Op. Att'y Gen. No. 5135.

**Commission may make it unlawful to apply for elk licenses in succeeding years.** — A state game commission regulation providing in part that it shall be unlawful for anyone to apply for a public elk license for a "P" area, or a general bull elk license, if he held a similar elk license the previous year, is within the commission's broad power to "... make such rules and regulations ... as it may deem necessary to carry out all the provisions and purposes of this act," and there is no constitutional objection to the imposition of the burden of ascertaining whether an application had been made the previous year on the public. 1975 Op. Att'y Gen. No. 75-38.

**Deputy game wardens may enter on private lands without warrants in the interest of game protection.** 1947-48 Op. Att'y Gen. No. 4974.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 35 Am. Jur. 2d Fish and Game § 31.

36A C.J.S. Fish §§ 26, 37; 38 C.J.S. Game §§ 45, 46, 50.

### 17-1-27. [Hearings on rules and regulations; petition; publication of notice of hearing.]

Whenever three percent of the duly qualified electors of any county affected by a rule or regulation promulgated by the commission, concerning hunting or fishing within said county, shall petition the commission in writing, requesting a hearing, the commission shall grant a public hearing, the time, place and purpose of which shall be set forth by advertising in one or more newspapers of general circulation within the state not less than ten (10) days before the date of such hearing; and shall, on the date of hearing, give full opportunity for all persons to be heard on the point in controversy. But nothing in this section shall be construed as suspending or invalidating any such rule or regulation, unless it is suspended or revoked by the commission.

**History:** Laws 1921, ch. 35, § 10; C.S. 1929, § 57-110; 1941 Comp., § 43-113; 1953 Comp., § 53-1-13.

**Cross references.** — For adoption of regulations and their effective date, see 17-2-5 NMSA 1978.

### 17-1-28. [Assent to act of congress concerning wildlife restoration projects.]

The state of New Mexico hereby assents to the provisions of the act of congress of the United States of America entitled "An act to provide that the United States shall aid the states in wildlife

restoration projects, and for other purposes," approved September 7 [2], 1937 (Public Number 415, 75th Congress), and the state game commission is hereby authorized and directed to perform all such acts as may be necessary to the conduct and establishment of cooperative wildlife restoration projects, as defined by said act of congress, and in compliance with said act, and rules and regulations promulgated by the secretary of agriculture [secretary of the interior] thereunder.

**History:** Laws 1939, ch. 19, § 1; 1941 Comp., § 43-114; 1953 Comp., § 53-1-14.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The federal act referred to in this section is compiled in 16 U.S.C. § 669 et seq.

In 1939 the functions of the secretary of agriculture relating to the conservation of wildlife, game and migratory birds were transferred to the secretary of the interior by 1939 Reorg. Plan No. II.

## 17-1-29. [Distribution of moneys received from United States government.]

The state game commission is authorized to receive any moneys to which the state of New Mexico may become entitled under the aforesaid act of congress, such moneys, when received, to be deposited with the treasurer of the state of New Mexico to the credit of the state game protection fund, expended for the purpose designated and withdrawn and as other moneys are withdrawn from the state game protection fund.

**History:** Laws 1939, ch. 19, § 2; 1941 Comp., § 43-115; 1953 Comp., § 53-1-15.

## ARTICLE 2

### Hunting and Fishing Regulations

Sec.

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## PART 1

## GENERAL PROVISIONS

### 17-2-1. Commission powers.

The state game commission, in addition to the powers now vested in it and not as a limitation of those powers, is expressly authorized and empowered by regulation adopted and promulgated in the manner provided in Chapter 17 NMSA 1978 to:

- A. define game birds, game animals and game fish;
- B. establish open and closed seasons for the killing or taking of all kinds of game animals, game birds and game fish and to change such open seasons from year to year and to fix different seasons for different parts of the state;
- C. establish bag limits covering all kinds of game animals, game birds and game fish and the numbers thereof which may be killed or taken by any one person during any one day or during any one open season;
- D. authorize or prohibit the killing or taking of any game animals, game birds or game fish of any kind or sex;
- E. prescribe the manner, methods and devices that may be used in hunting, taking or killing game animals, game birds and game fish;
- F. prescribe rules to prohibit any vehicle or vehicles used in transporting persons engaged in hunting, taking or killing game animals, game birds and game fish from leaving established roadways;
- G. prescribe rules that embody the principles of fair chase, which rules may include prohibitions on the use of certain technologies for hunting or fishing and specific wildlife location data that is collected by the department of game and fish or its contractors; and
- H. appoint one or more advisory committees to furnish advice, evaluations and recommendations for wildlife management projects utilizing revenue derived from the sale of public land management stamps. The advisory committees shall be created pursuant to the procedures of Section 9-1-9 NMSA 1978, provided that the restrictions on the life of advisory committees contained in Subsection F of that section shall not apply.

**History:** Laws 1931, ch. 117, § 3; 1941 Comp., § 43-201; 1953 Comp., § 53-2-1; Laws 1983, ch. 224, § 1; 2005, ch. 332, § 1; 2019, ch. 99, § 1.

**Cross references.** — For establishing open season for fur-bearing animals, see 17-5-3 NMSA 1978.

**The 2019 amendment,** effective June 14, 2019, authorized the state game commission to prescribe rules that embody the principles of fair chase; and added a new Subsection G and redesignated former Subsection G as Subsection H.

**The 2005 amendment,** effective June 17, 2005, adds Subsection G to provide that the commission is authorized

to appoint advisory committees for wildlife management projects using revenue derived from the sale of public land management stamps, that the advisory committees shall be created pursuant to Section 9-1-9 NMSA 1978, and that the restrictions on the life of committees in Section 9-1-9F NMSA 1978 shall not be applicable.

### ANNOTATIONS

**Indian reservations.** — Where an Indian tribe working with the federal government exercises its authority to develop and manage the reservation's resources for the benefit of its members and the exercise of concurrent

jurisdiction by the state would nullify the tribe's authority to regulate the use of its resources by tribal members and non-members, and would interfere with the comprehensive tribal regulatory scheme and threaten congress' commitment to tribal self-sufficiency and economic development, and in the absence of state interests which would justify assertion of concurrent authority, the application of the state's hunting and fishing laws to the reservation are preempted. *Mescalero Apache Tribe v. State of New Mexico*, 677 Fed.2d 55 (10th Cir. 1982), *aff'd*, 462 U.S. 324, 103 S.Ct. 2378, 76 L. Ed. 2d 611 (1983).

**Return of game or proceeds after wrongful confiscation.** — Where the department of game and fish confiscated an elk from a person charged with a hunting misdemeanor, and the magistrate court dismissed the case because the game officer failed to identify the defendant at the hearing as the person charged, the department was not required to return the elk, or the proceeds from the sale of the elk, to that person. 1988 Op. Att'y Gen. No. 88-43.

**Commission's authority to fix open season on game animals is constitutional.** — Authority given to the state game commission to promulgate rules and regulations is not an unconstitutional delegation of legislative power; the rule fixing an open season on hunting bear is validated by the statute defining bears as game animals. *State ex rel. Sofeico v. Heffernan*, 1936-NMSC-069, 41 N.M. 219, 67 P.2d 240.

**Power to define game animals is unconstitutional.** — Laws 1931, ch. 117, is a proper exercise of the police

power of the state. It is not an unconstitutional delegation of legislative power, except as to Subdivision A of this section. *State ex rel. Sofeico v. Heffernan*, 1936-NMSC-069, 41 N.M. 219, 67 P.2d 240.

**Authority over wild horses.** — Although the Wildlife Conservation Act defines the term "wildlife" as any nondomestic animal, wild horses on the White Sands Missile Range do not fall within the classification. Because the authority of the State Game Commission is limited by statute, the Game Commission lacks jurisdiction over these wild horses. 1994 Op. Att'y Gen. No. 94-06.

**Commission cannot exempt landowners and lessees from hunting license requirement.** — State game commission cannot exempt owners and lessees of nonurban lands residing thereon and members of their families from buying a license to hunt rabbits. 1935-36 Op. Att'y Gen. No. 120.

**Law reviews.** — For student article, "Preventing the Extinction of Candidate Species: The Lesser Prairie-Chicken in New Mexico", see 49 Nat. Resources J. 525 (2009).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 35 Am. Jur. 2d Fish and Game § 31.

Power of game or fish commission to open or close season, 34 A.L.R. 832.

Applicability, to domesticated or captive game, of game laws relating to closed season and the like, 74 A.L.R.2d 974.

36A C.J.S. Fish §§ 26, 37; 38 C.J.S. Game §§ 45, 46, 50.

## 17-2-2. Game to be protected.

The game animals and quadrupeds, game birds and fowl, and game fish as herein defined shall be protected and hunting, taking, capturing, killing or possession, or attempt to hunt, take, capture or kill of any or all species named herein shall be regulated by the state game commission under the authority of Chapter 117 of the 1931 Session Laws of the state of New Mexico.

**History:** Laws 1937, ch. 23, § 1; 1941 Comp., § 43-202; 1953 Comp., § 53-2-2.

**Compiler's notes.** — Laws 1931, ch. 117, referred to in this section, is compiled as 17-1-1, 17-1-5, 17-1-15, 17-1-26, 17-2-1, 17-2-5, 17-2-7, 17-2-9 and 17-2-10 NMSA 1978.

**Cross references.** — For Wildlife Conservation Act, see 17-2-37 NMSA 1978.

For protection of fur-bearing animals, see 17-5-1 and 17-5-2 NMSA 1978.

## ANNOTATIONS

**Carrying firearms before hunting season opens may be prohibited.** — Powers granted to state game commission include authority to prohibit the carrying of firearms in hunting areas for specified period of time before opening of the big game season. 1947-48 Op. Att'y Gen. 5135.

### 17-2-2.1. Artificial wildlife.

A. Artificial wildlife may be used, and defined as game animals or birds, for the purpose of prosecution pursuant to Section 17-2-31 or 17-3-1 NMSA 1978, or for prosecution for shooting at, from or across a roadway.

B. Violations of shooting artificial wildlife shall be punished pursuant to the applicable penalty provisions of Chapter 17 NMSA 1978.

**History:** Laws 2003, ch. 301, § 1.

**Cross references.** — For violation of game and fish laws or regulations; penalties, see 17-2-10 NMSA 1978.

For general powers and duties of state game commission; game protection fund, see 17-1-14 NMSA 1978.

### 17-2-3. Protected wildlife species and game fish defined.

A. The following mammals are game mammals:

(1) all of the family Tayassuidae (javelina);



- (2) within the family Bovidae:
- (a) all of the genus *Bison* (American bison) except where raised in captivity for domestic or commercial meat production;
  - (b) all of the genus *Capra* (ibex) except for the domestic species of goats;
  - (c) all of the genus *Ovis* (bighorn sheep) except for the domestic species of sheep;
  - (d) all of the genus *Ammotragus* (aoudad);
  - (e) all of the genus *Tragelaphus* (kudu); and
  - (f) all of the genus *Oryx* (oryx);
- (3) all of the family Antilocapridae (American pronghorn);
  - (4) all of the family Cervidae (elk and deer);
  - (5) all of the family Ochotonidae (pikas);
  - (6) all of the genus *Sciurus* (squirrels);
  - (7) all of the genus *Tamiasciurus* (red squirrels);
  - (8) all of the genus *Marmota* (marmots) of the family Sciuridae;
  - (9) all of the family Ursidae (bear); and
  - (10) all of the species concolor (cougar) of the genus *Felis* and family Felidae.
- B. The following birds are game birds:
- (1) all of the family Anatidae (waterfowl);
  - (2) all of the family Tetraonidae (grouse and ptarmigans);
  - (3) all of the family Phasianidae (quail, partridges and pheasants);
  - (4) all of the family Meleagridae (wild turkeys) except for the domestic strains of turkeys;
  - (5) all of the family Perdidae (francolins);
  - (6) all of the family Gruidae (cranes);
  - (7) all of the family Rallidae (rails, coots and gallinules);
  - (8) all of the family Charadriidae (plovers, turnstones and surfbirds);
  - (9) all of the family Scolopacidae (shorebirds, snipe, sandpipers and curlews);
  - (10) all of the family Recurvirostridae (avocets and stilts);
  - (11) all of the family Phalaropodidae (phalaropes); and
  - (12) all of the family Columbidae (wild pigeons and doves) except for the domestic strains of pigeons.
- C. The following fish are game fish:
- (1) all of the family Salmonidae (trout);
  - (2) all of the family Esocidae (pike);
  - (3) all of the family Ictaluridae (catfish);
  - (4) all introduced species of the family Serranidae (sea bass and white bass);
  - (5) all of the family Centrarchidae (sunfish, crappie and bass);
  - (6) all of the family Percidae (walleye pike and perch);
  - (7) all introduced species of the family Pomadasyidae (sargo);
  - (8) all introduced species of the family Sciaenidae (corvina, bairdiella and redfish);
  - (9) all of the genus *Oreochromis* (tilapia); and
  - (10) all of the family Moronidae (striped bass, hybrid striped bass, white bass and others).

**History:** 1953 Comp., § 53-2-3, enacted by Laws 1967, ch. 8, § 1; 1971, ch. 75, § 1; 2015, ch. 26, § 1.

**Repeals and reenactments.** — Laws 1967, ch. 8, § 1, repealed former 53-2-3, 1953 Comp., defining game animals, game birds and game fish and enacted a new 53-2-3 NMSA 1978.

**Cross references.** — For protection of fur-bearing animals, see 17-5-1 and 17-5-2 NMSA 1978.

**The 2015 amendment,** effective June 19, 2015, added tilapia and bass to the definition of "game fish"; in Subsection C, Paragraph (7), after the semicolon, deleted "and", and added new Paragraphs (9) and (10).

#### ANNOTATIONS

**Wild elk.** — Defendant could be convicted only under the game and fish laws, and not under Section 30-18-6

NMSA 1978, for transporting heads of free-roaming, wild elk, since wild elk were among protected species of family Cervidae. *State v Parson*, 2005-NMCA-083, 137 N.M. 773, 115 P.3d 236.

**Authority over wild horses.** — Although the Wildlife Conservation Act defines the term "wildlife" as any nondomestic animal, wild horses on the White Sands Missile Range do not fall within the classification. Because the authority of the State Game Commission is limited by statute, the Game Commission lacks jurisdiction over these wild horses. 1994 Op. Att'y Gen. No. 94-06.

## 17-2-4. Repealed.

**Repeals.** — Laws 2001, ch. 66, § 3 repealed 17-2-4 NMSA 1978, as enacted by Laws 1937, ch. 217, § 1, regarding the classification of bullfrogs as a protected species, effective June 15, 2001. For provisions of former section, see the 2000 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, see 17-2-4.2 NMSA 1978.

### 17-2-4.1. Jaguar to be protected.

In the event the jaguar is de-listed as a federal endangered species, the department of game and fish shall prohibit the taking, possession and sale of jaguars or parts thereof.

**History:** 1978 Comp., § 17-2-4.1, enacted by Laws 1999, ch. 31, § 1.

### 17-2-4.2. Amphibians and reptiles; protected; permits; unlawful taking; misdemeanor; penalties.

A. All species, except for those collected in rattlesnake roundups, for fish bait or for lizard races, of native, free-ranging amphibians and reptiles are hereby classified as protected nongame animals for commercial taking purposes. The commercial taking or capturing of native, free-ranging amphibians and reptiles is prohibited except by a permit issued by the state game commission.

B. The state game commission shall adopt rules necessary to administer Paragraph (14) of Subsection A of Section 17-1-14 NMSA 1978 and this section to assure that viable populations of native, free-ranging amphibians and reptiles are maintained in the state.

C. If the state game commission determines that it will offer permits to take or capture native, free-ranging amphibians or reptiles, the commission shall adopt a rule listing protected native, free-ranging amphibians and reptiles that may be taken or captured after taking into consideration any criteria that can be shown to have an effect from commercial takings on the viability of the species population in the state.

D. Unlawful taking of a native, free-ranging amphibian or reptile consists of intentionally taking or capturing, for commercial purposes, a regulated native, free-ranging amphibian or reptile without a valid permit from the state game commission.

E. Amphibians and reptiles may be removed, captured or destroyed without a permit, by any person, in emergency situations involving an immediate threat to human life or private property.

F. Whoever commits unlawful taking of a native, free-ranging amphibian or reptile is guilty of a misdemeanor and shall be fined not less than fifty dollars (\$50.00) per occurrence and not more than one thousand dollars (\$1,000) per occurrence or be imprisoned for not more than one year or both.

G. As referred to in this section, "taking" means the act of seizing amphibians or reptiles for a commercial purpose.

**History:** 1978 Comp., § 17-2-4.1, enacted by Laws 2001, ch. 66, § 2.

**Compiler's notes.** — This section was originally enacted as 17-2-4.1 NMSA 1978, but was redesignated as

17-2-4.2 because Laws 1999, ch. 31, § 1, previously enacted a 17-2-4.1.

### 17-2-5. Adoption of regulations; effective date.

Any written regulation of the state game commission adopted by an affirmative vote of a majority of the members of the state game commission, signed by the chairman and attested by the secretary of the commission, filed in the office of the director of the department of game and fish, and filed in accordance with Section 4-10-13 New Mexico Statutes Annotated, 1953 Compilation, is duly adopted and promulgated and effective immediately. A copy of any regulation certified by the director of the department of game and fish to be a true copy of an adopted regulation is prima facie evidence in any court in this state of the adoption and promulgation of the regulation.



**History:** Laws 1931, ch. 117, § 4; 1941 Comp., § 43-205; 1953 Comp., § 53-2-5; Laws 1961, ch. 106, § 1.

**Cross references.** — For hearings on objections to rules and regulations, see 17-1-27 NMSA 1978.

**Compiler's notes.** — Section 4-10-13, 1953 Comp., cited in this section was repealed by Laws 1967, ch. 275, § 13. See Chapter 14, Article 4 NMSA 1978.

#### ANNOTATIONS

**Authority to promulgate orders is constitutional.**

— Authority given to the game commission to promulgate

orders is not an unconstitutional delegation of legislative power. *State ex rel. Sofeico v. Heffernan*, 1936-NMSC-069, 41 N.M. 219, 67 P.2d 240.

**Proper promulgation of rules presumed.** — In habeas corpus proceeding to discharge one convicted of violating regulations of state game commission, the court assumes that the regulations have been properly promulgated. *State ex rel. Sofeico v. Heffernan*, 1936-NMSC-069, 41 N.M. 219, 67 P.2d 240.

### 17-2-6. Game and fish management areas; closed lakes or streams; notice.

All game and fish management areas, rest grounds and closed lakes or streams or closed portions of lakes or streams shall be conspicuously posted with posters setting forth their purpose and the penalties for violating the rules and regulations applicable to them. This posting is legal notice against the violation of applicable laws, rules or regulations.

**History:** Laws 1921, ch. 35, § 8; C.S. 1929, § 57-108; 1941 Comp., § 43-206; 1953 Comp., § 53-2-6; Laws 1961, ch. 106, § 2.

### 17-2-7. Unlawful hunting or fishing.

A. Except as permitted by regulations adopted by the state game commission or as otherwise allowed by law, it is unlawful to:

- (1) hunt, take, capture, kill or attempt to take, capture or kill, at any time or in any manner, any game animal, game bird or game fish in the state; or
- (2) possess, offer for sale, sell, offer to purchase or purchase in the state all or any part of any game animal, game bird or game fish.

B. Notwithstanding any other law, the owner of domestic livestock in this state or his regular employee may hunt, take, capture or kill any cougar or bear which has killed domestic livestock. The owner of livestock or his regular employee who takes action under this provision will report this action to the department of game and fish, who will verify the necessity of the action taken.

C. Violation of this section is a misdemeanor and shall be punished as provided in Section 17-2-10 NMSA 1978.

D. The provisions of this section shall not be deemed to prohibit the possession of game animals, birds or fish taken legally in any other jurisdiction.

**History:** Laws 1931, ch. 117, § 8; 1941 Comp., § 43-207; 1953 Comp., § 53-2-7; Laws 1971, ch. 75, § 2; 1979, ch. 340, § 1.

**Cross references.** — For penalty for taking fish or killing animals in state park, see 16-2-32 NMSA 1978.

#### ANNOTATIONS

**Plain view exception to search warrant requirement.** — Plain view exception did not apply to warrantless search of defendant's home for violation of game and fish laws under Section 17-2-7 NMSA 1978, because incriminating nature of hunting trophies would not have been immediately apparent to any lawfully positioned officer. *State v. Moran*, 2008-NMCA-160, 145 N.M. 297, 197 P.3d 1079.

**Indian reservations.** — Where an Indian tribe working with the federal government exercises its authority to develop and manage the reservation's resources for the benefit of its members and the exercise of concurrent jurisdiction by the state would nullify the tribe's authority to regulate the use of its resources by tribal members and

non-members, and would interfere with the comprehensive tribal regulatory scheme and threaten congress' commitment to tribal self-sufficiency and economic development, and in the absence of state interests which would justify assertion of concurrent authority, the application of the state's hunting and fishing laws to the reservation are preempted. *Mescalero Apache Tribe v. State of New Mexico*, 677 Fed. 55 (10th Cir. 1982), *aff'd*, 462 U.S. 324, 103 S.Ct. 2378, 76 L. Ed. 2d 611 (1983).

**Evidence of unlawful possession held sufficient.** — Where evidence showed defendant had no permit to possess elk meat, refrigerator in the home of defendant contained three packages of elk meat and defendants had discussed the tracking and killing of the elk before witnesses, evidence supported conviction for unlawful possession of elk meat. *State v. Booher*, 1967-NMCA-004, 78 N.M. 76, 428 P.2d 478.

**Cruelty to animals provisions inapplicable to wild animals.** — Section 30-18-1 NMSA 1978 applies only to cruelty to domesticated animals and wild animals previously reduced to captivity, and under the "general-specific"

rule of statutory construction, treatment of wild animals is presumed to be governed by the comprehensive hunting and fishing laws contained in this chapter. *State v. Cleve*, 1999-NMSC-017, 127 N.M. 240, 980 P.2d 23.

**Possession of game obtained with tribal license on Indian reservation.** — Absent justification, the state may not discriminatorily prohibit possession of game lawfully obtained from an Indian reservation while permitting possession of game elsewhere and the state may not prohibit the possession of game legally obtained from an Indian reservation with a proper tribal license. *Mescalero Apache Tribe v. State of N.M.*, 630 F.2d 724 (1980).

**Return of game or proceeds after wrongful confiscation.** — Where the department of game and fish confiscated an elk from a person charged with a hunting misdemeanor, and the magistrate court dismissed the case

because the game officer failed to identify the defendant at the hearing as the person charged, the department was not required to return the elk, or the proceeds from the sale of the elk, to that person. 1988 Op. Att'y Gen. No. 88-43.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 35 Am. Jur. 2d Fish and Game § 38.

Entrapment with respect to violation of fishing or game laws, 75 A.L.R.2d 709.

Possession of game or of specified hunting equipment as prima facie evidence of violation, 81 A.L.R.2d 1093.

Right to kill game in defense of person or property, 93 A.L.R.2d 1366.

Validity, construction and application of state wildlife possession laws, 50 A.L.R.5th 703.

36A C.J.S. Fish § 28; 38 C.J.S. Game §§ 8, 22-28, 30, 51, 76.

### 17-2-7.1. Interference prohibited; criminal penalties; civil penalties; revocation of license, certificate or permit.

A. It is unlawful for a person to commit interference with another person who is lawfully hunting, trapping or fishing in an area where hunting, trapping or fishing is permitted by a custodian of public property or an owner or lessee of private property.

B. A person who commits a:

(1) first offense of interference is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978; and

(2) second or subsequent offense of interference is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

C. When a person who commits interference possesses a license, certificate or permit issued to him by the state game commission, the license, certificate or permit shall be subject to revocation by the commission pursuant to the provisions of Sections 17-1-14 and 17-3-34 NMSA 1978.

D. As used in this section, "interference" means:

(1) intentionally placing oneself in a location where a human presence may affect the behavior of a game animal, bird or fish or the feasibility of killing or taking a game animal, bird or fish with the intent of interfering with or harassing another person who is lawfully hunting, trapping or fishing;

(2) intentionally creating a visual, aural, olfactory or physical stimulus for the purpose of affecting the behavior of a game animal, bird or fish with the intent of interfering with or harassing another person who is lawfully hunting, trapping or fishing; or

(3) intentionally affecting the condition or altering the placement of personal property used for the purpose of killing or taking a game animal, bird or fish.

E. Nothing in this section shall be construed to include a farmer or rancher in pursuit of his normal farm or ranch operation or law enforcement officer in pursuit of his official duties.

**History:** Laws 1993, ch. 94, § 1.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity and construction of statutes prohibiting harassment of hunters, fishermen, or trappers, 17 A.L.R.5th 837.

### 17-2-7.2. Landowner taking; conditions; department responsibilities.

A. A landowner or lessee, or employee of either, may take or kill an animal on private land, in which they have an ownership or leasehold interest, including game animals and other quadrupeds, game birds and fowl, that presents an immediate threat to human life or an immediate threat of damage to property, including crops; provided, however, that the taking or killing is reported to the department of game and fish within twenty-four hours and before the removal of the carcass of the animal killed, in accordance with regulations adopted by the commission.



B. A landowner or lessee, or employee of either, may take or kill animals on private land, in which they have an ownership or leasehold interest, including game animals and other quadrupeds, game birds and fowl, that present a threat to human life or damage to property, including crops, according to regulations adopted by the commission. The regulations shall:

(1) provide a method for filing a complaint to the department by the landowner or lessee, or employee of either of them, of the existence of a depredation problem;

(2) provide for various departmental interventions, depending upon the type of animal and depredation;

(3) require the department to offer at least three different interventions, if practical;

(4) require the department to respond to the initial and any subsequent complaints within ten days with an intervention response to the complaint, and to carry out the intervention, if agreed upon between the department and the landowner, within five days of that agreement;

(5) permit the landowner or lessee to reject for good cause the interventions offered by the department;

(6) require a landowner or lessee to demonstrate that the property depredation is greater in value than the value of any wildlife-related income or fee collected by the landowner or lessee for permission to take or kill an animal of the same species, on the private property or portion of the private property identified in the complaint as the location where the depredation occurred; and

(7) permit the landowner, lessee or employee, when interventions by the department have not been successful and after one year from the date of the filing of the initial complaint, to kill or take an animal believed responsible for property depredation.

C. For purposes of this section:

(1) "commission" means the state game commission;

(2) "department" means the department of game and fish; and

(3) "intervention" means a solution proposed by the department to eliminate the depredation.

**History:** Laws 1997, ch. 224, § 3.

#### ANNOTATIONS

##### **Relation to cruelty to animal prohibitions.**

— Even if the legislature had intended to protect wild animals in Section 30-18-1 NMSA 1978, the legislature,

having dealt with the subject of the hunting of game animals more particularly in the game and fish laws, intended to create an exception from the cruelty-to-animals statute for hunting and fishing activity contemplated by game and fish laws. *State v. Cleve*, 1999-NMSC-017, 127 N.M. 240, 980 P.2d 23.

## **17-2-8. Unlawful taking of big game and waste of game.**

A. It is unlawful for any person:

(1) who hunts or fishes and takes any game mammal designated in Paragraphs (2), (3) or (4) of Subsection A of Section 17-2-3 NMSA 1978, any game bird or any game fish to fail to transport the edible portions of the meat obtained to the person's home for human consumption or to provide for the human consumption thereof under any commission regulations pertaining to exportation, transportation and donation of game;

(2) who wounds or may have wounded any game mammal designated in Paragraphs (2), (3) or (4) of Subsection A of Section 17-2-3 NMSA 1978 to fail to go to the place where the mammal sustained or may have sustained the wound and make a reasonable attempt to track the mammal and reduce it to possession; or

(3) to take or kill a bighorn sheep, ibex, oryx, Barbary sheep, elk, deer or pronghorn antelope outside of the legal season or without a valid license, which taking or killing results in waste of the animal. Waste of the animal consists of removing from the animal only the head, antlers or horns or abandoning any of the four quarters, backstraps or tenderloins of the carcass. A violation of the provisions of this paragraph is intended to be separate from and cumulative to any other violation of Chapter 17 NMSA 1978.

B. Violation of Paragraph (3) of Subsection A of this section is a fourth degree felony pursuant to Section 31-18-15 NMSA 1978, and violation of Paragraph (1) or (2) of Subsection A of this section is a misdemeanor pursuant to Section 17-2-10 NMSA 1978.

**History:** 1953 Comp., § 53-2-7.1, enacted by Laws 1977, ch. 70, § 1; 2017, ch. 38, § 1.

The 2017 amendment, effective June 16, 2017, made it a fourth degree felony to wastefully take or kill certain big game, defined "waste of the animal", and made it a misdemeanor to hunt or fish certain game animals and fail to provide for its consumption or to wound a game

mammal and fail to make a reasonable attempt to track the mammal; in the catchline, added "Unlawful taking of big game"; designated the previously undesignated introductory clause as Subsection A and redesignated former Subsections A and B as Paragraphs A(1) and A(2), respectively; and added a new Subsection B.

## 17-2-9. Jurisdiction of magistrate court.

The magistrate court has jurisdiction in all cases arising under Chapter 17 NMSA 1978 and regulations promulgated by the state game commission. In addition to other jurisdiction, a magistrate has jurisdiction over such cases arising in any magistrate district adjoining at any point that in which he serves with the consent of the accused.

**History:** Laws 1931, ch. 117, § 9; 1941 Comp., § 43-208; 1953 Comp., § 53-2-8; Laws 1963, ch. 213, § 1; 1971, ch. 184, § 1.

### ANNOTATIONS

**Jurisdiction extends to game law violations.** — It is within the jurisdiction of justices of the peace (now magistrates) to try game law violation cases. 1953-54 Op. Att'y Gen. No. 5860; 1939-40 Op. Att'y Gen. No. 98.

**Jurisdiction does not extend to revocation of licenses.** — The revocation of a hunting or fishing license is not within the jurisdiction of a justice of the peace (now magistrate) but such power rests exclusively with the director of the department of game and fish of this state, as an administrative matter. 1965 Op. Att'y Gen. No. 65-79.

## 17-2-10. Violation of game and fish laws or rules; penalties.

A. A person violating any of the provisions of Chapter 17 NMSA 1978, except for the felony provision of Section 17-2-8 NMSA 1978, or any rules adopted by the state game commission that relate to the time, extent, means or manner that game animals, birds or fish may be hunted, taken, captured, killed, possessed, sold, purchased or shipped is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to Section 31-19-1 NMSA 1978. In addition, the person shall be sentenced to the payment of a fine in accordance with the following schedule:

- (1) for illegally taking, attempting to take, killing, capturing or possessing of each deer, antelope, javelina, bear or cougar during a closed season, a fine of four hundred dollars (\$400);
- (2) for illegally taking, attempting to take, killing, capturing or possessing of each elk, big-horn sheep, oryx, ibex or Barbary sheep, a fine of one thousand dollars (\$1,000);
- (3) for hunting big game without a proper and valid license, lawfully procured, a fine of one hundred dollars (\$100);
- (4) for exceeding the bag limit of any big game species, a fine of four hundred dollars (\$400);
- (5) for attempting to exceed the bag limit of any big game species by the hunting of any big game animal after having tagged a similar big game species, a fine of two hundred dollars (\$200);
- (6) for signing a false statement to procure a resident hunting or fishing license when the applicant is residing in another state at the time of application for a license, a fine of four hundred dollars (\$400);
- (7) for using a hunting or fishing license issued to another person, a fine of one hundred dollars (\$100);
- (8) for a violation of Section 17-2-31 NMSA 1978, a fine of three hundred dollars (\$300);
- (9) for selling, offering for sale, offering to purchase or purchasing any big game animal, unless otherwise provided by Chapter 17 NMSA 1978, a fine of one thousand dollars (\$1,000);
- (10) for illegally taking, attempting to take, killing, capturing or possessing of each jaguar, a fine of two thousand dollars (\$2,000); and
- (11) for a violation of the provisions of Subsection A of Section 17-2A-3 NMSA 1978, a fine of five hundred dollars (\$500).

B. A person convicted a second time for violating any of the provisions of Chapter 17 NMSA 1978, except for the felony provision of Section 17-2-8 NMSA 1978, or any rules adopted by the



state game commission that relate to the time, extent, means or manner that game animals, birds or fish may be hunted, taken, captured, killed, possessed, sold, purchased or shipped is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to Section 31-19-1 NMSA 1978. In addition, the person shall be sentenced to the payment of a fine in accordance with the following schedule:

- (1) for illegally taking, attempting to take, killing, capturing or possessing of each deer, antelope, javelina, bear or cougar during a closed season, a fine of six hundred dollars (\$600);
- (2) for illegally taking, attempting to take, killing, capturing or possessing of each elk, bighorn sheep, oryx, ibex or Barbary sheep, a fine of one thousand five hundred dollars (\$1,500);
- (3) for hunting big game without a proper and valid license, lawfully procured, a fine of four hundred dollars (\$400);
- (4) for exceeding the bag limit of any big game species, a fine of six hundred dollars (\$600);
- (5) for attempting to exceed the bag limit of any big game species by the hunting of any big game animal after having tagged a similar big game species, a fine of six hundred dollars (\$600);
- (6) for signing a false statement to procure a resident hunting or fishing license when the applicant is residing in another state at the time of application for a license, a fine of six hundred dollars (\$600);
- (7) for using a hunting or fishing license issued to another person, a fine of two hundred fifty dollars (\$250);
- (8) for a violation of Section 17-2-31 NMSA 1978, a fine of five hundred dollars (\$500);
- (9) for selling, offering for sale, offering to purchase or purchasing any big game animal, unless otherwise provided by Chapter 17 NMSA 1978, a fine of one thousand five hundred dollars (\$1,500);
- (10) for illegally taking, attempting to take, killing, capturing or possessing of each jaguar, a fine of four thousand dollars (\$4,000); and
- (11) for a violation of the provisions of Subsection A of Section 17-2A-3 NMSA 1978, a fine of one thousand dollars (\$1,000).

C. Notwithstanding the provisions of Section 31-18-13 NMSA 1978, a person convicted a third or subsequent time for violating any of the provisions of Chapter 17 NMSA 1978, except for the felony provision of Section 17-2-8 NMSA 1978, or any rules adopted by the state game commission that relate to the time, extent, means or manner that game animals, birds or fish may be hunted, taken, captured, killed, possessed, sold, purchased or shipped is guilty of a misdemeanor and upon conviction shall be sentenced to imprisonment in the county jail for a term of not less than ninety days, which shall not be suspended or deferred. In addition, the person shall be sentenced to the payment of a fine in accordance with the following schedule:

- (1) for illegally taking, attempting to take, killing, capturing or possessing of each deer, antelope, javelina, bear or cougar during a closed season, a fine of one thousand two hundred dollars (\$1,200);
- (2) for illegally taking, attempting to take, killing, capturing or possessing of each elk, bighorn sheep, oryx, ibex or Barbary sheep, a fine of three thousand dollars (\$3,000);
- (3) for hunting big game without a proper and valid license, lawfully procured, a fine of one thousand dollars (\$1,000);
- (4) for exceeding the bag limit of any big game species, a fine of one thousand two hundred dollars (\$1,200);
- (5) for attempting to exceed the bag limit of any big game species by the hunting of any big game animal after having tagged a similar big game species, a fine of one thousand dollars (\$1,000);
- (6) for signing a false statement to procure a resident hunting or fishing license when the applicant is residing in another state at the time of application for a license, a fine of one thousand two hundred dollars (\$1,200);
- (7) for using a hunting or fishing license issued to another person, a fine of one thousand dollars (\$1,000);
- (8) for a violation of Section 17-2-31 NMSA 1978, a fine of one thousand dollars (\$1,000);
- (9) for selling, offering for sale, offering to purchase or purchasing any big game animal, unless otherwise provided by Chapter 17 NMSA 1978, a fine of three thousand dollars (\$3,000);



(10) for illegally taking, attempting to take, killing, capturing or possessing of each jaguar, a fine of six thousand dollars (\$6,000); and

(11) for a violation of the provisions of Subsection A of Section 17-2A-3 NMSA 1978, a fine of two thousand dollars (\$2,000).

D. A person who is convicted of a violation of any rules adopted by the state game commission or of a violation of any of the provisions of Chapter 17 NMSA 1978, except for the felony provision of Section 17-2-8 NMSA 1978, for which a punishment is not set forth under this section, is a misdemeanor and shall be fined or imprisoned pursuant to Section 31-19-1 NMSA 1978.

E. The provisions of this section shall not be interpreted to prevent, constrain or penalize a Native American for engaging in activities for religious purposes, as provided in Section 17-2-14 or 17-2-41 NMSA 1978.

F. The provisions of this section shall not apply to a landowner or lessee, or employee of either of them, who kills an animal on private land, in which they have an ownership or leasehold interest, that is threatening human life or damaging or destroying property, including crops; provided, however, that the killing is reported to the department of game and fish within twenty-four hours and before the removal of the carcass of the animal killed; and provided further that all actions authorized in this subsection are carried out according to rules of the department.

**History:** Laws 1931, ch. 117, § 7; 1941 Comp., § 43-209; 1953 Comp., § 53-2-9; Laws 1963, ch. 213, § 2; 1977, ch. 290, § 2; 1979, ch. 340, § 2; 1997, ch. 119, § 1; 1997, ch. 224, § 1; 1999, ch. 31, § 2; 2017, ch. 38, § 2.

**Cross references.** — For artificial wildlife being used and defined as game animals or birds for the purpose of presecution, see 17-2-2.1 NMSA 1978.

For revocation of license for violation of law, see 17-2-30, 17-3-34 and 17-5-9 NMSA 1978.

For penalties for violations as to endangered species, see 17-2-45 NMSA 1978.

For fines constituting current school fund, see N.M. Const., art. XII, § 4.

**The 2017 amendment**, effective June 16, 2017, provided for stricter penalties for violation of the Game and Fish provisions; in the catchline, deleted "regulations" and added "rules"; in Subsection A, in the introductory paragraph, deleted "Any" and added "A", after "Chapter 17 NMSA 1978", added "except for the felony provision of Section 17-2-8 NMSA 1978", after "or any", deleted "regulations" and added "rules", after "upon conviction", deleted "may" and added "shall", and after "be sentenced", deleted "to imprisonment in the county jail for a term not to exceed six months" and added "pursuant to Section 31-19-1 NMSA 1978"; in Subsection B, in the introductory paragraph, after "Chapter 17 NMSA 1978", added "except for the felony provision of Section 17-2-8 NMSA 1978", after "or any", deleted "regulations" and added "rules", after "upon conviction", deleted "may" and added "shall", and after "be sentenced", deleted "to imprisonment in the county jail for a term of not more than three hundred sixty-four days" and added "pursuant to Section 31-19-1 NMSA 1978"; in Subsection C, in the introductory paragraph, after "Chapter 17 NMSA 1978", added "except for the felony provision of Section 17-2-8 NMSA 1978", after "or any", deleted "regulations" and added "rules", after "upon conviction", deleted "may" and added "shall", and after "suspended or deferred", deleted "and not more than three hundred sixty four days"; in Subsection D, deleted "Any" and added "A", after "violation of any", deleted "regulations" and added "rules", after "state game commission", deleted "that relate to the time, extent, means or manner that game animals, birds or fish may be hunted, taken, captured, killed, possessed, sold, purchased or shipped", after "Chapter 17 NMSA 1978", added "except for the felony provision of Section 17-2-8 NMSA 1978", after "under this section", added "is a misdemeanor and", after "shall be fined", deleted "not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500)", and

after "imprisoned", deleted "not more than six months or both" and added "pursuant to Section 31-19-1 NMSA 1978"; and in Subsection F, after "according to", deleted "regulations" and added "rules".

**The 1999 amendment**, effective June 18, 1999, added Paragraphs A(10), A(11), B(10), B(11), C(10), and C(11), inserted "or Barbary sheep" following "ibex" in Paragraph B(2), and made minor stylistic changes:

**The 1997 amendment**, effective July 1, 1997, added "In addition, the person" at the beginning of the last sentence of the introductory language in Subsection A; added Subsections B and C and redesignated the following subsection accordingly; and added Subsections E and F.

## ANNOTATIONS

**Wild elk.** — Defendant could be convicted only under the game and fish laws, and not under Section 30-18-6 NMSA 1978, for transporting heads of free-roaming, wild elk, since wild elk were among protected species of family Cervidae. *State v. Parson*, 2005-NMCA-083, 173 N.M. 773, 115 P.3d 236.

**Erroneous habeas corpus judgment held res judicata.** — A judgment in habeas corpus proceeding, not appealed from, discharging a defendant prosecuted for killing a bear out of season, on the ground that a bear was not a game animal defined by statute, was res judicata on that issue, although erroneous, barring a further prosecution for having in possession a bear skin, from the same animal. *State ex rel. Sofeico v. Heffernan*, 1936-NMSC-069, 41 N.M. 219, 67 P.2d 240.

**Money collected as informer's fee** should be paid over to person instituting prosecution, who may recover it by legal action if not so paid. 1931-32 Op. Att'y Gen. No. 100.

**Defendant pleading guilty may be fined or jailed.** — A justice of the peace (now magistrate) has the right to fine or send to jail a defendant pleading guilty to the charge of having violated the game laws of the state. 1938-39 Op. Att'y Gen. No. 98.

**No power to remit fixed fine.** — Justices of the peace (now magistrates) have no power to remit fines where the amount of the fine is fixed by statute. 1923-24 Op. Att'y Gen. No. 162 (issued under former statutory provisions).

**Law reviews.** — For article, "Possibilities for Expansion of the Migrating Bird Treaty Act for the Protection of Migrating Birds", see 40 Nat. Resources J. 47 (2000).



### 17-2-10.1. Game and fish penalty assessment misdemeanors; definition; schedule of assessments.

A. As used in Chapter 17 NMSA 1978, "penalty assessment misdemeanor" means a violation of any of the following listed sections of the NMSA 1978 for which the listed penalty assessment is established:

COMMON NAME OF OFFENSE	SECTION VIOLATED	PENALTY ASSESSMENT
Fishing, hunting or trapping without the proper stamp or validation as required by law or adopted by state game commission rule	17-2-7	\$ 50.00
Fishing without a license	17-3-17	\$ 75.00
Hunting small game without a license	17-3-1	\$100.00
Manner and method rule infraction contrary to adoption by state game commission rule	17-2-7	\$125.00.

B. When an alleged violator of a penalty assessment misdemeanor elects to accept a notice to appear in lieu of a notice of penalty assessment, no fine imposed upon later conviction shall exceed the penalty assessment established for the particular penalty assessment misdemeanor.

C. With the penalty assessment collected for each penalty assessment misdemeanor pursuant to this section, there shall be assessed and collected the cost of the appropriate license and validation that the violator failed to produce. Upon presentation of proof of payment of the penalty assessment, the director of the department of game and fish shall issue the appropriate license and validation.

**History:** Laws 1995, ch. 177, § 1; 2015, ch. 27, § 1.

The 2015 amendment, effective June 19, 2015, provided for additional penalty assessments for violations of hunting and fishing infractions; in Subsection A, added a penalty assessment of \$50.00 for "fishing, hunting or trapping without the proper stamp or validation as required

by law or adopted by state game commission rule" and a penalty assessment of \$125.00 for "manner and method rule infraction contrary to adoption by state game commission rule"; in Subsection C, after "With the", added "penalty", and after the first and second occurrences of "license", added "and validation".

### 17-2-10.2. Game and fish penalty assessment; payment.

A. Unless a warning notice is given to an alleged violator, at the time the alleged violator is charged with a penalty assessment misdemeanor, the conservation officer shall offer the alleged violator the option of accepting a penalty assessment. The signature of the alleged violator on the penalty assessment notice constitutes an acknowledgment of guilt of the offense stated in the notice. The acknowledgment shall be included in accrual of points toward revocation of licenses as provided for in Section 17-3-34 NMSA 1978 or in regulations adopted to implement that section.

B. Payment of any penalty assessment, including cost of the appropriate license, shall be mailed to the state game commission within thirty days from the date of charge. Payment of penalty assessments are timely if postmarked within thirty days from the date of the charge. The commission may issue a receipt when a penalty assessment is paid by currency, but checks tendered by the violator upon which payment is received are sufficient receipt.

C. No record of any penalty assessment payment is admissible as evidence in court in any civil action.

**History:** Laws 1995, ch. 177, § 2.

### 17-2-10.3. Game and fish penalty assessment; license revocation.

A. The state game commission is authorized to revoke the hunting or fishing license, or both, of a person who fails to pay a penalty assessment or who fails to appear, after proper notice, for hearings as required by law or regulation.

B. The state game commission may revoke the hunting or fishing license, or both, of any person, resident or nonresident, who is convicted in another state of any single offense that, if committed in New Mexico, would be grounds for revocation of license.

**History:** Laws 1995, ch. 177, § 3.

### 17-2-10.4. Game and fish penalty assessment revenue; disposition.

The department of game and fish shall remit all penalty assessment receipts to the state treasurer to be credited to the game protection fund in accordance with the provisions of Section 17-1-14 NMSA 1978.

**History:** Laws 1995, ch. 177, § 4.

### 17-2-11. [Witness testifying for state; evidence not to be used against him.]

In any prosecution under this chapter, any participant in a violation thereof, when so requested by the district attorney, state warden [director of the department of game and fish] or other officer instituting the prosecution, may testify as a witness against any other person charged with violating the same, and his evidence so given shall not be used against him in any prosecution for such violation.

**History:** Laws 1912, ch. 85, § 40; Code 1915, § 2463; C.S. 1929, § 57-248; 1941 Comp., § 43-212; 1953 Comp., § 53-2-12.

**Compiler's notes.** — The compilers of the 1915 Code substituted the words "this chapter" for the words "this act." Chapter 47, 1915 Code, comprised the whole of Laws 1912, ch. 85, the presently effective provisions of which are compiled as 17-1-12, 17-1-13, 17-2-11, 17-2-13, 17-2-17 to 17-2-20, 17-2-21, 17-2-23 to 17-2-28, 17-3-7, 17-3-29, 17-3-30, 17-3-33, 17-3-34, 17-4-6, 17-4-8 to 17-4-29 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws

1955, ch. 59, § 2 transferred the duties of the state game warden. See 17-1-6 NMSA 1978.

#### ANNOTATIONS

**Immunity statutes have only been passed as to particular crimes.** — The legislature has gone no further than to pass immunity statutes applicable only in prosecutions for particular crimes, such as this section. *Apodaca v. Viramontes*, 1949-NMSC-064, 53 N.M. 514, 212 P.2d 425.

### 17-2-12. Refuges; firearms on; prohibited; exceptions.

It is unlawful for any person to carry, transport or have in his possession, bows, arrows, crossbows or firearms of any kind or description within or upon any game refuge or to discharge any firearm or arrow into or within any state game refuge in New Mexico; provided this section shall not apply to any county, state or federal officer in the discharge of his official duties, nor to persons crossing refuges over public roads and trails with firearms unloaded or taken down; provided further that permits may be issued by the director to stockmen, trappers, ranchers and property owners, or their employees, to carry firearms while engaged in the discharge of their legitimate affairs on or within game refuges.

**History:** Laws 1937, ch. 23, § 3; 1941 Comp., § 43-213; 1953 Comp., § 53-2-13; Laws 1979, ch. 340, § 3.

#### ANNOTATIONS

**Section is limited to state game refuges.** — It was the intent of the legislature to limit the application of

this section to state game refuges. 1955-56 Op. Att'y Gen. No. 6155.

**State may not have power as to federal game refuges.** — Any attempt on the part of the state to control the disposition of game on a federal game refuge contrary to the wishes of the federal government might be beyond the power of the state. 1955-56 Op. Att'y Gen. No. 6155.



### 17-2-13. Songbirds; trapping, killing or injuring prohibited.

It shall be unlawful for any person to shoot, ensnare or trap for the purpose of killing or in any other manner to injure or destroy any songbird, or birds whose principal food consists of insects, comprising all the species and varieties of birds represented by the several families of bluebirds, including the western and mountain bluebirds; also bobolinks, catbirds, chickadees, cuckoos, which includes the chaparral bird or roadrunner (*Geococcyx novo mexicanus*), flickers, flycatchers, grosbeaks, humming birds, kinglets, martins, meadowlarks, nighthawks or bull bats, nuthatches, orioles, robins, shrikes, swallows, swifts, tanagers, titmice, thrushes, vireos, warblers, waxwings, whippoorwills [whippoorwills], woodpeckers, wrens, and all other perching birds which feed entirely or chiefly on insects. This section does not prohibit the killing of such birds for scientific purposes under permits from the department of game and fish.

**History:** Laws 1912, ch. 85, § 55; Code 1915, § 2478; Laws 1915, ch. 101, § 16; C.S. 1929, § 57-263; 1941 Comp., § 43-215; 1953 Comp., § 53-2-15; Laws 1967, ch. 119, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Power of Congress to protect migratory birds, 11 A.L.R. 991.

38 C.J.S. Game §§ 8, 22-28, 30, 51, 76.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Protection of migratory birds as within scope of treaty-making power, 4 A.L.R. 1388, 134 A.L.R. 882.

### 17-2-14. Hawks, vultures and owls; taking, possessing, trapping, destroying, maiming or selling prohibited; exception by permit; penalty.

A. It is unlawful for any person to take, attempt to take, possess, trap or ensnare or in any manner to injure, maim or destroy birds of the order Falconiformes, comprising all of the species and varieties of birds represented by the several families of vultures and hawks, and all of the order Stringiformes, comprising all of the species and varieties of owls. It is also unlawful to purchase, sell or trade, or to possess for the purpose of selling or trading, any parts of these birds.

B. The director of the department of game and fish may issue permits to allow any person to take, possess, trap, ensnare or destroy any bird protected by this section or to possess, give, purchase, sell or trade, or to possess for the purpose of selling or trading, any parts of any birds protected by this section. Permits shall be granted for the following purposes:

- (1) Indian religious purposes;
- (2) scientific purposes in accordance with law and the regulations of the department of game and fish; or
- (3) falconry purposes in accordance with law and the regulations of the department.

C. Notwithstanding any other law, any person engaged in the commercial raising of poultry or game birds may take, capture or kill any hawk, owl or vulture that has killed such poultry or game birds. The owner of such game or poultry farm who takes action under this provision shall report this action to the department of game and fish, which shall verify the necessity of the action taken.

D. Any person violating the provisions of this section is guilty of a petty misdemeanor.

**History:** 1953 Comp., § 53-2-15.1, enacted by Laws 1973, ch. 104, § 1; 1979, ch. 340, § 4; 1992, ch. 29, § 2.

**Repeals and reenactments.** — Laws 1973, ch. 104, § 1, repealed former 53-2-15.1 relating to protection of hawks, vultures and owls, and enacted a new 17-2-14 NMSA 1978.

**The 1992 amendment,** effective April 1, 1992, in Subsection A, deleted the former last sentence, which read

"The provisions of this subsection shall not apply to the genera of *Aquila* and *Haliaeetus* of the family *Accipitridae*"; in Subsection B, deleted "upon application and without charge to any person" preceding "for the following purposes" in the second sentence and "of game and fish" from the end of Paragraph (3); and made stylistic changes.

**17-2-15. [Horned toads; killing, selling or shipping from state unlawful.]**

It shall be unlawful for any person to wilfully [willfully] kill or to sell horned toads within the state of New Mexico, or to ship them from the state.

**History:** Laws 1941, ch. 32, § 1; 1941 Comp., § 43-216; 1953 Comp., § 53-2-16.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**ANNOTATIONS**

**Owner may carry toad out of state.** — This section does not prohibit one who owns a horned toad from carrying it across the state line. 1951-52 Op. Att'y Gen. No. 5551.

**17-2-16. Repealed.**

**Repeals.** — Laws 2001, ch. 66, § 3, repealed 17-2-16 NMSA 1978, as amended by Laws 1979, ch. 340, § 5, regarding the prohibition of the capturing or killing of bullfrogs, effective June 15, 2001. For provisions of former

section, see the 2000 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, see 17-2-4.2 NMSA 1978.

**17-2-17. [Storage of game or fish.]**

No game or fish shall be received or held in storage except as follows, namely:

A. during the open season therefor and for five days thereafter when the same is stored for the person lawfully in possession of the same;

B. at any time of the year when there is attached thereto a proper and valid officer's invoice as provided in this chapter relating to the seizure of game and fish for not more than thirty days after the date of such invoice;

C. when there is attached thereto a proper and valid certificate or permit signed by the state warden [director of the department of game and fish] or deputy [conservation officer] and on its face authorizing storage of the article named therein and during the period therein stated.

**History:** Laws 1912, ch. 85, § 26; Code 1915, § 2449; C.S. 1929, § 57-235; 1941 Comp., § 43-222; 1953 Comp., § 53-2-20.

**Compiler's notes.** — The compilers of the 1915 Code substituted the words "this chapter" for the words "this act" in Subsection B. For disposition of Chapter 47, 1915 Code, in NMSA 1978, see note to 17-2-11 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 1955, ch. 59, § 2 transferred the duties of the state game warden. See 17-1-6 NMSA 1978.

**17-2-18. [Menu as evidence of possession of game or fish.]**

The naming of game and fish upon any menu or bill of fare as food for patrons shall be prima facie evidence of the possession of the same by the proprietor of such hotel, restaurant, cafe or boardinghouse.

**History:** Laws 1912, ch. 85, § 28; Code 1915, § 2451; C.S. 1929, § 57-237; 1941 Comp., § 43-223; 1953 Comp., § 53-2-21.

**Cross references.** — For possession of game or fish without invoice, see 17-4-20 NMSA 1978.

**17-2-19. Enforcement of game laws; powers of conservation officers.**

A. The director of the department of game and fish, each conservation officer, each sheriff in his respective county and each member of the New Mexico state police shall enforce Chapter 17 NMSA 1978 and shall:

- (1) seize any game or fish held in violation of that chapter;
- (2) with or without warrant, arrest any person whom he knows to be guilty of a violation of that chapter; and



(3) open, enter and examine all camps, wagons, cars, tents, packs, boxes, barrels and packages where he has reason to believe any game or fish taken or held in violation of that chapter is to be found, and seize it.

B. Any warrant for the arrest of a person shall be issued upon sworn complaint, the same as in other criminal cases, and any search warrant shall issue upon a written showing of probable cause, supported by oath or affirmation, describing the places to be searched or the persons or things to be seized.

C. Conservation officers may, under the direction of the state game commission and the director of the department of game and fish:

(1) establish from time to time, as needed for the proper functioning of the game and fish research and management division, checking stations at points along established roads, or roadblocks, for the purpose of detecting and apprehending persons violating the game and fish laws and the regulations referred to in Section 17-2-10 NMSA 1978;

(2) under emergency circumstances and while on official duty only enforce the provisions of the Criminal Code [30-1-1 NMSA 1978] and the Motor Vehicle Code [66-1-1 NMSA 1978]; and

(3) while on official duty only, enforce the provisions of:

- (a) Sections 30-14-1 and 30-14-1.1 NMSA 1978 pertaining to criminal trespass;
- (b) Section 30-7-4 NMSA 1978 pertaining to negligent use of a deadly weapon;
- (c) Section 30-15-1 NMSA 1978 pertaining to criminal damage to property;
- (d) Section 30-22-1 NMSA 1978 pertaining to resisting, evading or obstructing an officer; and
- (e) Section 72-1-8 NMSA 1978 pertaining to camping next to a manmade water hole.

**History:** Laws 1912, ch. 85, § 57; Code 1915, § 2480; Laws 1915, ch. 101, § 17; C.S. 1929, § 57-265; 1941 Comp., § 43-224; 1953 Comp., § 53-2-22; Laws 1955, ch. 54, § 1; 1967, ch. 36, § 1; 1975, ch. 86, § 1; 1977, ch. 265, § 1; 1977, ch. 290, § 3; 1981, ch. 99, § 1; 1983, ch. 27, § 1; 2001, ch. 74, § 1.

**Cross references.** — For enforcement powers with respect to endangered species, see 17-2-46 NMSA 1978.

**The 2001 amendment,** effective July 1, 2001, in Subsection C, deleted "and except as otherwise provided in Paragraph (3) of this subsection," in Paragraph (2), added the paragraph designation (3)(a), and added Paragraphs (3)(b) to (e).

#### ANNOTATIONS

**"Emergency" defined.** — There are three elements to an "emergency" as that term is used in subsection C(2): (1) the gravity of the threatened harm; (2) the likelihood of the harm occurring; and (3) the lack of time in which action can be taken to avert the harm, especially whether it was feasible to summon a regular law enforcement officer. These factors must be considered from the conservation officer's point of view. *State v. Creech*, 1991-NMCA-012, 111 N.M. 490, 806 P.2d 1080.

**"Reason to believe" defined.** — The legislature intended subsection A(3) as a limit on the authority of conservation officers and in using the phrase "reason to believe" should be understood to have required individualized suspicion. *State v. Creech*, 1991-NMCA-012, 111 N.M. 490, 806 P.2d 1080.

**Officers of state game commission are state officers.** *Allen v. McClellan*, 1967-NMSC-114, 77 N.M. 801, 427 P.2d 677, overruled on other grounds, *New Mexico Livestock Bd. v. Dose*, 1980-NMSC-022, 94 N.M. 68, 607 P.2d 606.

**Probable cause to stop.** — Where game and fish officers were patrolling a thinly populated ranch and recreation area for illegal night-time hunting and the officers observed defendants' vehicles traveling for an extended period in a deserted area, moving and changing directions

together and sweeping their headlights to illuminate the side of the road, the officers had probable cause to detain defendants to investigate whether defendants were engaged in illegal hunting. *U.S. v. Stricklin*, 534 F.2d 1386 (10th Cir. N.M. 1976).

**Conservation officers may enter private lands without warrants.** — Deputy game wardens (now conservation officers) may enter on private lands without warrants in the interest of game protection. 1947-48 Op. Att'y Gen. No. 4974.

**County sheriffs and their deputies must enforce game laws.** — County sheriffs and their deputies are required to enforce game laws in their counties and need not be appointed deputy game wardens (now conservation officers). 1931-32 Op. Att'y Gen. 132.

**Conservation officer may carry sidearms.** — A state game department (now game commission) conservation officer may carry sidearms while in the lawful discharge of his duties. 1963-64 Op. Att'y Gen. No. 63-107.

**Role of conservation officers in enforcing other state laws.** — In respect to the enforcement of other state laws, state conservation officers stand in the same position as private citizens. 1963-64 Op. Att'y Gen. No. 63-107.

**Authority to make arrests.** — Express statutory authority is not spelled out by legislative enactment authorizing conservation officers to enforce other state laws, and in the absence of such express authority their power to act as official peace officers and to make arrests is generally restricted in nature. 1963-64 Op. Att'y Gen. No. 63-107.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 35 Am. Jur. 2d Fish and Game §§ 52 to 54.

Validity of roadblocks by state or local officials for purpose of enforcing fish or game laws, 87 A.L.R.4th 981.

Who may conduct border search pursuant to 19 USCS §§ 482, 1401(i), 1581(a), (b), and 1582, 61 A.L.R. Fed. 290.

36A C.J.S. Fish §§ 37, 42; 38 C.J.S. Game §§ 50, 61, 63, 64, 67.

## 17-2-20. [Seizure of devices used for violating law; nuisance; destruction; firearms excepted.]

Every net, trap, explosive, poisonous or stupefying substance, or device used or intended for use in taking or killing game or fish in violation of this chapter, and set, kept or found in or upon any of the streams or waters in this state or upon the shores thereof, and every trap, device, blind or deadfall found baited in violation of this chapter, is declared to be a public nuisance and may be abated and summarily destroyed by any person and it shall be the duty of every officer authorized to enforce this chapter to seize and summarily destroy the same and no prosecution or suit shall be maintained for such destruction; provided, that nothing in this chapter shall be construed as affecting the right of the state warden [director of the department of game and fish] to use such means as may be proper for the promotion of game and fish propagation and culture, nor as authorizing the seizure or destruction of firearms.

**History:** Laws 1912, ch. 85, § 31; Code 1915, § 2454; C.S. 1929, § 57-240; 1941 Comp., § 43-225; 1953 Comp., § 53-2-23.

**Compiler's notes.** — The compilers of the 1915 Code substituted the words "this chapter" for the words "this act." For disposition of Chapter 47, 1915 Code, in NMSA 1978, see note to 17-2-11 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 1955, ch. 59, § 2 transferred the duties of the state game warden. See 17-1-6 NMSA 1978.

### ANNOTATIONS

**Taking over and operating fish hatchery authorized.** — Laws 1912, ch. 85, should be liberally construed to allow the state game warden (now director of the department of game and fish) to take over and pay expenses of a fish hatchery offered him for the propagation and delivery of fish. 1912-13 Op. Att'y Gen. No. 271.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Jury trial in case of seizure or destruction of appliances, 17 A.L.R. 574, 50 A.L.R. 97.

36A C.J.S. Fish § 42; 38 C.J.S. Game §§ 61, 63, 64, 67.

### 17-2-20.1. Seizure and forfeiture; property subject.

A. All firearms and bows and arrows may be subject to seizure and forfeiture when used as instrumentalities in the commission of the following crimes:

- (1) illegal possession or transportation of big game during closed season;
- (2) taking big game during closed season;
- (3) attempting to take big game by the use of spotlight or artificial light; and
- (4) exceeding the bag limit on any big game species during open season.

B. Any motor vehicle shall be subject to seizure and forfeiture when operated in violation of the provisions of Section 17-2-31 NMSA 1978, regarding hunting by spotlight.

C. The provisions of the Forfeiture Act [31-27-1 NMSA 1978] apply to the seizure, forfeiture and disposal of property subject to forfeiture pursuant to Subsections A and B of this section.

**History:** 1978 Comp., § 17-2-20.1, enacted by Laws 1979, ch. 321, § 1; 1991, ch. 53, § 1; 2002, ch. 4, § 9.

The 2002 amendment, effective July 1, 2002, deleted former Subsection B, which read: "Provided that no firearms or bows and arrows shall be subject to forfeiture if the violation was without the knowledge or consent of the owner"; redesignated former Subsection C as present Subsection B and deleted the last sentence of that section, which directed that seized and forfeited motor vehicles were to be disposed of in accordance with the provisions of Section 17-2-20.2 NMSA 1978; deleted former Subsection D, which read: "No conveyance is subject to forfeiture under this section by reason of any act or omission established for the owner to have been committed or omitted without his knowledge or consent. A forfeiture of a conveyance encumbered by a bona fide security interest shall be subject to the interest of a secured party if the secured party neither had knowledge of nor consented to the act or omission"; and added present Subsection C.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 35 Am. Jur. 2d Fish and Game §§ 52 to 54.

Right to jury trial in case of seizure of property alleged to be illegally used, 17 A.L.R. 568, 50 A.L.R. 97.

Forfeiture of property for unlawful use before trial of individual offender, 3 A.L.R. 2d 738.

Validity, construction, and effect of statutes or regulations making possession of fish and game, or of specified hunting or fishing equipment, prima facie evidence of violation, 81 A.L.R. 2d 1093.

Lawfulness of seizure of property used in violation of law as prerequisite to forfeiture action or proceeding, 8 A.L.R. 3d 473.

Seizure and forfeiture of firearms or ammunition under 18 USCS § 924(d), 57 A.L.R. Fed. 234.

37 C.J.S. Forfeitures § 3; 38 C.J.S. Game §§ 61, 63, 64, 67.



## 17-2-20.2. Repealed.

**Repeals.** — Laws 2002, ch. 4, § 22 repealed 17-2-20.2 NMSA 1978, as enacted by Laws 1979, ch. 321, § 2, relating to standards and procedures for the forfeiture of property subject to forfeiture and disposal under 17-2-20.1.

NMSA 1978, effective July 1, 2002. For provisions of former section, see the 2001 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, see 31-27-1 NMSA 1978 et seq.

## 17-2-20.3. Penalties.

The following violations shall constitute a misdemeanor:

- A. illegal possession or transportation of big game during closed season;
- B. taking or attempting to take big game during closed season;
- C. taking or attempting to take big game by the use of spotlight or artificial light;
- D. selling or attempting to sell big game or parts thereof, except as permitted by regulation of the state game commission; and
- E. exceeding the bag limit on any big game species during open season.

**History:** 1978 Comp., § 17-2-20.3, enacted by Laws 1979, ch. 321, § 3.

**Cross references.** — For general penalties, see 17-2-10 NMSA 1978.

For civil liability, see 17-2-26 NMSA 1978.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 35 Am. Jur. 2d Fish and Game §§ 46 to 52.

Applicability, to domesticated or captive game, of game laws relating to closed season and the like, 74 A.L.R.2d 974.

Validity, construction, and effect of statutes or regulations making possession of fish and game, or of specified hunting or fishing equipment, prima facie evidence of violation, 81 A.L.R.2d 1093.

38 C.J.S. Game §§ 8, 22-28, 30, 41, 51, 58, 76.

## 17-2-21. [Sale or disposition of game or fish after seizure; invoice furnished purchaser or donee; disposition of proceeds of sale.]

All game and fish seized under the game laws shall without unnecessary delay be sold by the officer making such seizure, or by the state warden [director of the department of game and fish], except when such sale is impracticable or likely to incur expenses exceeding the proceeds, in which case the same shall be donated to some charitable institution or needy person not concerned in the unlawful killing, or possession thereof. The officer making such seizure shall sign and give to each purchaser or donee an invoice stating the time and place of disposition, the kind and weight as near as may be of the game or fish disposed of and the name of the purchaser or donee. Such invoice shall authorize possession, transportation and use within the state, and storage for thirty days from date. The proceeds from such sale, after deducting the cost of seizure and sale shall, if made by the state warden [director] or any deputy [conservation officer] under salary, be paid into the game protection fund, but if made by a deputy warden [conservation officer] not under salary, or any other officer, shall be paid one-half to the officer making such seizure.

**History:** Laws 1912, ch. 85, § 23; Code 1915, § 2446; C.S. 1929, § 57-232; 1941 Comp., § 43-226; 1953 Comp., § 53-2-24.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 1955, ch. 59, § 2 transferred the duties of the state game warden. See 17-1-6 NMSA 1978.

**Cross references.** — For sale of skins, pelts or furs involved in violation, see 17-5-9 NMSA 1978.

### ANNOTATIONS

**Return of game or proceeds after wrongful confiscation.** — Where the department of game and fish confiscated an elk from a person charged with a hunting misdemeanor, and the magistrate court dismissed the case because the game officer failed to identify the defendant at the hearing as the person charged, the department was not required to return the elk, or the proceeds from the sale of the elk, to that person. 1988 Op. Att'y Gen. No. 88-43.

## 17-2-22. Sale of evidence in cases of appeal.

A. For the purpose of avoiding waste, game or fish confiscated and held as evidence in any prosecution for violation of the game laws, if fit for human consumption, shall be sold by the

conservation officer or other officer having jurisdiction in the prosecution as soon as possible after the filing of any appeal from the decision of the court to any higher court.

B. The evidence shall be sold for the highest cash price offered and the proceeds of the sale forwarded to the main office of the department of game and fish at Santa Fe to be deposited in the game protection fund. A copy of the receipt of sale shall be delivered to the court and shall be attached to the papers forwarded to the higher court on appeal.

C. If the higher court finds the defendant to be not guilty of the charge he shall be reimbursed within ten days after such decision by the department of game and fish for the full amount of the proceeds from the sale of evidence.

**History:** 1953 Comp., § 53-2-24.1, enacted by Laws 1963, ch. 216, § 1.

### **17-2-23. [Reports of seizures and sales.]**

In all cases the officer making a seizure or sale shall, within ten days thereafter, report all the particulars thereof and an itemized statement of the proceeds, expenses and fees and the disposition thereof, and pay the remainder of the proceeds, if any, to the state treasurer to be by him paid into the game protection fund.

**History:** Laws 1912, ch. 85, § 24; Code 1915, § 2447; C.S. 1929, § 57-233; 1941 Comp., § 43-227; 1953 Comp., § 53-2-25.

### **17-2-24. [Officer's right to use animal or vehicle transporting seized game or fish; public conveyances excepted.]**

Where game or fish while being transported is seized under this chapter, the officer making such seizure shall have authority upon payment of reasonable compensation therefor, to also take possession of and use any animals and vehicles used in such transportation for the purpose of conveying the game or fish seized to a convenient railroad station or place of safekeeping or sale, and also for conveying any person arrested for the unlawful possession of such game or fish to a place of hearing or trial, and no liability shall attach to such officer by reason thereof, but this section shall not apply to any animal or vehicle while being used as a public conveyance for passengers or mails, or any railroad car.

**History:** Laws 1912, ch. 85, § 25; Code 1915, § 2448; C.S. 1929, § 57-234; 1941 Comp., § 43-228; 1953 Comp., § 53-2-26.

**Compiler's notes.** — The compilers of the 1915 Code substituted the words "this chapter" for the words "this act." For disposition of Chapter 47, 1915 Code, in NMSA 1978, see note to 17-2-11 NMSA 1978.

### **17-2-25. [Game or fish in possession of passenger; carrier exempt from liability; seizure.]**

Nothing in this chapter shall make a common carrier liable for transportation of game and fish when same is in the possession of a passenger, but such fact shall not exempt the same from seizure if unlawfully taken, killed, held in possession or transported.

**History:** Laws 1912, ch. 85, § 37; Code 1915, § 2460; C.S. 1929, § 57-245; 1941 Comp., § 43-229; 1953 Comp., § 53-2-27.

**Compiler's notes.** — The compilers of the 1915 Code substituted the words "in this chapter" for the word "herein." For disposition of Chapter 47, 1915 Code, in NMSA 1978, see note to 17-2-11 NMSA 1978.



## 17-2-26. Civil liability.

A. The director of the department of game and fish, or any other officer charged with enforcement of the laws relating to game and fish if so directed by the director, may bring a civil action in the name of the state against any person unlawfully wounding or killing, or unlawfully in possession of, any game quadruped, bird or fish, or part thereof and recover judgment for the following minimum sums as damages for the taking, killing or injuring:

for each elk	\$ 500.00
for each deer	250.00
for each antelope	250.00
for each mountain sheep	1,000.00
for each Barbary sheep	250.00
for each black bear	500.00
for each cougar	500.00
for each bison	600.00
for each ibex	1,000.00
for each oryx	1,000.00
for each javelina	100.00
for each beaver	65.00
for each bird	20.00
for each fish	5.00
for each endangered species	500.00
for each raptor	200.00
for each turkey	150.00
for each jaguar	2,000.00.

B. Notwithstanding the provisions of Subsection A of this section, the state game commission shall establish damages recoverable by civil judgment on a game animal, bird or fish designated to be a trophy animal by commission rule.

C. Damages recovered pursuant to this section are intended to compensate the state for the loss of unique public resources and shall not be limited or reduced by the extent of fines assessed pursuant to any criminal statute. The department of game and fish shall not award or issue a license, permit or certificate to a debtor owing damages pursuant to this section until the judgment has been paid in full to the department.

D. No verdict or judgment recovered by the state in an action shall be for less than the sum fixed in this section. The action for damages may be joined with an action for possession, and recovery may be had for the possession as well as the damages.

E. The pendency or determination of an action for damages or payment of a judgment, or the pendency or determination of a criminal prosecution for the same taking, wounding, killing or possession, is not a bar to the other, nor does either affect the right of seizure under any other provision of the laws relating to game and fish.

F. The provisions of this section shall not be interpreted to prevent, constrain or penalize a Native American for engaging in activities for religious purposes, as provided in Section 17-2-14 or 17-2-41 NMSA 1978.

G. The provisions of this section shall not apply to a landowner or lessee, or employee of either, who kills an animal, on private land in which the person has an ownership or leasehold interest, that is threatening human life or damaging or destroying property, including crops; provided, however, that the killing is reported to the department of game and fish within twenty-four hours and before the removal of the carcass of the animal killed; and provided further that all actions authorized in this subsection are carried out according to rules of the department.

History: Laws 1912, ch. 85, § 45; Code 1915, § 2468; C.S. 1929, § 57-253; 1941 Comp., § 43-230; 1953 Comp., § 53-2-28; Laws 1963, ch. 276, § 1; 1969, ch. 28, § 1;

1971, ch. 75, § 3; 1997, ch. 224, § 2; 1999, ch. 31, § 3; 2006, ch. 22, § 1.

**The 1997 amendment**, effective July 1, 1997, revised the schedule of fees in Subsection A, added Subsections D and E and made minor stylistic changes.

**The 1999 amendment**, effective June 18, 1999, added the judgment amount with regard to jaguars at the end of Subsection A and inserted "of game and fish" in Subsection E.

**The 2006 amendment**, effective May 17, 2006, adds Subsection B to provide that the commission shall establish damages recoverable by civil judgment on a game animal, bird or fish designated as trophy animal and adds Subsection C to provide that damages are intended to compensate the state for loss of unique public resources and shall not be modified by the extent fines are assessed and that the department shall not issue licenses or permits to a debtor owing damages pursuant to this section until the judgment for damages has been paid.

#### ANNOTATIONS

**Civil and criminal prosecution.** — A district attorney has the authority and duty to prosecute civil as well as criminal cases in which the state is a party and which arise in his or her district under the game and fish laws. Double jeopardy prohibitions do not inhibit the district

attorney from bringing a civil action for damages pursuant to Section 17-2-26 NMSA 1978 against a person previously convicted and sentenced for a criminal offense arising out of the same conduct in violation of the game and fish laws, because the damages authorized by Section 17-2-26 NMSA 1978 are remedial rather than punitive and serve to compensate the state for the loss of unique public resources. 2008 Op. Att'y Gen. No. 08-04.

**Sums of money listed constitute minimum amount of money in a civil liability suit.** 1968 Op. Att'y Gen. No. 68-07.

**Officer bringing action has discretion in requesting amount.** — This section vests discretion in the director or other officer bringing the action to set the request for the defendant's liability at any level consonant with the statutory minimum. 1968 Op. Att'y Gen. No. 68-07.

**Officer bringing action may ask for sum within jurisdiction of magistrate.** — If, in the exercise of his discretion, the officer bringing the suit on behalf of the state should determine that the suit should ask for no more than the statutory jurisdictional maximum amount, then the suit may be heard by a justice of the peace (now magistrate). 1968 Op. Att'y Gen. No. 68-07.

### 17-2-27. [District attorneys to prosecute and defend actions under fish and game laws.]

It shall be the duty of each of the district attorneys in this state to prosecute and defend for the state in all courts of the county or counties in their respective districts, all causes, criminal and civil, arising under the provisions of this chapter, in which the state may be a party or interested or concerned.

**History:** Laws 1912, ch. 85, § 81; Code 1915, § 2504; C.S. 1929, § 57-323; 1941 Comp., § 43-231; 1953 Comp., § 53-2-29.

**Compiler's notes.** — The compilers of the 1915 Code substituted the words "this chapter" for the words "this act." For disposition of Chapter 47, 1915 Code, in NMSA 1978, see note to 17-2-11 NMSA 1978.

### 17-2-28. [Indians hunting off reservations; hunting on reservations; application of laws.]

The provisions of this chapter shall apply to all Indians off the reservation within this state, or coming into this state from adjoining states, and to all persons hunting on any Indian reservation within this state; provided, however, that no Indian shall be required to have a license to hunt or fish within the limits of the reservation where said Indian resides.

**History:** Laws 1912, ch. 85, § 7; Code 1915, § 2430; Laws 1919, ch. 133, § 1; C.S. 1929, § 57-212; 1941 Comp., § 43-233; 1953 Comp., § 53-2-31.

**Compiler's notes.** — The words "this chapter" refer to Chapter 47, 1915 Code. For disposition of Chapter 47 in NMSA 1978, see note to 17-2-11 NMSA 1978.

#### ANNOTATIONS

**Preemption.** — The application on the Mescalero Apache tribe reservation, of New Mexico's hunting and fishing laws to nonmembers of the tribe is preempted by the operation of federal law. *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 103 S. Ct. 2378, 76 L. Ed. 2d 611 (1983).

**In absence of treaty Indian outside Indian country is subject to state laws.** — As a general rule, if there is no treaty or agreement between the United States and the Indian tribe recognizing or granting rights to Indians to hunt

and fish outside the Indian country, an Indian hunting or fishing in New Mexico outside the Indian country is subject to the laws of the state of New Mexico the same as any other person. 1953-54 Op. Att'y Gen. No. 6041.

An Indian may be assessed a license fee and regulated off the reservation for hunting and fishing the same as any other person of the state, except the Navajos must be permitted to hunt free of charge off the reservation. 1953-54 Op. Att'y Gen. No. 6041.

**Indian is exempt in Indian country even if off his reservation.** — An Indian hunting or fishing on a reservation not his own is still an Indian in Indian country and is exempt from the game laws of the state. 1953-54 Op. Att'y Gen. No. 6041.

**Non-Indian may be prosecuted for violation in Indian country.** — The state of New Mexico has jurisdiction to prosecute non-Indians violating the hunting and fishing laws of this state even though such violation



occurs on an Indian reservation. 1973 Op. Att'y Gen. No. 73-18; 1953-54 Op. Att'y Gen. No. 6041.

**Jurisdiction in Indian country.** — Section 2 of N.M. Const., art. XXI, provides that until the title of Indians shall have been extinguished, the lands shall be under the absolute jurisdiction and control of the congress of the United States, but this clearly does not deprive the state of jurisdiction over offenses committed by a non-Indian against a non-Indian in Indian country, nor does it prevent the enforcement of the game laws against non-Indians in the Indian country. 1953-54 Op. Att'y Gen. No. 6041.

**State has jurisdiction of hides, etc., taken on Indian reservation only if taken by non-Indian.** — So far as possession of hides, skins, pelts, heads and game animals, birds or fish, or parts thereof, taken by a non-Indian on an Indian reservation, the state would have jurisdiction the same as though taken anywhere else in the state;

but in the case of such items taken by an Indian on an Indian reservation and transported elsewhere, the state would have absolutely no jurisdiction whatsoever. 1953-54 Op. Att'y Gen. No. 6041.

**Law reviews.** — For article, "New Mexico v. Mescalero Apache Tribe: When Can a State Concurrently Regulate Hunting and Fishing by Nonmembers on Reservation Land?," see 14 N.M.L. Rev. 349 (1984).

For article, "The Native American's Right to Hunt and Fish: An Overview of the Aboriginal, Spiritual and Mystical Belief System, the Effect of European Contact and the Continuing Fight to Observe a Way of Life," see 19 N.M.L. Rev. 377 (1989).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 41 Am. Jur. 2d Indians §§ 64 et seq., 155 et seq..

42 C.J.S. Indians §§ 122 to 129.

## 17-2-29. [Hunting and boating while intoxicated or under the influence of narcotic drugs prohibited.]

In order to prevent hunting and boating accidents and to promote the public safety, it shall hereafter be unlawful for any person, while clearly intoxicated as a result of drinking alcoholic liquors or under the influence of any narcotic drug, to hunt, kill or attempt to take in any manner any game or nongame mammal or bird, or to carry firearms of any kind or bow and arrows in any hunting area; or to go or to be upon the waters of any lake in a boat or on a raft.

**History:** 1941 Comp., § 43-240; Laws 1953, ch. 98, § 1; 1953 Comp., § 53-2-32.

**Cross references.** — For prohibited operation of motorboats, vessels, etc., see 66-12-11 NMSA 1978.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Criminal liability for injury or death caused by operation of pleasure boat, 8 A.L.R.4th 886.

## 17-2-30. [Person convicted of hunting or boating while intoxicated or under influence of narcotic drugs; revocation and withholding of hunting and fishing license privileges.]

In the event any person shall be convicted of a violation of this act [17-2-29, 17-2-30 NMSA 1978], his hunting and fishing license shall be revoked and all hunting and fishing license privileges withheld for a period of twelve months.

**History:** 1941 Comp., § 43-244; Laws 1953, ch. 98, § 5; 1953 Comp., § 53-2-36.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Criminal liability for injury or death caused by operation of pleasure boat, 8 A.L.R.4th 886.

## 17-2-31. Use of artificial light while hunting prohibited.

It is unlawful for a person or a group of persons together in possession or control of a firearm or other implement to throw or cast the rays of a spotlight or other artificial light into any field, pasture, woodland, forest or prairie where big game or domestic livestock may be, or are reasonably expected to be, whereby any big game animal or domestic animal could be killed by aid of an artificial light. However, the following shall be exempt from the provisions of this section:

- A. an officer authorized to enforce the game and livestock laws of the state;
- B. a government employee acting in an official capacity;
- C. a landowner or lessee or employee of such landowner or lessee, while on the land owned or leased in connection with legitimate activities; or
- D. a person who has received a permit or authorization from the department of game and fish to conduct such activities.

**History:** 1941 Comp., § 43-235; Laws 1951, ch. 171, § 1; 1953 Comp., § 53-2-37; 2007, ch. 155, § 1.

**Cross references.** — For penalty for violation of this section, see 17-2-10 NMSA 1978.

**The 2007 amendment**, effective June 15, 2007, added the exemptions in Subsections B and D.

#### ANNOTATIONS

**Section is not void for uncertainty.** *State v. Barber*, 91 N.M. 764, 581 P.2d 27 (Ct. App. 1978).

**Absence of criminal intent element does not violate due process.** — Given the public interest concerned and the difficulties involved in the protection of big game animals and livestock, together with the apparent general public attitude, it appears that the legislature intended to eliminate the element of criminal intent in hunting by means of artificial light so that it is the doing on the act alone which is prohibited, and this does not violate due process. *State v. Barber*, 1978-NMCA-059, 91 N.M. 764, 581 P.2d 27.

### 17-2-32. Diseased rabbits; hunting and trapping.

The department of game and fish may restrict hunting and trapping of rabbits in any area when notified by the department of public health [department of health] that rabbits in the area are infected with bubonic plague. Any restriction under this section shall be terminated when the department of public health [department of health] notifies the department of game and fish that danger, of public health significance, no longer exists in the area with respect to these diseased rabbits.

**History:** 1953 Comp., § 53-2-45, enacted by Laws 1963, ch. 150, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 1968, ch. 37, § 3, transferred the functions of the department of public health to the department of health and social services.

#### ANNOTATIONS

**Section is not void for uncertainty.** *State v. Barber*, 1978-NMCA-059, 91 N.M. 764, 581 P.2d 27.

**Absence of criminal intent element does not violate due process.** — Given the public interest concerned and the difficulties involved in the protection of big game animals and livestock, together with the apparent general public attitude, it appears that the legislature intended to eliminate the element of criminal intent so that it is the doing of the act alone which is prohibited, and this does not violate due process. *State v. Barber*, 1978-NMCA-059, 91 N.M. 764, 581 P.2d 27.

## PART 2

### HUNTER TRAINING ACT

#### 17-2-33. Use of firearms by minors.

A. It is unlawful after April 1, 1972, for any person born after January 1, 1958, to hunt with or shoot a firearm, unless:

(1) he is supervised by a parent, legal guardian or a responsible adult designated by the parent or guardian; or

(2) he carries a certificate indicating that he has successfully completed the New Mexico hunter training course or the hunter training course of another state which is approved by the New Mexico department of game and fish; or

(3) he is eighteen years of age or older.

B. It is unlawful after April 1, 1976, for any person under the age of eighteen years to hunt with or shoot a firearm unless he is carrying a certificate indicating that he has successfully completed the New Mexico hunter training course or a hunter training course of another state which is approved by the New Mexico department of game and fish.

C. Any person violating the provisions [provisions] of this section is guilty of a petty misdemeanor.

**History:** 1953 Comp., § 53-2-46, enacted by Laws 1971, ch. 61, § 2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### 17-2-34. Hunter training program; instructor certification; certificate of competency.

A. The department of game and fish shall provide a course instruction in the safe handling of firearms for individuals interested in obtaining a certificate of competency in the safe handling



of firearms. The department may cooperate with the superintendent of public instruction or any reputable association or organization as determined by the department and having as one of its objectives the promotion of safety in firearm handling.

B. The department of game and fish shall prescribe the type of instruction and the qualifications of instructors and shall designate annually those persons qualified to give instruction in the safe handling of firearms. Persons designated by the department of game and fish to be instructors are authorized to give the course of instruction in the safe handling of firearms to all interested persons. Upon the completion of the course and certification to the department by the instructor, the department shall cause to be issued, to the person instructed, a certificate of competency in the safe handling of firearms, which shall be valid unless revoked by the department of game and fish for such cause as determined by regulation of the department to be unsafe handling of a firearm.

C. The department of game and fish shall promulgate rules and regulations to implement the provisions of the Hunter Training Act [17-2-33 NMSA 1978].

**History:** 1953 Comp., § 53-2-47, enacted by Laws 1971, ch. 61, § 3.

### 17-2-35. Exemption.

Nothing in the Hunter Training Act [17-2-33 NMSA 1978] shall prohibit any person from carrying or shooting a firearm while participating in an organized and supervised shooting program, or while under the immediate and direct supervision of a parent, guardian or responsible adult, or while participating in a course of instruction in the safe handling of firearms offered by the department of game and fish. However, no exemption shall permit hunting without possession of a valid hunter training certificate.

**History:** 1953 Comp., § 53-2-48, enacted by Laws 1971, ch. 61, § 4; 1981, ch. 306, § 1.

### 17-2-36. Short title.

This act [17-2-33 to 17-2-36 NMSA 1978] may be cited as the "Hunter Training Act".

**History:** 1953 Comp., § 53-2-49, enacted by Laws 1971, ch. 61, § 1.

## PART 3

### WILDLIFE CONSERVATION ACT

### 17-2-37. Short title.

Sections 17-2-37 through 17-2-46 NMSA 1978 may be cited as the "Wildlife Conservation Act".

**History:** 1953 Comp., § 53-2-50, enacted by Laws 1974, ch. 83, § 1; 1995, ch. 145, § 1.

**Cross references.** — For the powers and the duties of the conservation services division, *see* 17-1-5.1 NMSA 1978.

**The 1995 amendment,** substituted "Sections 17-2-37 through 17-2-46 NMSA 1978" for "Sections 53-2-50 through 53-2-59 NMSA 1953".

**Contingent effective date.** — Laws 1995, ch. 145, § 9 provided that the 1995 amendments to the Wildlife Conservation Act shall become effective only upon the appropriation of sufficient funds from the general fund to the conservation services division of the department of game and fish in an amount not less than \$350,000 to fulfill the responsibilities established in Laws 1994, ch. 129 and the

appropriation of sufficient funds from the general fund of not less than \$100,000 to implement the 1995 amendments. Laws 1995, ch. 223, § 10, effective June 16, 1995, appropriated \$450,000 from the general fund to the conservation services division of the department of game and fish for expenditure in fiscal year 1996 for the purpose of operation the division, provided that the division may expend not more than \$100,000 for implementation of the Wildlife Conservation Act.

#### ANNOTATIONS

**Mining fees for fish and wildlife habitat.** — Surcharge on fees charged to mining industry to contribute to cost of providing for fish and wildlife habitat are

valid exercise of mining commission's authority and their transfer to department of game and wildlife, which administers the Wildlife Conservation Act, is valid. *New Mexico Mining Ass'n v. New Mexico Mining Comm'n*, 1996-NMCA-098, 122 N.M. 332, 924 P.2d 741.

**Allocation of licenses based on residency impermissible discrimination.** — The allocation of licenses for bighorn, oryx and ibex by the state game commission on the basis of residency discriminates impermissibly against nonresidents under the federal constitution. *Terk v. Gordon*, No. 74-387-M (D.N.M., filed Aug. 25, 1977), *aff'd*, 436 U.S. 850, 98 S. Ct. 3063, 56 L. Ed. 2d 751 (1978).

**Fee structure, although discriminatory, not offensive.** — The present fee structure in 17-3-13 NMSA 1978, which discriminates against nonresidents, is not offensive to either the privileges and immunities clause, U.S. Const., art. IV, § 2, or the U.S. Const., amend. XIV. *Terk v. Gordon*, No. 74-387-M (D.N.M., filed Aug. 25, 1977), *aff'd*, 436 U.S. 850, 98 S. Ct. 3063, 56 L. Ed. 2d 751 (1978).

**County ordinances conflicting with Wildlife Conservation Act are invalid.** — County land use ordinances attempting to restrict traditional federal and state regulatory authority conflict with, and thus are preempted by, the state Wildlife Conservation Act. These ordinances cannot lawfully grant to the counties the option of taking over the state's designated role in planning for the recovery and management of threatened or endangered species. 1994 Op. Att'y Gen. No. 94-01.

**Law reviews.** — For student article, "Preventing the Extinction of Candidate Species: The Lesser Prairie-Chicken in New Mexico", see 49 Nat. Resources J. 525 (2009).

For note, "Leaving Wildlife Out of National Wildlife Refuges: The Irony of Wyoming v. United States", see 34 N.M.L. Rev. 217 (2004).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Criminal prosecution under Endangered Species Act of 1973 (16 USCS §§ 1531-1543), 128 A.L.R. Fed. 271.

## 17-2-38. Definitions.

As used in the Wildlife Conservation Act [17-2-37 NMSA 1978]:

- A. "commission" means the state game commission;
- B. "director" means the director of the department of game and fish;
- C. "ecosystem" means a system of living organisms and their environment;
- D. "endangered species" means any species of fish or wildlife whose prospects of survival or recruitment within the state are in jeopardy due to any of the following factors:
  - (1) the present or threatened destruction, modification or curtailment of its habitat;
  - (2) overutilization for scientific, commercial or sporting purposes;
  - (3) the effect of disease or predation;
  - (4) other natural or man-made factors affecting its prospects of survival or recruitment within the state; or
  - (5) any combination of the foregoing factors.

The term may also include any species of fish or wildlife appearing on the United States list of endangered native and foreign fish and wildlife as set forth in Section 4 of the Endangered Species Act of 1973 as endangered species, provided that the commission adopts those lists in whole or in part. The term shall not include any species covered by the provisions of 16 U.S.C. 1331 through 1340 (1971) and shall not include any species of the class insecta determined by the director to constitute a pest whose protection under the Wildlife Conservation Act would present an overwhelming and overriding risk to man;

E. "investigation" means a process pursuant to Subsections B through L of Section 17-2-40 NMSA 1978 undertaken whenever the director suspects that a species may be threatened or endangered and which consists of a formal review of existing data and studies and may include additional field research to determine whether a species is threatened or endangered;

F. "land or aquatic habitat interests" means interests in real property or water rights consisting of fee simple title, easements in perpetuity, time certain easements, long-term leases and short-term leases;

G. "management" means the collection and application of biological information for the purposes of establishing and maintaining a congruous relationship between individuals within species and populations of wildlife and the carrying capacity of their habitat. The term includes the entire range of activities that constitutes a full scientific resource program of, including but not limited to, research, census, law enforcement, propagation, acquisition or maintenance of land or aquatic habitat interests appropriate for recovery of the species, improvement and maintenance, education and related activities or protection and regulated taking;

H. "recovery plan" means a designated program or methodology reasonably expected to lead to restoration and maintenance of a species and its habitat;

I. "peer review panel" means an advisory panel of scientists, each of whom possesses expertise relevant to the proposed investigation and at least one of whom is a wildlife biologist, convened to



review the scientific methodology for collection and analysis of data by a researcher based on commonly accepted scientific peer review;

J. "species" means any species or subspecies;

K. "substantial public interest" means a nonfrivolous claim indicated by a broad-based expression of public concern;

L. "take" or "taking" means to harass, hunt, capture or kill any wildlife or attempt to do so;

M. "threatened species" means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range in New Mexico; the term may also include any species of fish or wildlife appearing on the United States list of endangered native and foreign fish and wildlife as set forth in Section 4 of the Endangered Species Act of 1973 as threatened species, provided that the commission adopts the list in whole or in part; and

N. "wildlife" means any nondomestic mammal, bird, reptile, amphibian, fish, mollusk or crustacean or any part, egg or offspring, or the dead body or parts thereof.

**History:** 1953 Comp., § 53-2-51, enacted by Laws 1974, ch. 83, § 2; 1995, ch. 145, § 2.

The 1995 amendment, in Subsection D, deleted "or are likely within the foreseeable future to become so" following "jeopardy" in the introductory language, deleted "or subspecies" following "species" and "or threatened" following "endangered" in the next to last sentence and added the language beginning "and shall not include" at the end of the last sentence; added Subsections E and F; redesignated former Subsection E as Subsection G and substituted "acquisition or maintenance of land or aquatic habitat interests appropriate for recovery of the species" for "acquisition" therein; added Subsections H through K and M; redesignated former Subsections F and G as

Subsections L and N; inserted "or 'taking'" in Subsection L; and made minor stylistic changes.

**Compiler's notes.** — Section 4 of the federal Endangered Species Act of 1973 is compiled as 16 U.S.C. § 1533.

#### ANNOTATIONS

**Authority over wild horses.** — The definition of wildlife in this section does not encompass the wild horses on the White Sands Missile Range. Therefore, because the authority of the State Game Commission is limited by statute, and a state agency has no powers not delegated to it by statute, the Game Commission lacks jurisdiction over these wild horses. 1994 Op. Att'y Gen. No. 94-06.

## 17-2-39. Findings and declarations.

The legislature finds and declares that:

A. species of wildlife indigenous to the state that may be found to be threatened or endangered should be managed to maintain and, to the extent possible, enhance their numbers within the carrying capacity of the habitat;

B. the state should assist in the management of species of wildlife that are deemed to be endangered elsewhere by prohibiting the taking, possession, transportation, exportation, processing, sale or offering for sale or shipment within this state of species of wildlife listed on the United States lists of endangered fish and wildlife, unless such actions will assist in preserving or propagating the species;

C. adequate funding should be made available to the department of game and fish by annual appropriations from the general fund or from other sources separate and apart from the game protection fund for management of threatened or endangered species; and

D. because the management and recovery of threatened or endangered species are the responsibility of and a benefit to all of society, the costs of management and recovery should be the responsibility of all sectors of society, and those costs should be minimized and should be borne by federal, state and local governments with contributions from the private sector.

**History:** 1953 Comp., § 53-2-52, enacted by Laws 1974, ch. 83, § 3; 1995, ch. 145, § 3.

**Cross references.** — For the game protection fund, see 17-1-14 NMSA 1978.

The 1995 amendment, in Subsection A, deleted "and subspecies" following "species" and inserted "threatened or" preceding "endangered"; deleted "or subspecies" following "species" in three places in Subsection B; in Subsection C, inserted "should" following "funding", deleted "and

fish" preceding "protection fund" and inserted "threatened or"; and added Subsection D.

#### ANNOTATIONS

**Law reviews.** — For article, "Hip Deep: A Survey of State Instream Flow Law From the Rocky Mountains to the Pacific Ocean", see 43 Nat. Resources J. 1151 (2003).

## **17-2-40. Biennial review; investigations; recommendations of the director; procedures.**

A. The director shall conduct a biennial review of all species of wildlife named on the list required by Section 17-2-41 NMSA 1978. The director may conduct investigations at any time of those other species of wildlife indigenous to the state that are suspected of being threatened or endangered in order to develop information relating to population, distribution, habitat needs, limiting factors and other biological and ecological data to determine his recommendations for listing or not listing a species and management measures and requirements necessary for their survival. The director shall also conduct, within a reasonable time, an investigation to support listing or delisting of a species based upon new evidence or, with the advice and consent of the commission, based upon substantial public interest. Upon completion of an investigation or investigations, he shall make written recommendations to the commission to list or not list any unlisted species or to delist any listed species investigated. In conducting any investigation for new listing or delisting required or undertaken pursuant to this subsection, the director shall comply with the procedures established in Subsections B through L of this section. Species listed as threatened or endangered on the state list through adoption of the United States list pursuant to Subsections D and M of Section 17-2-38 NMSA 1978 shall not be subject at the time of adoption to the listing procedures established in Subsections B through K of this section.

B. The director shall select a researcher to conduct an investigation pursuant to Subsection A of this section and request the appointment of a peer review panel composed of one qualified individual from each of the four-year state universities to be appointed by the presidents of the respective universities. The peer review panel shall be requested to submit comments according to a schedule determined by the director. The researcher shall submit his research design to the peer review panel.

C. When additional field research is undertaken as part of an investigation, the peer review panel shall examine the proposed research design for methodology for collection and analysis of data. Upon receipt of the peer review panel's submitted comments, the researcher shall initiate the field research regarding the designated species.

D. To the extent practicable, as part of his investigation the researcher shall meet and consult with private landowners, lessees and land and resource managers who are or may be affected by or have information pertinent to the investigation.

E. When the researcher initiates his investigation, the director shall:

(1) create a public repository file in which copies of all documents filed with the director pertaining to the investigation or a potential recovery plan, to be developed pursuant to Section 17-2-40.1 NMSA 1978, including all peer review comments, shall be maintained;

(2) mail a notice of the initiation of the investigation to federal and state agencies, local and tribal governments that are or may be affected by the results of the investigation and individuals and organizations that have requested notification of department actions regarding threatened or endangered species;

(3) notify the general public of the initiation of the investigation by information releases to the media in the area of the state affected;

(4) indicate, in all notices and information releases, where and until what date information may be submitted for inclusion in the public repository file;

(5) accept data, views or information about the biological or ecological status of the species for use in both the investigation and the development of the potential recovery plan; and

(6) accept data, views and information on the potential economic or social impacts or opportunities of a change in the legal status of the species for inclusion in the recovery plan.

F. The director shall file all written comments, data, views and information furnished pursuant to Subsection D of this section in the public repository file and shall preserve that file for use in connection with the listing process and development of any recovery plan developed pursuant to the provisions of Section 17-2-40.1 NMSA 1978. The director shall file in the public repository file all records indicating contact by the director, the researcher, employees or contractors with land owners or public or private resource managers affected by the potential action.



G. Information from the public repository file relating to social and economic impacts shall not be considered by the director in making his recommendation or the commission in making its decision to list, delist, not list, continue to list, upgrade or downgrade a species, but shall be considered only in the development of any recovery plan for the species.

H. The commission shall adopt, notwithstanding the provisions of Section 14-2-1 NMSA 1978, regulations by January 1, 1996 governing the confidentiality of data from an investigation.

I. The researcher shall prepare and submit draft reports to the peer review panel and to the public repository file. The peer review panel will be requested to examine and comment on the draft report in a timely manner.

J. After consideration of the peer review panel's submitted comments on the draft reports, the researcher shall prepare final reports and file them and all peer review panel comments with the director and in the public repository file. The peer review panel shall not be compelled to attend any hearing before the commission.

K. Upon receipt of the researcher's final reports, the director shall make recommendations to the commission to list, not list or delist the species based upon criteria listed in Subsection L of this section. The commission shall establish dates and locations for public hearings on the recommended actions and give notice of the public hearings in the same manner and to the same persons as notice was given of the initiation of the investigation and, in addition, publish legal notice in a newspaper of general circulation in the area affected at least ninety days before the date set for the hearing. Public hearings shall be held at a place within any quadrant of the state affected by the recommended actions when the director determines that there is substantial public interest indicated in holding a hearing in that quadrant. All hearings on the recommended actions shall be held within six months of the date the director makes his recommendations. The notice shall:

- (1) include the date, time and location of all hearings on the matter;
- (2) include a statement of the recommended action;
- (3) include an indication of the location and availability of the public repository file;
- (4) indicate where and by what date written comments and testimony to be included in the hearing record may be filed;
- (5) indicate that views, data and comments pertaining to the final report may be presented orally at or in writing to the hearing;
- (6) specify that notice of intent to present technical and scientific testimony and a written copy of the testimony to be presented shall be submitted to the commission not less than thirty days prior to the initial hearing; and
- (7) specify that the public record shall remain open for comments for thirty days after the date of the final hearing.

L. The commission shall make its decisions and take action based upon relevant and reliable evidence to list, not list or delist a species at its next regularly scheduled meeting within no more than thirty days after the close of the hearing record. The commission shall:

- (1) list or maintain a species as endangered and shall not delist a species if it finds that the species' prospects for survival or recruitment within the state are in jeopardy based upon the biological and ecological evidence in the public repository file and based upon biological and ecological evidence received in the public hearings; and
- (2) list or maintain a species as threatened and shall not delist a species if it finds that the species' prospects for survival or recruitment within the state are likely within the foreseeable future to be in jeopardy based upon the biological and ecological evidence in the public repository file and biological and ecological evidence received in public hearings.

M. Whenever the director finds that there is an emergency posing a significant risk to the well-being of any species and that risk is likely to jeopardize the continued survival or recruitment of the species within the state, the director shall recommend to the commission that the species should be listed as endangered. The commission shall act upon the director's recommendation immediately and shall either list or not list the species by regulation based upon the evidence supporting the recommendation if it finds that the continued survival of the species is in jeopardy. If the commission lists the species as endangered, it shall waive the requirements of Subsections A through L of this section. Whenever the commission adopts a regulation listing a species as endangered pursuant to this subsection, it shall give notice of the listing in the same manner and to

the same persons as notice is given in the initiation of investigations and in addition shall publish legal notice in a newspaper of general circulation in the area affected. The emergency listing shall cease to have force and effect at the close of a three-year period following the date of the finding unless, during the three year period, the procedures for listing pursuant to Subsections B through L of this section or continuing to list pursuant to commission regulations for the biennial review are completed.

**History:** 1953 Comp., § 53-2-53, enacted by Laws 1974, ch. 83, § 4; 1995, ch. 145, § 4.

The 1995 amendment rewrote the section heading which read "Investigation"; designated the existing

provisions as Subsection A and rewrote the subsection and added Subsections B through M.

### 17-2-40.1. Recovery plans; procedures.

A. To the extent practicable, a recovery plan shall be developed pursuant to Subsections B through G of this section for any species listed as threatened or endangered. If indicated, the director shall conduct a social and economic analysis and, if adverse impacts are found, develop a social or economic mitigation plan.

B. To the extent practicable, the director shall develop recovery plans that include several threatened or endangered species that utilize similar habitats or share a common threat or both. A multiple-species recovery plan shall be designed to accomplish recovery of the shared habitat or reduce a common threat or both.

C. As the initial action in the development of a recovery plan, the director shall, within one year of listing, schedule a public information meeting in each of the quadrants of the state determined by the director to be affected by the development of a recovery plan. These meetings shall be held in a manner calculated to provide a reasonable opportunity for individuals and private and public entities to participate and express their views about the development of a recovery plan for one or more species and the attendant adverse social or economic impacts, if any, that may result from implementation of a recovery plan. At these meetings the director shall present background information about the basis of the listing, an explanation of the process to develop a recovery plan and the probable content in general terms, if known, of the recovery plan and if needed, the process to develop a social and economic mitigation plan.

D. Upon completion of the public information meeting or meetings on a recovery plan, the director shall consult and cooperate with other states or countries when appropriate and shall solicit interest from representatives of affected local governments, tribal governments, landowners, state and federal agencies and other interested individuals and organizations to serve on an advisory committee. He shall appoint to the advisory committee all of those who are willing to participate in the development of the recovery plan. When necessary, he may appoint from the membership of the advisory committee a working group reflecting the diversity of the advisory committee.

E. With the assistance of the advisory committee, the director shall develop a draft recovery plan to achieve the following objectives:

- (1) restoration and maintenance of a viable population of the threatened or endangered species and its habitat reasonably expected to lead to the delisting of the species;
- (2) avoidance or mitigation of adverse social or economic impacts;
- (3) identification of social or economic benefits and opportunities; and
- (4) use of volunteer resources and existing economic recovery and assistance programs and funding available from public and private sources to implement the plan.

F. The director shall mail the draft recovery plan to federal and state agencies, local and tribal governments that are or may be affected by the recovery plan and individuals and organizations that have requested notification of department actions regarding threatened or endangered species.

G. The final recovery plan shall be presented to the commission for its consideration not later than two years from the date the species was listed. If the commission determines that the proposed plan has achieved the objectives set forth in Subsection E of this section, it shall approve the recovery plan or approve with conditions. After approval of the plan, the director shall seek



cooperation with other states and countries, when appropriate, and landowners, state and federal agencies and local and tribal governments for implementation of the recovery plan and when appropriate submit the recovery plan to the secretary of the interior for approval pursuant to the federal Endangered Species Act of 1973.

**History:** 1978 Comp., § 17-2-40.1, enacted by Laws 1995, ch. 145, § 5.

**Cross references.** — For the federal Endangered Species Act of 1973, see 16 U.S.C. § 1531 et seq.

## 17-2-41. Endangered species.

A. On the basis of investigations concerning wildlife, other available scientific and commercial data and after consultation with wildlife agencies in other states, appropriate federal agencies, local and tribal governments and other interested persons and organizations, the commission shall by regulation develop a list of those species of wildlife indigenous to the state that are determined to be threatened or endangered within the state, giving their common and scientific names by species and subspecies.

B. The director shall conduct a review of the state list of threatened or endangered species and shall present biennially to the commission his recommendations for appropriate action. The commission shall act on the director's biennial recommendations at its next regularly scheduled meeting. The commission shall adopt, no later than January 1, 1996, regulations providing procedures for commission actions on the director's recommendations to continue to list or to upgrade or downgrade a species.

C. Except as otherwise provided in the Wildlife Conservation Act [17-2-37 NMSA 1978], it is unlawful for any person to take, possess, transport, export, process, sell or offer for sale or ship any species of wildlife appearing on any of the following lists:

(1) the list of wildlife indigenous to the state determined to be endangered within the state as set forth by regulations of the commission; and

(2) the United States lists of endangered native and foreign fish and wildlife as set forth in Section 4 of the Endangered Species Act of 1973 as endangered or threatened species, but only to the extent that those lists are adopted for this purpose by regulations of the commission; provided that any species of wildlife appearing on any of the lists set forth in this subsection, transported into the state from another state or from a point outside the territorial limits of the United States and which is destined for a point beyond the state, may be transported across the state without restriction in accordance with the terms of any federal permit or permit issued under the laws or regulations of another state or otherwise in accordance with the laws of another state.

D. The provisions of Subsection C of this section shall not apply to a taking of wildlife by a Native American for religious purposes, unless it materially and negatively affects an endangered species or threatened species.

**History:** 1953 Comp., § 53-2-54, enacted by Laws 1974, ch. 83, § 5; 1995, ch. 145, § 6.

**Cross references.** — For Section 4 of the federal Endangered Species Act of 1973, see 16 U.S.C. § 1533.

**The 1995 amendment,** in Subsection A, inserted "local and tribal governments", deleted "not later than one year after the effective date of the Wildlife Conservation Act" preceding "the commission shall", deleted "and subspecies" following "species" and inserted "threatened or" preceding "endangered"; in Subsection B, inserted the language beginning "of threatened or" for "of endangered species biennially commencing within two years of the effective date

of the Wildlife Conservation Act and may present to the commission recommendations for appropriate additions to or deletions from the list" in the first sentence and added the second and third sentences; deleted "or subspecies" following "species" in two places in Subsection C; added Subsection D; and made minor stylistic changes.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 35 Am. Jur. 2d Fish and Game § 50.5.

16D C.J.S. Constitutional Law § 1416.

## 17-2-42. Management programs.

A. The director shall establish such programs, including programs for research and the acquisition of land or aquatic habitat, as authorized and deemed necessary by the commission for the management of endangered species.

B. In carrying out programs authorized by the Wildlife Conservation Act [17-2-37 NMSA 1978], the director may enter into agreements with federal agencies, political subdivisions of the state or with private persons for administration and management of any program established under this section or utilized for management of endangered species.

C. The director may authorize by permit the taking, possession, transportation, exportation or shipment of species or subspecies which have been deemed by the commission to be in need of management as provided in the Wildlife Conservation Act, so long as such use is for scientific, zoological or educational purposes, for propagation in captivity of such wildlife or to protect private property.

D. Endangered species may be removed, captured or destroyed where necessary to alleviate or prevent damage to property or to protect human health. Such removal, capture or destruction may be carried out only by prior authorization by permit from the director, unless otherwise provided by law; provided, that endangered species may be removed, captured or destroyed without permit by any person in emergency situations involving an immediate threat to human life or private property. Regulations governing the removal, capture or destruction of endangered species shall be adopted by the commission within one year after the effective date of the Wildlife Conservation Act.

**History:** 1953 Comp., § 53-2-55, enacted by Laws 1974, ch. 83, § 6.

"Effective date of the Wildlife Conservation Act". — The phrase "effective date of the Wildlife Conservation Act" means February 26, 1974, the effective date of Laws 1974, Chapter 83.

ordinances attempting to restrict traditional federal and state regulatory authority conflict with, and thus are preempted by, the state Wildlife Conservation Act. These ordinances cannot lawfully grant to the counties the option of taking over the state's designated role in planning for the recovery and management of threatened or endangered species. 1994 Op. Att'y Gen. No. 94-01.

#### ANNOTATIONS

County ordinances conflicting with Wildlife Conservation Act are invalid. — County land use

### 17-2-43. Commission; power to regulate.

The commission is authorized and directed to establish such regulations as it may deem necessary to carry out all the provisions and purposes of the Wildlife Conservation Act [17-2-37 NMSA 1978].

**History:** 1953 Comp., § 53-2-56, enacted by Laws 1974, ch. 83, § 7.

#### 17-2-43.1. Judicial review; administrative actions.

A. Any person adversely affected by an order of the commission may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. Any person adversely affected by a regulation adopted by the commission may appeal to the court of appeals. All appeals shall be upon the record made at the hearing or contained in the public repository file and shall be taken to the court of appeals within thirty days following the date of the filing of the regulation by the commission pursuant to the provisions of the State Rules Act [14-4-1 NMSA 1978].

C. Upon appeal, the court of appeals shall set aside the regulation only if it is found to be:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence in the record; or
- (3) otherwise not in accordance with law.

D. After a hearing and a showing of good cause by the appellant, a stay of the regulation being appealed may be granted:

- (1) by the commission; or
- (2) by the court of appeals if the commission denies a stay or fails to act upon an application for a stay within sixty days after receipt of the application.

E. The appellant shall pay all costs for any appeal found to be frivolous by the court of appeals.



**History:** Laws 1995, ch. 145, § 8; 1999, ch. 265, § 26.

The 1999 amendment, effective July 1, 1999, added Subsection A; redesignated former Subsection A as Subsection B, and in that subsection, substituted "a regulation adopted by the commission" for "an administrative action taken by the commission" in the first sentence, and

substituted the language beginning "filing of the regulation" for "action" in the second sentence; and deleted former Subsection B, which read "For appeals of regulations, the date of the action shall be the date of the filing of the regulation by the commission pursuant to the provisions of the State Rules Act".

## **17-2-44. Director; land or aquatic habitat interest acquisition.**

In addition to other powers and duties, the director:

- A. may acquire land or aquatic habitat interests for the conservation, management, restoration, propagation and protection of threatened or endangered species; and
- B. shall conduct studies to determine the status and requirements for survival of threatened or endangered species.

**History:** 1953 Comp., § 53-2-57, enacted by Laws 1974, ch. 83, § 8; 1995, ch. 145, § 7.

The 1995 amendment rewrote the section heading which read "Commission; land acquisition; state plan studies"; in Subsection A, substituted "land or aquatic

habitat interests" for "lands, waters or interests therein" and inserted "threatened or"; deleted former Subsection B, relating to public hearings on a state plan for endangered species; and redesignated former Subsection C as Subsection B and inserted "threatened or" therein.

## **17-2-45. Penalty.**

A. Any person who fails to procure any permit required by Subsection C or D of Section 17-2-42 NMSA 1978 or who fails to abide by the terms of such permit, is guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars (\$50.00) nor more than three hundred dollars (\$300) or be imprisoned for not more than ninety days, or both.

B. Any person who violates the provisions of Subsection C of Section 17-2-41 NMSA 1978, or any regulations issued pursuant to that section is guilty of a misdemeanor and upon conviction shall be fined one thousand dollars (\$1,000) or imprisoned for a term of not less than thirty days nor more than one year, or both.

**History:** 1953 Comp., § 53-2-58, enacted by Laws 1974, ch. 83, § 9.

## **17-2-46. Enforcement; powers of conservation officers.**

A. The director, each conservation officer, each sheriff in his respective county and each member of the New Mexico state police shall enforce the Wildlife Conservation Act [17-2-37 NMSA 1978] and with probable cause shall:

- (1) seize any wildlife, including any wild mammal, bird, amphibian, reptile, fish, mollusk or crustacean held in violation of the Wildlife Conservation Act;
- (2) arrest any person whom he knows to be guilty of a violation of the Wildlife Conservation Act; and
- (3) open, enter and examine all camps, cars, vehicles, tents, packs, boxes, barrels and packages where he has reason to believe any game or fish taken or held in violation of the Wildlife Conservation Act is to be found, and seize it.

B. Any warrant for the arrest of a person shall be issued upon sworn complaint, the same as in other criminal cases, and any search warrant shall issue upon a written showing of probable cause, supported by oath or affirmation, describing the places to be searched or the persons or things to be seized.

C. Conservation officers under the direction of the director may establish checking stations at points along established roads as needed.

**History:** 1953 Comp., § 53-2-59, enacted by Laws 1974, ch. 83, § 10.

#### ANNOTATIONS

**Citizenship requirement for wildlife law enforcement officers.** — By operation of state law, wildlife law

enforcement officers can be required to hold New Mexico and United States citizenship. 1979 Op. Att'y Gen. No. 79-30.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 35 Am. Jur. 2d Fish and Game §§ 52 to 54.  
36A C.J.S. Fish §§ 37, 42; 38 C.J.S. Game §§ 50, 61, 63, 64, 67.

## ARTICLE 2A

### Statewide System for Hunting Activities

Sec.

17-2A-1. Definitions.

17-2A-2. Statewide system for hunting activities.

Sec.

17-2A-3. Hunting guides and outfitters.

#### 17-2A-1. Definitions.

For the purposes of Chapter 17 NMSA 1978:

A. "hunt code" means a description used to identify and define the species, weapon type and time frame authorized for a specific hunt;

B. "outfitter" or "guide" means a person who advertises or holds himself out to the public for hire or is employed or accepts compensation for providing, within the unit where a hunt occurs, facilities, equipment or services for hunting activities; provided, however, that "outfitter" or "guide" does not include a person who only cooks, cuts wood or performs other comparable or incidental duties not directly related to hunting activities; and

C. "unit" means a geographically bound area in the state that is used to manage game species.

**History:** Laws 1996, ch. 89, § 3.

**Compiler's notes.** — Laws 1997, ch. 119, § 4B repealed Laws 1996, ch. 89, § 6, which provided for the repeal of this section on June 30, 1999.

#### 17-2A-2. Statewide system for hunting activities.

The state game commission shall develop a statewide system for hunting activities that increases participation by New Mexico residents and considers hunter safety, quality hunts, high demand areas, guides and outfitters, quotas and local and financial interests.

**History:** Laws 1996, ch. 89, § 4.

**Compiler's notes.** — Laws 1997, ch. 119, § 4B repealed Laws 1996, ch. 89, § 6, which provided for the repeal of this section on June 30, 1999.

#### 17-2A-3. Hunting guides and outfitters.

A. Effective April 1, 1997, it is unlawful to be a hunting guide or outfitter in New Mexico without being registered, except for a private landowner or his authorized agent who outfits or guides pursuant to a landowner permit issued by the department of game and fish for the landowner's property or for the landowner's shared private and public unit.

B. The state game commission shall adopt regulations by September 1, 1997 to govern the granting of non-interim registration, permits and certificates to hunting guides and outfitters and to regulate the operations and professional conduct of registered hunting guides and outfitters. Regulations shall be adopted in accordance with the following procedures and standards:

(1) the commission shall establish dates and locations for a public hearing and provide reasonable prior public notice of a hearing. A public hearing shall be held at a place within any quadrant of the state affected by the proposed regulation when the commission determines there is substantial public interest in holding a hearing in that quadrant;

(2) a hearing shall be held within six months of the date a proposed regulation is issued;



- (3) notice of a hearing shall:
- (a) include the date, time and location of the hearing;
  - (b) include a statement of the recommended action;
  - (c) include an indication of the location and availability of the public file on the regulation;
  - (d) indicate where and by what date written and oral comments and testimony may be received; and
  - (e) specify that the public record shall remain open for comments for thirty days after the date of the final hearing; and
- (4) the commission shall make its decision and take action based upon relevant and reliable evidence.

C. No person shall be allowed to work as a registered hunting guide or outfitter in New Mexico:

- (1) without being registered by the state game commission;
- (2) if the person has had a guide or outfitter license, registration, permit or certificate revoked in another state;
- (3) if the person has had a guide or outfitter license, registration, permit or certificate suspended in another state and it has not been reinstated; or
- (4) if the person has been convicted of a felony.

D. The state game commission shall develop a point system for the suspension or revocation of a guide or outfitter registration. The point system shall be similar to the point system that governs individual hunting and fishing license privileges.

E. To be granted a registration to be a guide, an applicant shall, in addition to any other reasonable criteria adopted by the state game commission, and except as provided for persons granted an interim registration:

- (1) be at least eighteen years of age; and
- (2) pass a written or oral examination approved by the department of game and fish at a date and time approved by the department.

F. A registered or interim registered guide shall work only under the supervision of a New Mexico registered or interim registered outfitter and in an area designated by the registered or interim registered outfitter.

G. The department of game and fish may provide a registration for a temporary emergency guide, provided the registration is limited to a maximum seven-day period and is granted only in emergency circumstances as determined by the department. The fee for a temporary emergency guide registration is ten dollars (\$10.00).

H. To be granted a registration to be an outfitter, an applicant shall, in addition to any other reasonable criteria adopted by the state game commission, and except as provided for persons granted an interim registration:

- (1) be at least twenty-one years of age;
- (2) have operated as a New Mexico registered guide for at least three years or have been granted an interim outfitter's registration;
- (3) not be a convicted felon or have a history of violation of federal or state game and fish laws or regulations or federal or state guide or outfitter licensing or registration laws or regulations; and
- (4) pass a written or oral examination approved by the department of game and fish at a date and time determined by the department.

I. A registered outfitter shall:

- (1) provide proof of commercial liability insurance of at least five hundred thousand dollars (\$500,000);
- (2) responsibly supervise each registered guide working under his direction;
- (3) provide a written contract for outfitting services, signed by the registered outfitter and identifying the outfitter's registration number, to each resident and nonresident who seeks to use the services of a registered outfitter;
- (4) register with the taxation and revenue department and provide proof of that registration to the department of game and fish; and

(5) provide at least one registered guide or outfitter for every four or fewer resident or nonresident hunters who have contracted for an outfitter's guided services.

J. The department of game and fish shall provide to the taxation and revenue department a copy of each outfitter registration that is granted.

K. Except as provided in this subsection, no person shall be allowed to charge a processing or other fee to obtain for a resident or nonresident a license that is granted from a special drawing for a hunt on public lands pursuant to the provisions of Section 17-3-16 NMSA 1978, except that nothing in this subsection shall prohibit the department of game and fish from collecting an application fee. Persons involved in licensing services, booking agencies or license brokering that do not provide direct guide and outfitter services shall not be required to register with the department of game and fish and may charge a fee, other than the application fee for a license, for their services.

L. A New Mexico resident registered outfitter shall be a registered outfitter who is a resident as defined in Section 17-3-4 NMSA 1978. The state game commission shall adopt regulations that set forth additional requirements and that shall include at a minimum that a resident registered outfitter shall maintain a business address in New Mexico and, except as provided in Subsection Q of this section, derive at least fifty percent of his guiding or outfitting income from guiding or outfitting in New Mexico, as determined by gross receipts or corporate or individual income tax returns for the immediately preceding three years.

M. The department of game and fish shall maintain for public distribution a list of New Mexico registered outfitters.

N. The annual registration fee for a registered guide in New Mexico is fifty dollars (\$50.00) for a resident and one hundred dollars (\$100) for a nonresident.

O. The annual registration fee to be a registered outfitter in New Mexico is five hundred dollars (\$500) for either a resident or a nonresident.

P. Annual registration fees for guides and outfitters shall be deposited in the game protection fund.

Q. A resident interim registered or registered outfitter may apply for inactive status of his registration for any period in which he does not operate as an outfitter. The state game commission shall reactivate an outfitter registration at the request of the outfitter and upon proof that the outfitter complies with the provisions of this section and upon payment of the annual registration fee for the year the registration is being reinstated and payment of a reinstatement fee of not to exceed fifty dollars (\$50.00).

R. The state game commission shall adopt by September 1, 1996 interim regulations, consistent to the greatest extent practicable with the provisions of this section, to provide for the granting of interim registrations to guides and outfitters. The commission shall issue interim registrations prior to mailing applications for 1997 licensed hunts to persons who qualify for interim registration and submit applications to the department of game and fish.

S. A person adversely affected by an action, other than a regulation, taken pursuant to the provisions of this section, including the denial, suspension or revocation of a registration, license, permit or certificate, may seek review of the action pursuant to the provisions of the Uniform Licensing Act [61-1-1 NMSA 1978].

T. A person adversely affected by a regulation adopted by the state game commission pursuant to this section may appeal to the court of appeals. All appeals shall be made upon the record at the hearing and shall be taken to the court of appeals within thirty days following the date of the action. The date of the action shall be the date of the filing of the regulation by the commission, pursuant to the provisions of the State Rules Act [14-4-1 NMSA 1978].

U. Upon appeal, the court of appeals shall set aside a regulation only if it is found to be:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence in the record; or
- (3) otherwise not in accordance with law.

V. After a hearing and a showing of good cause by the appellant, a stay of a regulation being appealed may be granted:

- (1) by the state game commission; or
- (2) by the court of appeals if the state game commission denies a stay or fails to act upon an application for a stay within sixty days after receipt of the application.

W. The appellant shall pay all costs for any appeal found to be frivolous by the court of appeals.



**History:** Laws 1996, ch. 89, § 5; 1997, ch. 119, § 2; 2001, ch. 63, § 1.

**Compiler's notes.** — Laws 1997, ch. 119, § 4B repealed Laws 1996, ch. 89, § 6, which provided for the repeal of this section on June 30, 1999.

Laws 1997, ch. 119, § 6 provided that in the event the act was not enacted with the emergency clause, its provisions shall be made retroactive in operation to April 1, 1997. Although the act was enacted with the emergency clause, it was not signed by the governor until April 9, 1997.

**The 2001 amendment**, effective June 15, 2001, in Subsection K, inserted "Except as provided in this subsection" and inserted the last sentence, which begins "Persons involved in licensing services".

**The 1997 amendment**, effective April 9, 1997, deleted former Paragraphs E(3) and H(5) relating to being endorsed by a registered outfitter; rewrote Paragraphs I(3) and (5); inserted "resident or" preceding "nonresident" and added the clause beginning with "except" in Subsection K; deleted former Subsection L, relating to a point system to provide preferences to registered outfitters who are New Mexico residents; added Subsection Q; and redesignated Subsections M through Q as Subsections L through P.

## ANNOTATIONS

**"Revocation" and "suspension" construed.** — Where the New Mexico department of game and fish (department) denied respondent's application for a New Mexico outfitter's license pursuant to 17-2A-3(C)(2) NMSA 1978, which precludes an individual from working as a registered outfitter if the person has had a guide or outfitter license revoked in another state, and where the district court reversed the decision of the department, finding that the department applied an inapplicable section of 17-2A-3 NMSA 1978 and violated the Interstate Wildlife Violator Compact, 11-16-1 to -12 NMSA 1978, the district court did not err in reversing the department's decision, because the evidence in this case established that the actions of the Arizona commission on which the department relied to deny respondent a license are akin to a suspension, rather than a revocation, and therefore the department erroneously applied 17-2A-3(C)(2) NMSA 1978. An applicant whose license has been taken away for a specified period of time or until the applicant comes into compliance with the requirements established by game and fish is subject to the provision of 17-2A-3(C)(3) NMSA 1978. *N.M. Dep't of Game & Fish v. Rawlings*, 2019-NMCA-018.

## ARTICLE 3

### Licenses and Permits

Sec.

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- 17-3-1. Current license required.
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- 17-3-43. Short title.
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# PART 1

## GENERAL PROVISIONS

### 17-3-1. Current license required.

Each license issued under Chapter 17 NMSA 1978, runs from April 1 through March 31 of the following calendar year. No person shall shoot, hunt, kill, injure or take, in any manner, any game animal, game bird or game fish without paying for, and having in his possession, the proper license required by law for the year in which the shooting, hunting, fishing or taking is done. No nonresident shall shoot, hunt, kill or take, in any manner, any nongame animal or nongame bird without paying for, and having in his possession, any one of the nonresident hunting licenses listed in Section 17-3-13 NMSA 1978 required by law for the year in which the shooting, hunting or taking is done.

**History:** 1953 Comp., § 53-3-1, enacted by Laws 1964 (1st S.S.), ch. 17, § 1; 1967, ch. 4, § 1.

**Repeals and reenactments.** — Laws 1964 (1st S.S.), ch. 17, § 1, repealed former 53-3-1, 1953 Comp., relating to hunting and fishing licenses and shipping permits, and enacted a new 17-3-1 NMSA 1978.

**Cross references.** — For what are game mammals, game birds and game fish, see 17-2-3 NMSA 1978.

For penalty for violation of fish and game laws, see 17-2-10 NMSA 1978.

For licenses for Indians and Indian reservations, see 17-2-28 NMSA 1978 and notes thereto.

For permits respecting endangered species, see 17-2-42 and 17-2-45 NMSA 1978.

For license and permit fees, see 17-3-13 NMSA 1978.

## ANNOTATIONS

**Bear as game animal.** — A statute denominating bear as a game animal could not validate a previous unauthorized regulation of the game commission classifying bear as a game animal, especially as the statute did not purport to be a validating statute; but where a previous statute had specified the closed season for bear, it sufficiently showed the statutory intent to define bear as a game animal. *State ex rel. Sofeico v. Heffernan*, 1936-NMSC-069, 41 N.M. 219, 67 P.2d 240. See 17-2-1, 17-2-3 NMSA 1978 and notes thereto.

**A state may enact game laws which discriminate against nonresidents in the enjoyment of the**

privileges of hunting and fishing. 1964 Op. Att'y Gen. No. 64-91.

**State may require special season deer tag on Jicarilla reservation and Tierra Amarilla grant.** — The state game commission may lawfully require that one who hunts in the Jicarilla reservation and Tierra Amarilla grant obtain a \$2.00 special season deer tag. 1961-62 Op. Att'y Gen. No. 62-135.

**A New Mexico license is required of persons fishing in the Elephant Butte reservoir,** although a part of the United States reclamation service. This opinion was confirmed by the chief counsel of the United States reclamation service. 1917-18 Op. Att'y Gen. No. 68.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 35 Am. Jur. 2d Fish and Game § 45.

Power of game commission to open or close season, 34 A.L.R. 832.

Validity of discrimination against nonresidents, 61 A.L.R. 337, 112 A.L.R. 63.

Applicability of state fishing license laws or other public regulations to fishing in private lake or pond, 15 A.L.R. 2d 754.

Rights of boating and fishing on inland lakes, 57 A.L.R. 2d 569.

Right of public to use shore of inland navigable lakes between high and low water mark, 40 A.L.R. 3d 776.

36A C.J.S. Fish § 36; 38 C.J.S. Game §§ 61, 63, 64, 67.



## 17-3-2. Classes of licenses.

A. As used with reference to licenses in Chapter 17 NMSA 1978:

(1) "fishing" entitles the licensee to fish for game fish during the open seasons for each species;

(2) "game hunting" entitles the licensee to hunt game birds, other than wild turkey, and squirrel during the open seasons for each and to apply for or purchase a license to hunt for deer, antelope, elk, bighorn sheep, Barbary sheep, javelina, bear, oryx, ibex, cougar and wild turkey;

(3) "deer" entitles the licensee to hunt deer during the open season;

(4) "antelope" entitles the licensee to hunt antelope during the open season;

(5) "elk" entitles the licensee to hunt elk during the open season;

(6) "bighorn sheep" entitles the licensee to hunt bighorn sheep during the open season;

(7) "Barbary sheep" entitles the licensee to hunt Barbary sheep during the open season;

(8) "javelina" entitles the licensee to hunt javelina during the open season;

(9) "bear" entitles the licensee to hunt bear during the open season;

(10) "nongame" entitles the licensee to hunt or take any animal or bird not protected by law;

(11) "temporary fishing" entitles the licensee to fish for game fish during a specific period of time indicated on the license;

(12) "oryx" entitles the licensee to hunt oryx during the open season;

(13) "ibex" entitles the licensee to hunt ibex during the open season;

(14) "cougar" entitles the licensee to hunt cougar during the open season;

(15) "turkey" entitles the licensee to hunt turkey during the open season;

(16) "special season turkey" entitles the licensee to hunt turkey during special seasons designated by the state game commission;

(17) "quality elk" entitles the licensee to hunt elk during a special quality elk season, to be established by the state game commission, when the timing of the season and hunter density is specially regulated and the elk population is managed with an intent to provide the licensee an increased opportunity to take a mature elk;

(18) "quality deer" entitles the licensee to hunt deer during a special quality deer season, to be established by the state game commission, when the timing of the season and hunter density is specially regulated and the deer population is managed with an intent to provide the licensee an increased opportunity to take a mature deer;

(19) "temporary game hunting" entitles the licensee to hunt game birds, except wild turkey, and squirrel during a specific period of time indicated on the license;

(20) "second rod" entitles the licensee to fish using two fishing rods to fish for game fish during the open seasons for each species; and

(21) "fishing and game hunting combination" entitles the licensee to hunt squirrel and game birds, other than wild turkey, and to fish for game fish during the open season for each.

B. A hunting license does not entitle the licensee to hunt, kill or take game animals or birds within or upon a park or enclosure licensed or posted as provided by law or within or upon a privately owned enclosure without consent of the owner or within or upon a game refuge or game management area.

C. A fishing license does not entitle the licensee to fish for or take fish within or upon a park or enclosure licensed or posted as provided by law or within or upon a privately owned enclosure without consent of the owner or in or on closed waters.

D. A junior fishing license may be purchased by a resident who has reached the age of twelve years but has not reached the age of eighteen years. A junior fishing license entitles the licensee to fish for game fish during the open season for each species.

E. A senior fishing license may be purchased by a resident who has reached the age of sixty-five years. A senior fishing license entitles the licensee to fish for game fish during the open season for each species.

F. A nonresident junior fishing license may be purchased by a nonresident who has reached the age of twelve years but has not reached the age of eighteen years. A nonresident junior fishing license entitles the licensee to fish for game fish during the open season for each species.

G. A senior game hunting license may be purchased by a resident who has reached the age of sixty-five years. A senior game hunting license entitles the licensee to hunt for squirrel and game birds, other than wild turkey, during the open seasons for each species and to apply for or purchase a license to hunt for deer, antelope, elk, bighorn sheep, Barbary sheep, javelina, bear, oryx, ibex, cougar and wild turkey.

H. A junior, resident or nonresident, game hunting license may be purchased by a person who has not reached the age of eighteen years. A junior game hunting license entitles the licensee to hunt for squirrel and game birds, other than wild turkey, during the open seasons for each species and to apply for or purchase a license to hunt for deer, antelope, elk, bighorn sheep, Barbary sheep, javelina, bear, oryx, ibex, cougar and wild turkey.

I. A handicapped fishing license may be purchased by a resident who has a severe physical impairment that substantially limits one or more major life activities and who can furnish adequate proof of this disability to the state game commission. A handicapped fishing license may be purchased by a resident who has a developmental disability as defined in Subsection H of Section 43-1-3 NMSA 1978 and who can furnish adequate proof of this disability to the state game commission. A handicapped fishing license entitles the licensee to fish for game fish during the open season for each species.

J. A handicapped game hunting license may be purchased by a resident who has a severe physical impairment that substantially limits one or more major life activities and who can furnish adequate proof of this disability to the state game commission. A handicapped game hunting license entitles the licensee to hunt for squirrel and game birds, other than wild turkey, during the open season for each species and to apply for or purchase a license to hunt for deer, antelope, elk, bighorn sheep, Barbary sheep, javelina, bear, oryx, ibex, cougar and wild turkey.

K. A fishing license may be obtained at no cost by a resident who has reached the age of seventy years.

L. A second rod validation may be purchased by either a resident or nonresident. A second rod validation entitles the licensee to fish using two rods for game fish during the open season for each species.

M. A junior-senior elk license may be purchased by a resident who has not reached the age of eighteen years or by a resident who has reached the age of sixty-five years. A junior-senior elk license entitles the licensee to hunt for elk during the open season for that species.

N. A junior-senior deer license may be purchased by a resident who is younger than eighteen years or older than sixty-five years. A junior-senior deer license entitles the licensee to hunt for deer during the open season for that species.

O. A junior or senior fishing and game hunting combination license may be purchased by a resident who is younger than eighteen years or older than sixty-five years. A junior or senior fishing and game hunting combination license entitles the licensee to fish for game fish or hunt for squirrel and game birds, other than wild turkey, during the open seasons for each species and to apply for or purchase a license to hunt for deer, antelope, elk, bighorn sheep, Barbary sheep, javelina, bear, oryx, ibex, cougar and wild turkey.

P. Except for a resident, disabled veteran, fishing and game hunting combination license issued pursuant to Section 17-3-13 NMSA 1978, a New Mexico resident who is a veteran of the United States military or who is active duty military is eligible for a fifty percent discount on any license, permit or stamp purchase upon valid proof of service as determined by the state game commission.

**History:** 1953 Comp., § 53-3-1.1, enacted by Laws 1964 (1st S.S.), ch. 17, § 2; 1969, ch. 28, § 2; 1971, ch. 75, § 4; 1973, ch. 268, § 1; 1977, ch. 180, § 1; 1979, ch. 286, § 1; 1983, ch. 117, § 1; 1989, ch. 129, § 1; 1992, ch. 28, § 1; 1993, ch. 189, § 1; 1995, ch. 87, § 1; 1998, ch. 51, § 1; 2003, ch. 195, § 1; 2005, ch. 74, § 1; 2007, ch. 8, § 1; 2009, ch. 230, § 1; 2010, ch. 45, § 1; 2011, ch. 25, § 1; 2011, ch. 186, § 2; 2015, ch. 148, § 1.

**Repeals.** — Laws 2015, ch. 148, § 3 repealed Laws 2011, ch. 25, § 1, effective April 1, 2016.

**Cross references.** — For power of state game commission to establish open and closed seasons, see 17-2-1 NMSA 1978.

For special nonresident bird licenses for regulated shooting preserves, see 17-3-39 NMSA 1978.

For hunting and fishing in licensed private parks or lakes, see 17-4-15 NMSA 1978.

**The 2015 amendment**, effective April 1, 2016, removed certain game and fish licenses for residents who are disabled veterans and military members, enacted a new provision entitling veterans and active duty military residents to purchase any license under this section at a fifty percent discount, and provided for an exception; deleted Subsection P, relating to a disabled veteran fishing and game hunting combination license; deleted Subsection Q,



relating to a military game hunting and fishing license; and added a new Subsection P.

**The 2011 amendment**, effective April 1, 2012, eliminated the distinction between small game hunting and general hunting licenses and permitted game hunting licenses to apply for and purchase a license to hunt specified mammal species.

**The 2010 amendment**, effective May 19, 2010, added Subsection Q.

**The 2009 amendment**, effective July 1, 2009, added Subsection P.

**The 2007 amendment**, effective April 1, 2008, added Paragraph (23) of Subsection A to define the fishing and small game combination license; added Subsection N to provide for a junior-senior deer license; and added Subsection O to provide for a junior-senior fishing and small game combination license.

**The 2005 amendment**, effective April 1, 2006, eliminates the bison and gazelle classes of licenses in Subsection A, creates for a junior fishing license for persons between the ages of twelve and eighteen in Subsection D, creates a senior fishing license for residents who are 65 years of age or older in Subsection E, creates a junior general hunting license for residents who have are not 18 years of age in Subsection H and creates a junior-senior elk license for residents under 18 years of age and 65 years of age or older.

**The 2003 amendment**, effective on July 1, 2003 for trout water anglers and April 1, 2004 for warm water anglers, added Paragraph A(24); substituted "A" for "No"

and "does not entitle" for "entitles" preceding "the licensee to" in Subsections B and C; added Subsection J; and substituted "a" for "any" throughout the section.

**The 1998 amendment**, effective July 1, 1998, added Paragraph A(23); deleted Subsection F and redesignated the remaining subsections accordingly; and deleted the proviso at the end of Subsection G.

#### ANNOTATIONS

**Access to public waters.**— A private landowner cannot prevent persons from fishing in a public stream that flows across the landowner's property, provided the public stream is accessible without trespass across privately owned adjacent lands. 2014 Op. Att'y Gen. 14-04.

**This section applies to non-Indians on Indian lands.** 1973 Op. Att'y Gen. No. 73-18. See 17-2-28 NMSA 1978 and notes thereto.

**Applicability to Indians constitutional.**— This section is constitutional if, in application, Indian lands are brought into its scope via non-Indian action. 1973 Op. Att'y Gen. No. 73-18.

**License covering birds does not cover rabbits.**— Holders of bird (now small game) licenses cannot kill rabbits. 1935-36 Op. Att'y Gen. No. 121.

**License not required to fish private property.**— Where fish from private lakes or ponds are private property, a fishing license is not required. 1933-34 Op. Att'y Gen. No. 118.

### 17-3-3. Repealed.

**Repeals.** — Laws 1983, ch. 117, § 6, repealed 17-3-3 NMSA 1978, as enacted by Laws 1964 (1st S.S.), ch. 17, § 3, relating to prohibited shipments and penalties therefor, effective April 1, 1983.

### 17-3-4. Residence.

As used in Chapter 17 NMSA 1978:

A. a "resident" entitled to purchase resident hunting and fishing licenses is any person:

(1) who is a United States citizen and who, for a period of not less than ninety days immediately preceding the date of application for the license, has been domiciled in New Mexico and has not claimed residency elsewhere for any purpose;

(2) who is not a citizen of the United States but who is legally within the United States and has actually lived in this state for ninety days immediately preceding his license application;

(3) not otherwise entitled to claim residence, who is a student attending any educational institution in this state, has so attended and actually lived in this state for at least one full term immediately preceding his license application and presents with his application a certificate of such attendance from proper authorities of the educational institution;

(4) not otherwise entitled to claim residence, who is a member of the armed forces of the United States and permanently assigned to a military installation located within this state and presents with his license application a certificate of such assignment from his commanding officer or designated representative, or the spouse or dependent of such person, not otherwise entitled to claim residence, living within the same household and similarly certified by the person's commanding officer; or

(5) not otherwise entitled to claim residence, who is a member of the armed forces of the United States and officially stationed at a military reservation located partially in this state and partially in an adjacent state but only for a special license valid only for hunting and fishing in this state on those reservations; and

B. a "nonresident" who must purchase nonresident hunting and fishing licenses is any person not a resident, including any temporary resident who maintains his home outside of the state.

**History:** 1953 Comp., § 53-3-1.3, enacted by Laws 1964 (1st S.S.), ch. 17, § 4; 1967, ch. 22, § 1; 1971, ch. 17, § 1; 1971, ch. 170, § 1; 1979, ch. 340, § 6.

#### ANNOTATIONS

**A state may enact game laws which discriminate against nonresidents** in the enjoyment of the privileges of hunting and fishing. 1964 Op. Att'y Gen. No. 64-91.

**A "resident" is one making his home in the state**, voting or meaning to vote here, for at least six months (now 90 days). 1923-24 Op. Att'y Gen. No. 69.

**No resident license without residence for required period.** — A person who is a bona fide resident of this state may not procure a resident hunting license prior to his having resided in this state for a period of six months (now 90 days). 1957-58 Op. Att'y Gen. No. 57-228.

**Owning property is not sufficient.** — A nonresident property-owner of the state is not entitled to a resident fishing or hunting license. 1919-20 Op. Att'y Gen. No. 15.

**Army service alone is not sufficient** to enable person to acquire bona fide resident in state for purpose of obtaining residence hunting or fishing license. 1931-32 Op. Att'y Gen. No. 108.

**Soldier without prior state residence is not entitled to resident license.** — Soldiers stationed outside

of New Mexico and with no prior residence therein are not entitled to resident hunting or fishing license. 1935-36 Op. Att'y Gen. No. 88; 1931-32 Op. Att'y Gen. No. 108; 1925-26 Op. Att'y Gen. No. 27.

**Being stationed out of state does not end in-state residence.** — A soldier with prior bona fide New Mexico residence and stationed outside of the state may be deemed a resident for purpose of obtaining a hunting or fishing license. 1931-32 Op. Att'y Gen. No. 108.

**Military dependent may become resident.** — A dependent of a permanently assigned military person is qualified to purchase a resident hunting or fishing license after residing in New Mexico six months (now 90 days) prior to applying for same. 1957-58 Op. Att'y Gen. No. 58-116.

**Los Alamos residents** for six months (now 90 days) or more are not by reason of such residence entitled to resident licenses unless they had previously established a bona fide residence elsewhere in the state and have not abandoned such other place as their legal New Mexico residence. 1947-48 Op. Att'y Gen. No. 5175.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 35 Am. Jur. 2d Fish and Game §§ 35, 45.

36A C.J.S. Fish § 36; 38 C.J.S. Game §§ 52, 53.

### 17-3-5. Application for hunting or fishing licenses; contents; filing.

A. The director of the department of game and fish shall prepare and furnish blank applications for all persons applying for fishing or hunting licenses within the state. Except as provided in Subsection B or E of this section, each person, before receiving any fishing or hunting license, shall make application on a blank so provided. Among other matters that may be shown by the application, a statement shall show the exact residence of the applicant. Except as provided in Subsection B or E of this section, the application shall be signed by the applicant. All applications for licenses shall be filed with and issued by license vendors appointed by the director. All fishing and hunting licenses and the applications therefor shall contain the place of residence of the person to whom any license may be issued.

B. License vendors, as authorized by the director of the department of game and fish, may take applications for hunting and fishing licenses or authorizations via telephone or the internet. The vendor or applicant shall fill out a license application with the same information as required for other applications. The vendor shall mail the license to the applicant, and the license shall be in the possession of the hunter or angler unless otherwise provided in Chapter 17 NMSA 1978. All money collected through telephone or internet sales shall be remitted to the director by the tenth day of the month following the sale. An individual receiving a license pursuant to this subsection is not required to sign an application prior to issuance of the license; provided, however, that the individual is subject to prosecution pursuant to Section 17-3-6 NMSA 1978 for any false or fraudulent statement or other misrepresentation as if the individual had signed an application for license.

C. Upon request, an applicant for a fishing or game hunting license shall receive an authorization number as assigned by the director of the department of game and fish through the vendor. The authorization number may be used in lieu of the actual license only by the individual who applies and meets the requirements for a license. The authorization number shall serve as a license for the purposes of Sections 17-3-1 and 17-3-17 NMSA 1978. It is a misdemeanor to hunt or fish with an invalid authorization number or a number issued to another person.

D. Each license vendor authorized to sell licenses via telephone or internet may collect the actual cost, not to exceed five dollars (\$5.00), of shipping and handling the application and license issuance.

E. The director of the department of game and fish may prepare and furnish an electronic application for all persons applying for hunting license drawings. A person making an electronic application is not required to sign an application prior to issuance of the license; provided that the person is subject to prosecution pursuant to Section 17-3-6 NMSA 1978 for any false or fraudulent statement or other misrepresentation as if the person had signed an application.



**History:** Laws 1923, ch. 129, § 1; C.S. 1929, § 57-218; 1941 Comp., § 43-302; Laws 1945, ch. 99, § 2; 1953 Comp., § 53-3-2; Laws 1973, ch. 63, § 1; 1995, ch. 99, § 1; 2005, ch. 326, § 1; 2011, ch. 186, § 3.

**Cross references.** — For power of state game commission to withhold license, see 17-1-14 NMSA 1978.

For blank forms and applications for licenses, see 17-3-7 NMSA 1978.

**The 2011 amendment**, effective April 1, 2012, eliminated the distinction between small game hunting and general hunting licenses.

**The 2005 amendment**, effective June 17, 2005, provides in Subsection B that license vendors may take applications via the internet and that all money collected via internet sales shall be remitted to the director and adds Subsection E to provide that the director may provide for electronic applications for hunting license drawings, that a persons making an electronic application is not required to sign the application and that a person is subject to prosecution for a false or fraudulent statement or misrepresentation as if the person signed the application.

**The 1995 amendment**, effective June 16, 1995, designated the existing provision as Subsection A; added Subsections B through D; and, in Subsection A, inserted "of the department of game and fish" in the first sentence, added "except as provided in Subsection B of this section" at the beginning of the second and third sentences, and made minor stylistic changes.

#### ANNOTATIONS

**It would not be legal for any person to sign the name of another as an applicant** when applying for a hunting or fishing license in New Mexico. 1957-58 Op. Att'y Gen. No. 58-116.

**False certificate by witness is subject to prosecution.** — Witness who makes a false certificate concerning the residence of an applicant for a fishing or hunting license is subject to prosecution under 17-3-6 NMSA 1978 since signature by the witness corroborates the applicant's statement and is an essential part of the application. 1941-42 Op. Att'y Gen. No. 3973.

### 17-3-6. False statements; using license issued to another; hunting without license lawfully procured; altering licenses.

It is a misdemeanor:

A. to certify or sign any false or fraudulent statement relative to the residence of any applicant for a hunting or fishing license or permit;

B. for any nonresident of New Mexico, for the purpose of securing a New Mexico hunting or fishing license, to make or cause to be made any false or fraudulent statements or representations to any person issuing hunting and fishing licenses in this state;

C. to use a hunting or fishing license issued to or in the name of any other person or in the name of any fictitious person;

D. to hunt game or fish in New Mexico without a license lawfully procured;

E. for any license vendor or any licensee to alter or predate or postdate any license, certificate or permit; or

F. for any nonresident to possess a resident hunting, fishing or trapping license issued in the nonresident's name pursuant to a telephone, electronic or hard copy application.

**History:** Laws 1923, ch. 129, § 2; C.S. 1929, § 57-219; 1941 Comp., § 43-303; Laws 1945, ch. 99, § 3; 1953 Comp., § 53-3-3; Laws 1963, ch. 213, § 3; 1979, ch. 340, § 7; 2005, ch. 326, § 2.

**Cross references.** — For penalties for acts described in this section, see 17-2-10 NMSA 1978.

**The 2005 amendment**, effective June 17, 2005, added Subsection F to provide that it is a misdemeanor for a nonresident to possess a resident license issued in the nonresident's name pursuant to a telephone, electronic or hard copy application.

#### ANNOTATIONS

**False certificate by witness is subject to prosecution.** — Witness who makes a false certificate concerning the residence of an applicant for a fishing or hunting license is subject to prosecution under this section since his signature corroborates the applicant's statement and is an essential part of the application. 1941-42 Op. Att'y Gen. No. 3273.

**Magistrate has jurisdiction of violations of this section.** 1953-54 Op. Att'y Gen. No. 5860.

### 17-3-7. Blank forms; license issued only on application; false statement voids license; records; reports; accounting for fees collected; refund of fees; transfer of hunting license.

A. The director of the department of game and fish shall prescribe and procure the printing of all forms and blanks that may be required to carry out the intent of Chapter 17 NMSA 1978. All necessary blanks shall be furnished by the director to the license collectors. No license shall be issued except as provided in Section 17-3-5 NMSA 1978. Any false statement in any application shall render the license issued void.

B. A license collector shall keep a correct and complete record of licenses issued, which record shall remain in the license collector's office and be open to inspection by the public at all times.

C. A license collector may collect and retain a vendor fee for each license or permit issued; provided the fee shall be just and reasonable, as determined by regulation of the state game commission, and shall not exceed one dollar (\$1.00) for each license or permit issued; and provided further that no such fee shall be collected by the department of game and fish from the purchaser of a special license. "Special license" includes those licenses for the following species: antelope, elk, Barbary sheep, bighorn sheep, bison, oryx, ibex, gazelle and javelina.

D. A license collector shall remit to the director of the department of game and fish the statutory fee of all licenses and permits sold on or before the tenth day of the month following and shall by the same time report the number and kind of licenses issued.

E. Except as provided in Section 17-1-14 NMSA 1978, the director of the department of game and fish shall turn over all money so received to the state treasurer to be credited to the game protection fund.

F. The director of the department of game and fish, in the director's sole discretion, may authorize a refund of the amount of a hunting license fee from the game and fish suspense fund if:

(1) upon written application by the licensee, prior to the time of the hunt for which the license has been issued, the director finds that:

(a) the licensee has a disability, due to a verified injury or life-threatening illness, that prohibits the licensee from hunting during the period that the license is valid; or

(b) the licensee has been deployed by the military and the deployment prevents the licensee from traveling to the hunt during the period that the license is valid;

(2) upon written application by a personal representative of a licensee's estate, the director finds that the licensee died prior to the time of the hunt for which the license was issued; or

(3) the director cancels a hunt due to forest fire or other natural disaster.

G. The director of the department of game and fish, in the director's sole discretion, may authorize a transfer of a hunting license:

(1) to the licensee's designee if, upon written application by the licensee, prior to the time of the hunt for which the license has been issued, the director finds that:

(a) the licensee has a disability, due to a verified injury or life-threatening illness, that prohibits the licensee from hunting during the period that the license is valid; or

(b) the licensee has been deployed by the military and the deployment prevents the licensee from traveling to the hunt during the period that the license is valid;

(2) to the designee of the licensee's estate if, upon written application by the personal representative of the licensee's estate, the director finds that the licensee died prior to the time of the hunt for which the license was issued; or

(3) upon written application by a licensee, to a nonprofit organization approved by the state game commission.

H. The state game commission may prescribe, by rule, the documentation necessary for a finding pursuant to Subsection F or G of this section.

**History:** Laws 1912, ch. 85, § 48; Code 1915, § 2471; C.S. 1929, § 57-256; Laws 1937, ch. 210, § 1; 1941 Comp., § 43-305; 1953 Comp., § 53-3-5; Laws 1959, ch. 64, § 1; 1973, ch. 140, § 1; 1977, ch. 180, § 2; 1978, ch. 105, § 1; 1992, ch. 29, § 3; 1995, ch. 99, § 2; 2005, ch. 38, § 2; 2012, ch. 32, § 1.

**Cross references.** — For preparation and contents of forms and filing of applications, see 17-3-5 NMSA 1978.

**The 2012 amendment,** effective May 16, 2012, provided for refunds of license fees due to forest fires or other natural disasters and in Subsection F, added Paragraph (3).

**The 2005 amendment,** effective June 17, 2005, added Subsections F and G to provide that the director of the game and fish department may, in the director's discretion, authorize a refund of a hunting license from the game and fish suspense fund or a transfer of a hunting

license if a licensee has been prevented from hunting during the time of the license because of a disability or because of a deployment by the military or if the licensee died to the time of the hunt.

#### ANNOTATIONS

**It would not be legal for any person to sign the name of another as an applicant** when applying for a hunting or fishing license in New Mexico. 1957-58 Op. Att'y Gen. No. 58-116.

**There are no provisions for reimbursement of license fees** in any circumstances; therefore, persons who have purchased a second license illegally are not entitled to reimbursement for the second license. 1975 Op. Att'y Gen. No. 75-38.



### **17-3-8. Loss of application blanks by license collector; accounting.**

In the event that a license collector shall lose any of the application blanks for hunting or fishing licenses issued to him by the director of the department of game and fish, he shall immediately notify the director of the loss of the blanks and he shall inform the director of the number and the serial number of each of the application blanks lost.

**History:** 1953 Comp., § 53-3-5.1, enacted by Laws 1959, ch. 144, § 1.

### **17-3-9. Application blanks lost by license collector to be void.**

Upon the receipt of a notice from the license collector that an application blank has been lost, the director of the department of game and fish shall immediately declare the blank void. The director shall notify the various conservation officers throughout the state and such other persons as he shall deem necessary that the application blanks containing the serial numbers reported by the license collector are void.

**History:** 1953 Comp., § 53-3-5.2, enacted by Laws 1959, ch. 144, § 2.

### **17-3-10. Presumption of loss [sale]**

In any case where a license collector has notified the director of the department of game and fish of the loss of an application blank for hunting or fishing licenses, it shall be presumed that the blank has been sold.

**History:** 1953 Comp., § 53-3-5.3, enacted by Laws 1959, ch. 144, § 3.

### **17-3-11. Possession of license declared void is unlawful.**

Any person in possession of a hunting or fishing license containing the serial number which was reported by the collector as the application blank which was lost and which was declared void by the director of the department of game and fish, and the license was not validly issued to him, shall be guilty of a misdemeanor.

**History:** 1953 Comp., § 53-3-5.4, enacted by Laws 1959, ch. 144, § 4.

### **17-3-12. Accounting for licenses.**

When a license vendor is unable to account for hunting and fishing licenses issued to him, the state game commission shall determine the extent of liability of the vendor and the decision of the commission shall be final.

**History:** 1953 Comp., § 53-3-5.6, enacted by Laws 1959, ch. 144, § 6.

#### **ANNOTATIONS**

**Highest value for which missing licenses could have been sold may be used.** — Since by 17-3-7 NMSA 1978 it is the duty of each license collector to account properly for the licenses sold by him, in the event a

vendor is not able to accurately account for any missing licenses, the director is justified in assuming that they have been sold for the highest dollar value which could have been received for their sale, and until the license collector is able to prove the contrary to the director's satisfaction, he should be held responsible for that sum. 1953-54 Op. Att'y Gen. No. 6028 (issued prior to enactment of this section).

**17-3-13. License fees.**

A. The director of the department of game and fish shall keep a record of all money received and licenses and permits issued by the department, numbering each class separately. Upon satisfactory proof that a license or permit has been lost before its expiration, the director may issue a duplicate and collect a just and reasonable fee for it as determined by regulation of the state game commission.

B. The director of the department of game and fish shall collect the following fees for each license of the class indicated:

Resident, fishing .....	\$25.00
Resident, game hunting .....	15.00
Resident, deer .....	31.00
Resident, junior-senior, deer .....	19.00
Resident, senior, handicapped, game hunting and fishing .....	20.00
Resident, fishing and game hunting combination .....	30.00
Resident, junior, fishing and game hunting combination .....	15.00
Resident, disabled veteran, fishing and game hunting combination .....	10.00
Resident, antelope .....	50.00
Resident, elk cow .....	50.00
Resident, elk bull or either sex .....	80.00
Resident, junior-senior, elk .....	48.00
Resident, bighorn sheep, ram .....	150.00
Resident, bighorn sheep, ewe .....	75.00
Resident, Barbary sheep .....	100.00
Resident, bear .....	44.00
Resident, turkey .....	25.00
Resident, cougar .....	40.00
Resident, oryx .....	150.00
Resident, ibex .....	100.00
Resident, javelina .....	55.00
Resident, fur dealer .....	15.00
Resident, trapper .....	20.00
Resident, junior trapper .....	9.00
Nonresident, fishing .....	56.00
Nonresident, junior fishing .....	15.00
Nonresident, junior, game hunting .....	15.00
Nonresident, game hunting .....	65.00
Nonresident, deer .....	260.00
Nonresident, quality deer .....	345.00
Nonresident, bear .....	250.00
Nonresident, cougar .....	280.00
Nonresident, turkey .....	100.00
Nonresident, antelope .....	260.00
Nonresident, elk cow .....	315.00
Nonresident, elk bull or either sex .....	525.00
Nonresident, quality elk .....	750.00
Nonresident, bighorn sheep .....	3,150.00
Nonresident, Barbary sheep .....	350.00
Nonresident, oryx .....	1,600.00
Nonresident, ibex .....	1,600.00
Nonresident, javelina .....	155.00
Nonresident, fur dealer .....	125.00
Nonresident, trapper .....	345.00
Nonresident, nongame .....	65.00
Resident, senior, handicapped, fishing .....	8.00



Resident, junior fishing .....	5.00
Temporary fishing, one day .....	12.00
Temporary fishing, five days .....	24.00
Resident, senior, handicapped, game hunting .....	15.00
Resident, junior, game hunting .....	10.00
Temporary game hunting, four days .....	33.00
Second rod validation .....	4.00

**History:** 1953 Comp., § 53-3-6, enacted by Laws 1964 (1st S.S.), ch. 17, § 5; 1965, ch. 32, § 1; 1966, ch. 17, § 1; 1967, ch. 2, § 1; 1969, ch. 28, § 3; 1971, ch. 75, § 5; 1973, ch. 268, § 2; 1977, ch. 180, § 3; 1979, ch. 286, § 2; 1980, ch. 17, § 1; 1983, ch. 117, § 2; 1992, ch. 28, § 2; 1993, ch. 189, § 2; 1995, ch. 87, § 2; 1996, ch. 87, § 1; 1998, ch. 51, § 2; 2003, ch. 195, § 2; 2005, ch. 74, § 2; 2007, ch. 8, § 2; 2009, ch. 230, § 2; 2010, ch. 45, § 2; 2011, ch. 25, § 2; 2011, ch. 186, § 4; 2015, ch. 148, § 2.

**Repeals and reenactments.** — Laws 1964 (1st S.S.), ch. 17, § 5, repealed former 53-3-6, 1953 Comp., relating to license fees and prohibiting fishing without a license, and enacted a new 17-3-13.1 NMSA 1978.

**Cross references.** — For depositing money received in game protection fund, see 17-1-14, 17-3-7, 17-3-20 and 17-5-7 NMSA 1978.

For placing portion of certain license fees in game and fish bond retirement fund, see 17-1-22 NMSA 1978.

For fee for additional deer license fee, see 17-3-15 NMSA 1978.

For fee for special Boy Scout fishing license, see 17-3-19 and 17-3-20 NMSA 1978.

For license fee for taking and selling minnows and non-game fish for bait, see 17-3-27 NMSA 1978.

For license fee for special nonresident bird licenses for regulated shooting preserves, see 17-3-39 NMSA 1978.

**The 2015 amendment**, effective April 1, 2016, removed from the list of license fees, certain licenses for military members; in Subsection B, after the first occurrence of "Resident, senior, handicapped," deleted "military", after the second occurrence of "Resident, junior fishing", deleted "Temporary active-duty fishing, five days . . . 12.00", and after "Resident, junior, game hunting", deleted "Temporary active-duty game, four days . . . 16.00".

**The 2011 amendment**, effective April 1, 2012, eliminated the distinction between small game hunting and general hunting licenses; lowered resident game hunting, deer and combined game hunting and fishing license fees; and increased nonresident game hunting license fees.

**The 2010 amendment**, effective May 19, 2010, in Subsection B, changed the license class "Resident, senior, handicapped" to the license class "Resident, senior, handicapped, military".

**The 2009 amendment**, effective July 1, 2009, in Subsection B, added the "Resident, disabled veteran, fishing and small game combination" license fee of \$10.00.

**The 2007 amendment**, effective April 1, 2008, in Subsection B provided fees for the resident, junior-senior deer license; the resident, fishing and small game combination license; and the resident, junior-senior, fishing and small game combination license.

**The 2005 amendment**, effective April 1, 2006, increases fees for all classes of fishing and hunting licenses.

**The 2003 amendment**, effective July 1, 2003 for trout water anglers and April 1, 2004 for warm water anglers, added the last entry of the table in Subsection B.

**The 1998 amendment**, effective July 1, 1998, added a fee for a temporary small game license at the end of the section.

**The 1996 amendment**, effective April 1, 1997, in Subsection B, changed the general hunting and fishing fee from \$23.00 to \$20.00; changed the resident elk cow fee from \$45.00 to \$37.00; changed the resident elk bull or either sex fee from \$75.00 to \$60.00; changed the nonresident bison fee from \$200.00 to \$1,000.00; and changed the resident junior-senior handicapped fishing fee from \$10.50 to \$5.00.

#### ANNOTATIONS

**Fee structure, although discriminatory, not offensive.** — The present fee structure in this section, which discriminates against nonresidents, is not offensive to either the privileges and immunities clause, U.S. Const., art. IV, § 2, or the U.S. Const., amend. XIV. *Terk v. Gordon*, No. 74-387-M (D.N.M., filed Aug. 25, 1977), *aff'd*, 436 U.S. 850, 98 S. Ct. 3063, 56 L. Ed. 2d 751 (1978).

**1964 act was not retroactive.** — Laws 1964 (1st S.S.), ch. 17, which enacted or amended certain statutes dealing with hunting and fishing licenses, was not retroactive in operation, since it operated prospectively from May 25, 1964. 1964 Op. Att'y Gen. No. 64-91.

**Increasing fees is not impermissibly discriminatory.** — Where an act of the legislature increases hunting or fishing license fees as of a certain date, any discrimination between persons on the basis of when they purchase a license is permissible, rational and unavoidable. 1964 Op. Att'y Gen. No. 64-91.

There is no discrimination in an act which increases hunting or fishing license fees as of a certain effective date except that which may result from an individual's own action or inaction. 1964 Op. Att'y Gen. No. 64-91.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 35 Am. Jur. 2d Fish and Game § 45.

### 17-3-13.1. Disabled veteran; license fee exemption; lifetime license.

A. The director of the department of game and fish shall issue without a fee a general hunting and fishing license and class A trout stamp to any resident who was one hundred percent disabled as a result of having served in the armed forces of the United States, upon submission by the person of proof satisfactory to the commission that he was one hundred percent disabled as a result of having served in the armed forces of the United States.

B. Any license and stamp issued pursuant to the provisions of Subsection A of this section shall be issued only once, but shall be issued for the life of the licensee, provided the licensee is a resident of New Mexico and provided the licensee notifies the director of the department of game and fish promptly of any change of residence within or outside the state.

C. Any person holding a license and stamp under the provisions of this section shall be subject to all applicable hunting and fishing regulations, provisions and penalties of Chapter 17 NMSA 1978.

**History:** Laws 1981, ch. 344, § 1.

### **17-3-13.2. Repealed.**

**Repeals.** — Laws 1985, ch. 118, § 2 repealed 17-3-13.2, as enacted by Laws 1985, ch. 118, § 1, relating to the fees and use of wild turkey validations, effective July 1, 1988.

### **17-3-13.3. Big game depredation damage stamp required; disposition of receipts.**

A. Each license to hunt big game shall include a big game depredation damage stamp. The department of game and fish shall, by rule, set the fee for the stamp; provided that the fee shall not exceed five dollars (\$5.00) for each resident license or ten dollars (\$10.00) for each nonresident license.

B. No license to hunt big game shall be considered to be a proper and valid license unless it indicates, by a stamp, check off or other official mark, that the fee for the big game depredation damage stamp has been paid.

C. Revenues received by the department of game and fish from the sale of big game depredation damage stamps shall be deposited to the credit of the big game depredation damage fund.

**History:** Laws 2001, ch. 213, § 1.

### **17-3-13.4. Big game depredation damage fund; creation; expenditure.**

A. The "big game depredation damage fund" is created in the state treasury. The fund consists of appropriations made to the fund, revenues received by the department of game and fish from the sale of big game depredation damage stamps and earnings from the investment of the fund. The fund shall be administered by the department and money in the fund is appropriated to the department to carry out the provisions of Subsection B of this section. Payments from the fund shall be by warrant of the secretary of finance and administration upon vouchers signed by the director of the department or his authorized representative. Balances in the fund shall not revert to any other fund.

B. The department of game and fish shall, by rule, establish a program to correct damage to federal, state or private land caused by big game and to prevent such damage in the future. Pursuant to rules adopted by the department, expenditures from the big game depredation damage fund shall be made by the department to carry out the established program; provided that money in the fund shall not be expended for any administrative costs.

**History:** Laws 2001, ch. 213, § 2.

### **17-3-13.5. Elk licenses reserved.**

The state game commission shall reserve no more than two elk licenses a year for sale to persons under the age of twenty-one who have been determined by a licensed physician to have a life-threatening illness and who have been qualified through a nonprofit wish-granting organization approved by the commission.

**History:** Laws 2003, ch. 290, § 1.



### **17-3-13.6. Disabled military members and veterans; fishing license fee exemption.**

The director of the department of game and fish shall issue without any fee on an annual or seasonal basis a fishing license and appropriate habitat management stamp to a disabled member or veteran of the United States armed forces who is undergoing a rehabilitation program that:

- A. involves learning and practicing fishing skills;
- B. is sponsored by the federal government or a nonprofit organization authorized by the federal government; and
- C. is under the direction of a military or federal veterans administration rehabilitation center.

**History:** Laws 2010, ch. 72, § 1.

**Effective dates.** — Laws 2010, ch. 72, § 2 made the provisions of Laws 2010, ch. 72, § 1 effective July 1, 2010.

### **17-3-13.7. Nonresident disabled military members and veterans; hunting licenses at resident fee.**

A nonresident disabled active duty member or veteran of the United States armed forces who is undergoing a rehabilitation program that involves hunting activities and that is sponsored by the federal government or a nonprofit organization authorized by the federal government and is under the direction of a military or federal veterans administration rehabilitation center may purchase:

- A. a deer license at the resident deer license fee;
- B. an antelope license at the resident antelope license fee;
- C. an elk license at the resident elk license fee;
- D. a javelina license at the resident javelina license fee;
- E. a turkey license at the resident turkey license fee; or
- F. an oryx license at the resident oryx license fee.

**History:** Laws 2011, ch. 45, § 1; 2013, ch. 126, § 1.

The 2013 amendment, effective June 14, 2013, provided for nonresident disabled military members and

veterans to hunt oryx at a resident fee; and added Subsection F.

### **17-3-14. Director authorized to issue license when agreement to hunt antelope on deeded or leased property is made.**

In any case where the department of game and fish enters into an agreement with the owner of deeded property or the lessee of property held under a grazing lease to obtain permission for the hunting of antelope on the property, the director of the department of game and fish is authorized to issue an antelope license free of charge to the owner or lessee of the property in consideration for the permission to hunt on the property.

**History:** 1953 Comp., § 53-3-6.1, enacted by Laws 1959, ch. 143, § 1; 1961, ch. 17, § 1; 1967, ch. 3, § 1.

#### **17-3-14.1. Landowner permits for elk.**

The director of the department of game and fish shall issue landowner permits for the lawful taking of elk in accordance with regulations of the state game commission.

**History:** 1978 Comp., § 17-3-14.1, enacted by Laws 1989, ch. 86, § 1.

### 17-3-14.2. Landowner permits; management of certain big game species.

The director of the department of game and fish may issue landowner permits for the lawful taking of elk, antelope, oryx, and deer. The permits may be issued when, in the determination of the director, they are necessary to effectively reduce conflicts between humans and wildlife and provide sport-hunting opportunities in accordance with regulations of the state game commission.

**History:** Laws 1998, ch. 12, § 1.

### 17-3-15. Additional deer license.

A. It is a misdemeanor for any person to procure or use more than one license to hunt big game in one year, except as provided in this section, or to use any tag after it has been used once.

B. For the purpose of effectuating better game management and control, the state game commission may by regulation authorize the sale of not more than one additional deer license each year to any person holding a license that entitled the person to hunt deer during that year. The fee for an additional deer license shall be the resident or nonresident deer license fee pursuant to Section 17-3-13 NMSA 1978.

C. It is a misdemeanor for any person to take or attempt to take a deer with an additional deer license unless the person has the additional deer license and the other license that entitled the person to hunt deer for that year in the person's possession. Possession of an additional deer license without the other license that entitled the person to hunt deer for that year is prima facie evidence of violation of this section.

**History:** 1953 Comp., § 53-3-6.3, enacted by Laws 1964 (1st S.S.), ch. 17, § 6; 1983, ch. 117, § 3; 2007, ch. 142, § 1.

**Cross references.** — For the resident and nonresident deer license fees, see 17-3-13 NMSA 1978.

**The 2007 amendment**, effective June 15, 2007, provided that the fee for an additional deer license is the resident or nonresident deer license fee.

### 17-3-16. Funds; special drawings for licenses.

A. The director of the department of game and fish may provide special envelopes and application blanks when a special drawing is to be held to determine the persons to receive licenses. Money required to be submitted with these applications, if enclosed in the special envelopes, need not be deposited with the state treasurer but may be held by the director until the successful applicants are determined. At that time, the fees of the successful applicants shall be deposited with the state treasurer and the fees submitted by the unsuccessful applicants shall be returned to them.

B. Beginning with the licenses issued from a special drawing for a hunt code that commences on or after April 1, 2012:

(1) licenses shall be issued as follows:

(a) ten percent of the licenses to be drawn by nonresidents and residents who will be contracted with a New Mexico outfitter prior to application; and

(b) six percent of the licenses to be drawn by nonresidents who are not required to be contracted with an outfitter; and

(2) a minimum of eighty-four percent of the licenses shall be issued to residents of New Mexico.

C. If the number of applicants who apply for licenses pursuant to the provisions of Paragraphs (1) and (2) of Subsection B of this section does not constitute the allocated licenses for either category, then the additional licenses available may be granted to another category of applicants. The director shall offer first choice of undersubscribed hunts to residents, whenever practicable.

D. If the determination of the percentages in Subsection B of this section yields a fraction of:



- (1) five-tenths or greater, the number of licenses to be issued shall be rounded up to the next whole number; and
- (2) less than five-tenths, the number of licenses shall be rounded down to the next whole number.

E. The fee for a nonresident license for a special drawing in a high-demand hunt covered in Subsection B of this section shall be assessed at the same rate as a license for nonresident quality elk or quality deer. As used in this subsection, "high-demand hunt" means:

- (1) a hunt where the total number of nonresident applicants for a hunt code in each unit exceeds twenty-two percent of the total applicants and where the total applicants for a hunt exceeds the number of licenses available based on application data indicating that this criteria occurred in each of the two immediately preceding years; or
- (2) an additional hunt code designated by the department of game and fish as a quality hunt.

F. All antlerless elk hunts pursuant to this section shall be exclusively for New Mexico residents.

G. Hunts on all state wildlife management areas shall be allocated exclusively to New Mexico residents.

H. As used in this section, "New Mexico outfitter" means a person who has a business:

- (1) with a valid New Mexico state, county or municipal business registration and a valid outfitter license issued by the department of game and fish;
- (2) that is authorized to do and is doing outfitting business under the laws of this state;
- (3) that has paid property taxes or rent on real property in New Mexico, paid gross receipts taxes and paid at least one other tax administered by the taxation and revenue department in each of the three years immediately preceding the submission of an affidavit to the department of game and fish;
- (4) the majority of which is owned by the person who has resided in New Mexico during the three-year period immediately preceding the submission of an affidavit to the department of game and fish;
- (5) that employs at least eighty percent of the total personnel of the business who are New Mexico residents; and
- (6) that has either leased property for ten years or purchased property greater than fifty thousand dollars (\$50,000) in value in New Mexico;
- (7) that, if it has changed its name from that of a previously certified business, the business is identical in every way to the previously certified business that meets all criteria;
- (8) that possesses all required federal or state land use permits for the hunt; and
- (9) that operates as a hunting guide service during which at least two days are accompanied with the client in the area where the license is valid.

**History:** 1953 Comp., § 53-3-7, enacted by Laws 1964 (1st S.S.), ch. 17, § 7; 1996, ch. 89, § 1; 1997, ch. 119, § 3; 2011, ch. 186, § 5.

**Repeals and reenactments.** — Laws 1964 (1st S.S.), ch. 17, § 7, repealed former 53-3-7, 1953 Comp., relating to nonresident temporary fishing licenses, and enacted a new 17-3-16 NMSA 1978. The attorney general had ruled that Laws 1949, ch. 13, amending 17-3-13 NMSA 1978, had repealed by implication former 53-3-7, 1953 Comp. See 1949-50 Op. Att'y Gen. No. 5200.

Laws 1997, ch. 119, § 4 repealed 17-3-16 NMSA 1978, as enacted by Laws 1996, ch. 89, § 2, effective April 9, 1997. Laws 1996, ch. 89, § 2 provided for the repeal and reenactment of this section, and was to become effective on June 30, 1999.

**Compiler's notes.** — Laws 1997, ch. 119, § 6 provided that in the event the act is not enacted with the emergency clause, its provisions shall be made retroactive in operation to April 1, 1997. Although the act was enacted with the emergency clause, it was not signed by the governor until April 9, 1997.

**The 2011 amendment,** effective April 1, 2012, increased the percentage of licenses issued to residents from seventy-eight percent to eighty-four percent; lowered the number of licenses issued to nonresidents who use a New Mexico outfitter from twelve percent to ten percent and to nonresidents who do not use an outfitter from ten percent to six percent; required the director to offer unsubscribed licenses to residents; added Subsection F to restrict antlerless elk hunts to residents; added Subsection G to restrict hunts on state wildlife management areas to residents; and added Subsection H to define "New Mexico outfitter".

**The 1997 amendment,** effective April 9, 1997, rewrote Paragraph B(1); deleted former Paragraph B(2) providing for 3% of licenses issued to applications listing residents and nonresidents; redesignated Paragraph B(3) as B(2) and substituted "seventy-eight" for "eighty"; rewrote Subsection C; substituted "the percentages in" for "seventeen percent or three percent in Paragraphs (1) and (2)" in Subsection D; and substituted the phrase beginning with "and where" for "based on data for the two immediately preceding years; or" following "applicants" in Paragraph E(1);

and inserted "of game and fish" following "department" in Paragraph E(2).

The 1996 amendment, effective July 1, 1996, designated the existing language as Subsection A; and added Subsections B through E.

#### ANNOTATIONS

**Administrative regulations inconsistent with this section.** – As applied to the issuance of licenses for bull elk hunting in the Valles Caldera Preserve, the regulations found in 19.31.8.24 NMAC are inconsistent with this section, which specifies how licenses issued through a

special drawing must be allocated among state residents and non-residents. 2003 Op. Att'y Gen. No. 03-06.

**Valles Caldera Preserve Act does not supersede this section.** – The legislature did not intend that this section's requirements could be avoided by simply having the federal Valles Caldera Preserve Trust conduct a special drawing, given Congress' express intent that the Valles Caldera Preserve Act not supercede New Mexico's laws pertaining to the issuance of hunting licenses; thus, the trust cannot use its authority to regulate access to the preserve in a manner that interferes with the application of this section. 2003 Op. Att'y Gen. No. 03-06.

### 17-3-16.1. Bighorn sheep enhancement permits; issuance; use.

A. The state game commission shall direct the department of game and fish to authorize not more than four of the permits available for issuance in the license year for the taking of four bighorn rams for the purpose of raising funds for programs and projects to benefit bighorn sheep.

B. The state game commission shall prescribe by regulation the form, design and manner of issuance of the bighorn sheep enhancement permits. The issuance of two permits shall be subject to auction by the department or by an incorporated nonprofit organization dedicated to conservation of wildlife, as determined by the commission, and shall be sold to the highest bidder. The issuance of the other two permits shall be subject to a lottery by the department or by an incorporated nonprofit organization dedicated to conservation of wildlife, as determined by the commission.

C. All money collected from the issuance and sale of the bighorn sheep enhancement permits shall be credited to the game protection fund to be used exclusively for bighorn sheep preservation, restoration and management.

**History:** Laws 1989, ch. 364, § 1; 1999, ch. 81, § 1; 2012, ch. 34, § 1.

The 2012 amendment, effective May 16, 2012, authorized additional bighorn sheep enhancement permits; in Subsection A, after "not more than", deleted "two" and added "four" and after "for the taking of", deleted "two" and added "four"; and in Subsection B, in the second sentence, after "The issuance of" deleted "one permit" and

added "two permits" and in the third sentence, after "issuance of the other", deleted "permit" and added "two permits".

The 1999 amendment, effective June 18, 1999, substituted "two" for "one" in two places in Subsection A; and, in Subsection B, substituted "one" for "such" in the next-to-last sentence, added the last sentence, and made minor stylistic changes.

### 17-3-16.2. Elk enhancement permit; issuance; use.

A. The state game commission shall direct the department of game and fish to authorize two elk enhancement permits each license year for the taking of two elk bulls to raise funds for programs and projects to better manage elk.

B. The state game commission shall prescribe by rule the form, design and manner of issuance of the two elk enhancement permits. The issuance of one permit shall be subject to auction by the department or by an incorporated nonprofit organization dedicated to conservation of wildlife, as determined by the commission, and shall be sold to the highest bidder. The issuance of the other permit shall be subject to a lottery by the department or by an incorporated nonprofit organization dedicated to conservation of wildlife, as determined by the commission.

C. All money collected from the issuance and sale of the elk enhancement permits shall be credited to the game protection fund to be used exclusively for elk restoration and management.

**History:** Laws 1999, ch. 69, § 1.

### 17-3-16.3. Lieutenant governor's deer enhancement permits; issuance; use.

A. The state game commission shall direct the department of game and fish to authorize two deer enhancement permits each license year for the taking of two deer to raise funds for programs and projects to better manage deer.



B. The state game commission shall prescribe by rule the form, design and manner of issuance of the two deer enhancement permits. The issuance of one permit shall be subject to auction by the department or by an incorporated nonprofit organization dedicated to conservation of wildlife, as determined by the commission, and shall be sold to the highest bidder. The issuance of the other permit shall be subject to a lottery by the department or by an incorporated nonprofit organization dedicated to conservation of wildlife, as determined by the commission.

C. All money collected from the issuance and sale of the lieutenant governor's deer enhancement permits shall be credited to the game protection fund to be used exclusively for deer restoration and management.

**History:** Laws 2003, ch. 89, § 1.

**Cross references.** — For general powers and duties of the state game commission and the game protection fund, see 17-1-14 NMSA 1978.

#### 17-3-16.4. Gould's turkey enhancement permits; issuance; use.

A. The state game commission may direct the department of game and fish to authorize Gould's turkey enhancement permits for the taking of Gould's turkeys, *Meleagris gallopavo mexicana*, to raise funds for programs and projects to better manage the Gould's turkey population in New Mexico.

B. The state game commission shall prescribe by rule the form, design and manner of issuance of the Gould's turkey enhancement permits. The issuance of the permits shall be subject to a lottery or auction. Such allotment of the permits may be conducted by an incorporated nonprofit organization dedicated to conservation of wildlife, in cooperation with and overseen by the commission and the department of game and fish.

C. The state game commission shall direct the department of game and fish to authorize Gould's turkey enhancement permits only after the department has documented that the issuance of each enhancement permit will not jeopardize the prospects for the survival and recruitment of the Gould's turkey within New Mexico.

D. Gould's turkey enhancement permits shall be authorized only when doing so does not conflict with the Wildlife Conservation Act [17-2-37 NMSA 1978] or any rules implementing that act.

E. Money collected from the issuance and sale of the Gould's turkey enhancement permits shall be credited to the game protection fund to be used exclusively for the restoration and management of Gould's turkeys and Gould's turkey habitats, which support a variety of other unique and rare wildlife of southwestern New Mexico.

**History:** Laws 2005, ch. 149, § 1.

**Effective dates.** — Laws 2005, ch. 149, § 2 made Laws 2005, ch. 149, § 1 effective July 1, 2005.

#### 17-3-16.5. Hunting and fishing authorizations; governor's special events.

The director of the department of game and fish may annually make available to the governor no more than twelve big game special authorizations and twelve game bird or trophy fish special authorizations. The authorizations shall be allocated by auction in conjunction with special events called by the governor to raise money for fish and wildlife conservation. Any auction used to allocate an authorization shall comply with rules adopted by the state game commission. Each authorization shall allow the holder to purchase a license to hunt or fish for the species indicated on the authorization during dates and times at locations specified by the state game commission. The director may designate the species allowable for each authorization, but no more than three authorizations shall be issued for any one species each year. Money collected pursuant to the special authorizations of the governor shall be deposited in the game protection fund.

**History:** Laws 2007, ch. 105, § 1.

**Effective dates.** — Laws 2007, ch. 105, contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

### 17-3-16.6. Enhancement authorization packages; habitat enhancement.

The state game commission shall adopt rules for the department of game and fish to issue enhancement authorization packages each license year for the taking of one each of elk, deer, oryx, ibex and pronghorn antelope. Each enhancement authorization package shall be auctioned by the department of game and fish or by an incorporated nonprofit organization dedicated to the conservation of wildlife and sold to the highest bidder. Money collected from the enhancement authorization packages shall be deposited in the game protection fund and shall be used exclusively for big game habitat enhancement, conservation and protection.

**History:** Laws 2007, ch. 243, § 1.

**Effective dates.** — Laws 2007, ch. 243 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

### 17-3-17. Fishing without license; exceptions.

A. It is a misdemeanor for any person, except children who have not reached their twelfth birthday, to take or attempt to take any game fish from any public stream or water in this state without carrying a proper fishing license as provided by law. The presence of any person, except children who have not reached their twelfth birthday, along any public stream or water in this state with fishing rod, hook or line, without carrying a proper fishing license, is prima facie evidence of the violation of this section. The director of the department of game and fish or any conservation officer may require any person along any public stream or water in this state with fishing rod, hook or line to exhibit the person's license.

B. The director, with the approval of the state game commission, may designate no more than two nonconsecutive Saturdays in each year as free fishing days. During the free fishing days, residents and nonresidents may exercise the privileges of holders of proper fishing licenses without having proper fishing licenses and without payment of any license fees, subject to all limitations, restrictions, conditions, laws, rules and regulations applicable to holders of proper fishing licenses.

C. The director may designate, by special permit, fishing events during which the requirement for a fishing license or permit pursuant to Chapter 17 NMSA 1978 is waived exclusively for designated event participants. During the special permitted events, residents and nonresidents may exercise only the privileges as allowed by the director. The director's special permit shall substitute for the requirement of any license or permit pursuant to Chapter 17 NMSA 1978, and no payment of any license fee is required. The director's special permit shall be for a period of no longer than three days, and all other laws and rules shall apply.

**History:** 1953 Comp., § 53-3-9, enacted by Laws 1964 (1st S.S.), ch. 17, § 8; 1973, ch. 268, § 3; 1979, ch. 340, § 8; 1991, ch. 96, § 1; 2013, ch. 29, § 1.

**Repeals and reenactments.** — Laws 1964 (1st S.S.), ch. 17, § 8, repealed former 53-3-9, 1953 Comp., relating to administration of provisions for nonresident temporary fishing licenses, and enacted a new 17-3-16 NMSA 1978.

**The 2013 amendment,** effective June 14, 2013, provided for special fishing event permits; and added Subsection C.

**The 1991 amendment,** effective July 1, 1991, substituted "Exceptions" for "Exception" in the catchline; redesignated the formerly undesignated provision as Subsection A and inserted "of the department of game and fish" following "director" in the final sentence thereof and added Subsection B.

#### ANNOTATIONS

**This section applies to non-Indians on Indian lands.** 1973 Op. Att'y Gen. No. 73-18.

**Application is constitutional.** — This section is constitutional if, in application, Indian lands are brought into its scope via non-Indian action. 1973 Op. Att'y Gen. No. 73-18.

**Requirement of possession of license is mandatory.** — Neither the state game commission, the state game warden (now director) nor any other person may waive the provision that persons over 14 (now 11) years of age must have fishing license in their possession when fishing since the statutory requirement is mandatory. 1947-48 Op. Att'y Gen. No. 5017.

### 17-3-18. Director authorized to issue fishing permit without license to certain handicapped persons.

The director of the department of game and fish is authorized to issue a fishing permit without a license to any group of mentally or physically handicapped persons who participate in a field trip of less than one week's duration under the supervision provided by a special institution or school for handicapped persons.



**History:** 1953 Comp., § 53-3-9.1, enacted by Laws 1977, ch. 180, § 4.

### **17-3-19. Special license; minors fishing on scout property.**

Every citizen of the United States who is a resident or nonresident of the state of New Mexico and under the age of eighteen years shall, upon the payment of two dollars (\$2.00), be issued a special temporary license to fish for ten days during the proper open season in any waters or streams located on the property owned and operated by the boy scouts of America in Colfax county, New Mexico. Such temporary license shall not authorize fishing in any other waters of this state.

**History:** 1941 Comp., § 43-309a, enacted by Laws 1949, ch. 149, § 1; 1953 Comp., § 53-3-10; Laws 1983, ch. 117, § 4; 2005, ch. 74, § 3; 2013, ch. 5, § 1.

The 2013 amendment, effective June 14, 2013, created a special temporary fishing license for nonresidents under the age of eighteen; in the first sentence, after

"state of New Mexico and", deleted "of the age of fourteen, fifteen, sixteen or seventeen" and added "under the age of eighteen".

The 2005 amendment, effective April 1, 2006, increased the fee for a special temporary license from \$1.50 to \$2.00.

### **17-3-20. Fee disposition.**

Of the two dollars (\$2.00) collected for each temporary license issued pursuant to Section 17-3-19 NMSA 1978, one dollar fifty cents (\$1.50) shall be paid to the department of game and fish to be credited to the game protection fund and fifty cents (\$.50) shall be paid to the vendor of the license.

**History:** 1941 Comp., § 43-309b, enacted by Laws 1949, ch. 149, § 2; 1953 Comp., § 53-3-11; 2005, ch. 74, § 4.

The 2005 amendment, effective April 1, 2006, provided that \$1.50 of the fee collected under Section 17-3-19

NMSA 1978, shall be credited to the game protection fund and \$0.50 shall be paid to the license vendor.

### **17-3-21. [Season and bag limits applicable to minors holding special license.]**

All fishing under the privileges granted to the holders of such special licenses shall be in accordance with the seasons and bag limits and other regulations established by the state game commission.

**History:** 1941 Comp., § 43-309c, enacted by Laws 1949, ch. 149, § 3; 1953 Comp., § 53-3-12.

### **17-3-22. [Administration of 17-3-19 to 17-3-22.]**

The state game and fish department is hereby charged with the proper administration of this act [17-3-19 to 17-3-22 NMSA 1978].

**History:** 1941 Comp., § 43-309d, enacted by Laws 1949, ch. 149, § 4; 1953 Comp., § 53-3-13.

### **17-3-23. Fishing on lands of New Mexico boy's school near Springer authorized for resident children without a license.**

It is lawful for any child who has been committed under the Children's Code [32A-1-1 NMSA 1978] to and is resident at the New Mexico boy's school near Springer, New Mexico to fish without a license in waters located on the property of the school.

**History:** 1941 Comp., § 43-309e, enacted by Laws 1951, ch. 60, § 1; 1953 Comp., § 53-3-14; Laws 1972, ch. 97, § 69.

### **17-3-24. [Supervision of fishing at boys' school.]**

Provided however, that such fishing by said wards [resident children] as provided by Section 1 [17-3-23 NMSA 1978] of this act, shall be done under the supervision of the officials of said New Mexico industrial school [boys' school], and in conformity with seasons and bag limits established by the state game commission.

**History:** 1941 Comp., § 43-309f, enacted by Laws 1951, ch. 60, § 2; 1953 Comp., § 53-3-15.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **17-3-25. Patients at Carrie Tingley crippled children's hospital; fishing on hospital lands by patients; supervision.**

Any person between the age of fourteen and the age of majority, who is a patient in the Carrie Tingley crippled children's hospital, may fish without a license in waters located on the property of the Carrie Tingley crippled children's hospital at Truth or Consequences. Fishing shall be done only under the supervision of the officials of the Carrie Tingley crippled children's hospital, and in conformity with seasons and bag limits established by the state game commission.

**History:** 1953 Comp., § 53-3-15.1, enacted by Laws 1967, ch. 26, § 1; 1973, ch. 138, § 22.

### **17-3-26. Taking minnows and nongame fish to sell as bait; license required; exception.**

It is unlawful for any person, except children under the age of twelve years, to take from the streams or public waters of this state minnows and nongame fish for the purpose of sale to fishermen or others for bait without having first procured from the state game commission a license therefor as provided in Sections 17-3-26 through 17-3-28 NMSA 1978.

**History:** Laws 1939, ch. 27, § 1; 1941 Comp., § 43-313; 1953 Comp., § 53-3-19; Laws 1955, ch. 60, § 1; 1979, ch. 340, § 9.

#### **ANNOTATIONS**

**License and bond are required of sellers or takers of bait fish.** — This section would seem to point to the conclusion that only those who take minnows and nongame fish from public waters are required to be licensed. However, the first sentence of 17-3-27 NMSA 1978 is phrased in the disjunctive, and the application of that statute is to those engaged in the business of selling minnows and nongame fish or to those who take the minnows and nongame fish from the streams of the state. Thus, not

only those who take minnows from the streams are to be licensed and bonded, but also those who otherwise engage in the business of selling them irrespective of where they were originally secured. And if one taking minnows or other nongame fish from private waters sells them, it would appear that he is engaging in a business for which a license and bond are required. 1957-58 Op. Att'y Gen. No. 57-150.

**Including those employed on commission basis:** — Whereas this section and 17-3-27 NMSA 1978 do not apply to persons hired on salary basis for nongame fishing on behalf of a licensee, persons employed by a licensee on a "split the profit" or commission basis are required to be licensed. 1947-48 Op. Att'y Gen. No. 5119.

### **17-3-27. Bait license; bond; fee; issuance.**

Any person desiring to procure a license for the purpose of engaging in the business of selling minnows and nongame fish for bait or taking minnows and nongame fish from the streams of this state for the purpose of sale to others shall apply to the state game commission for a license. The application shall be upon forms provided by the commission and shall set forth the public streams or waters out of which the applicant intends to take the minnows and nongame fish and the place at which they are to be sold. The application shall be accompanied by a just



and reasonable fee as determined by regulation of the state game commission. Upon receipt of the application, it shall be the duty of the state game commission or, when it is not in session, the director of the department of game and fish to pass upon the application and to issue a license authorizing the taking and the manner of taking of the minnows and nongame fish by the applicant from those waters in the state as in the opinion of the state game commission or director will not be detrimental to the public or injurious to protected fish. The license when so issued shall specify the manner of taking and the waters from which the applicant is permitted to take minnows and nongame fish for sale for bait.

**History:** Laws 1939, ch. 27, § 2; 1941 Comp., § 43-314; 1953 Comp., § 53-3-20; Laws 1955, ch. 55, § 1; 1992, ch. 29, § 4.

The 1992 amendment, effective April 1, 1992, added the present section catchline; in the text, substituted the present third sentence for the former third and fourth sentences, relating to a fee of \$20 and a bond of \$1,000, in the present fourth sentence, deleted "and bond" following "the application" and inserted "of the department of game and fish"; and made stylistic changes.

#### ANNOTATIONS

This license fee is a regulatory measure rather than a revenue gathering device. 1965 Op. Att'y Gen. No. 65-18.

**County or municipal licenses are not precluded.**

— The licensing of bait sellers, under this section, is not a preemption of the field so as to preclude licensing by the county or a municipality of the same business enterprise. 1959-60 Op. Att'y Gen. No. 59-32.

### **17-3-28. [Exceptions from 17-3-26, 17-3-27; taking bait for own use; persons under 15; unlawful to place nongame fish in certain waters.]**

Nothing in this act [17-3-26 to 17-3-28 NMSA 1978] shall be construed to prevent licensed fishermen from taking minnows and other nongame fish for his [their] own use for bait; or to any minor under fifteen (15) years of age taking minnows not for resale; provided, however, that it shall be unlawful for licensed fishermen or any other person using nongame fish for bait to place any of such nongame fish which are not used for bait in any waters stocked or reserved for game fish by the state game commission of the state of New Mexico.

**History:** Laws 1939, ch. 27, § 3; 1941 Comp., § 43-315; 1953 Comp., § 53-3-21.

### **17-3-29. Permit to take game, birds or fish as specimens or for scientific or propagating purposes; eligibility; issuance; contents; nonassignable; sale for food purposes prohibited.**

The state director may issue permits to any person to take, capture, kill, transport within or out of the state any game, birds or fish mentioned in this chapter at any time when satisfied that such person desires the same exclusively as specimens or for scientific or propagating purposes. Such permit shall be in writing and shall state the kind and number to be taken and the manner of taking, the name of the person to whom issued, the name of the place to which the same is to be transported and the name of the persons shipping such game, birds or fish, and shall be signed by him. Such permit shall not be transferable nor shall it be lawful to sell or barter any of the animals, birds or fish taken or exported under such permit for food purposes, and the holder of such permit shall be liable to the penalties provided in this chapter if he violates any of its provisions.

**History:** Laws 1912, ch. 85, § 42; Code 1915, § 2465; C.S. 1929, § 57-250; 1941 Comp., § 43-317; 1953 Comp., § 53-3-23; Laws 1957, ch. 134, § 1.

**Compiler's notes.** — The words "this chapter" were substituted by the 1915 Code compilers for the words "this act" and may refer to Chapter 47, 1915 Code (composed of Laws 1912, ch. 85). For the disposition of Chapter 47, 1915 Code, in NMSA 1978, see the note to 17-2-11 NMSA 1978. However, the words "this chapter" were also used in Laws 1957, ch. 134, § 1, amending this section, and may therefore refer to Chapter 53, 1953 Comp., the

presently effective provisions of which are compiled in this chapter of NMSA 1978, together with subsequently enacted provisions.

#### ANNOTATIONS

**State permit not required by federal authorities to kill deer in national park for study.** — The secretary of interior and his subordinates have authority to kill deer within the boundaries of a national park for an ecology study to determine deer range conditions within that

park without obtaining state permits. *New Mexico State Game Comm'n v. Udall*, 410 F.2d 1197 (10th Cir.), cert. denied, 396 U.S. 961, 90 S. Ct. 429, 24 L. Ed. 2d 426 (1969).

**This section relates to propagation for own use.** — Any person breeding game for sale is required to have

a permit under 17-4-8 NMSA 1978. A person desiring to propagate birds only for his own use without barter, sale or exchange may secure a permit under the provisions of this section. 1955-56 Op. Att'y Gen. No. 6176.

### 17-3-30. [Sending game animals, birds and fish to officers of other states.]

The state warden [director of the department of game and fish] may, upon application from the game and fish warden or corresponding officer of any other state, procure and transmit to such officer alive specimens of the game animals, birds and fish of this state to be used for scientific or propagating purposes.

**History:** Laws 1912, ch. 85, § 43; Code 1915, § 2466; C.S. 1929, § 57-251; 1941 Comp., § 43-318; 1953 Comp., § 53-3-24.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 1955, ch. 59, § 2 transferred the duties of the state game warden. See 17-1-6 NMSA 1978.

### 17-3-31. [Permit to capture or destroy protected game damaging crops or property; beavers.]

The state game and fish warden [director of the department of game and fish] may grant permits to owners or lessees of land and for the capture or destruction on their lands of any protected game doing damage to their cultivated crops or property; provided, that on said permit or permits so issued as aforesaid, the state game and fish warden shall fix the numerical limit of any protected game so to be captured or destroyed and shall also therein fix the time limit within which any such protected game shall be so captured.

The state game and fish warden shall also grant permits, preferably to owners or lessees of land, for the capture of such beaver as interfere with the operation of any lawful canal, ditch or dam, or cause or threaten the destruction of private property and for the capture of beaver to be transferred from one stream to another; provided, however, that all skins of beaver taken under the provisions of this section shall be turned in to the state game and fish warden, to be by him sold and one-half of the proceeds therefor to be by said state game and fish warden conveyed into the game protection fund and the other one-half of the proceeds to be by said state game and fish warden turned over to the holder of said permit.

**History:** Code 1915, ch. 47, § 84, added by Laws 1919, ch. 133, § 9; C.S. 1929, § 57-326; 1941 Comp., § 43-319; 1953 Comp., § 53-3-25.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 1955, ch. 59, § 2 transferred the duties of the state game warden. See 17-1-6 NMSA 1978.

**Cross references.** — For application of this section to beaver, see 17-5-2 NMSA 1978.

For permits to take fur-bearing animals doing damage, see 17-5-3 NMSA 1978.

#### ANNOTATIONS

**A blanket permit may be granted** to landowners and lessees of nonurban lands to allow them to kill cottontail rabbits on their own land where the rabbits are damaging cultivated crops or property. 1935-36 Op. Att'y Gen. No. 120.

**Permit may issue although property damaged is privately owned.** — The state game warden (director of the department of game and fish) may issue permits to kill elk or any other protected animal when they do damage to farms, even though privately owned. 1919-20 Op. Att'y Gen. No. 82.

### 17-3-32. Importing game animals; permits.

In order to protect game animals, birds and fish against importation of undesirable species and introduction of infectious or contagious diseases, it is a misdemeanor to import any live animals, birds or fish into this state, except domesticated animals or domesticated fowl or fish from government hatcheries, without first obtaining a permit from the department of game and fish.



**History:** Laws 1927, ch. 37, § 1; C.S. 1929, § 57-501; 1941 Comp., § 43-320; 1953 Comp., § 53-3-26; Laws 1963, ch. 213, § 4.

#### ANNOTATIONS

**Fertile eggs come within the classification of live birds.** 1955-56 Op. Att'y Gen. No. 6154.

**Burden is on importer to prove game birds were domesticated.** — This section requires the person

importing any live animals, birds or fish into this state to obtain a permit from the director. It exempts domesticated animals or domesticated fowl, and the burden of proving that any such birds, if within the birds declared to be game birds, were domesticated would fall upon the person desiring to import them without a permit. 1955-56 Op. Att'y Gen. No. 6154.

### 17-3-32.1. Exceptions from certain permits.

The provisions of Sections 17-2-14 and 17-3-32 NMSA 1978 shall not apply to any raptor belonging to and used by a nonresident under a valid falconer's license or permit from another state, providing that the importation into and possession within New Mexico is only for purposes of transit or to hunt mammals or birds during legal falconry or nongame seasons; except that any nonresident who uses a raptor to hunt any mammal or bird in New Mexico shall otherwise abide by regulations established with reference to hunting by nonresident falconers in the state.

**History:** Laws 1979, ch. 109, § 1.

### 17-3-33. Presumption from possession of game or fish without license; showing license to officer.

The possession of game or fish at any time unaccompanied by a proper and valid license, game tag, certificate or permit or invoice, as provided in Chapter 17 NMSA 1978, shall be prima facie evidence that such game or fish was unlawfully taken and is unlawfully held in possession, and it shall be the duty of every person having possession or control of game or fish to produce the proper license, game tag, certificate, permit or invoice when one is required by Chapter 17 NMSA 1978 on demand of any officer, and to permit the same to be copied by such officer. Violation of any provision of this section is a misdemeanor and is punishable as provided by Section 17-2-10 NMSA 1978.

**History:** Laws 1912, ch. 85, § 14; Code 1915, § 2437; C.S. 1929, § 57-222; 1941 Comp., § 43-321; 1953 Comp., § 53-3-27; 1979, ch. 340, § 10.

**Cross references.** — For invoice upon sale from licensed lake or park, see 17-4-16 to 17-4-20 NMSA 1978.

#### ANNOTATIONS

**Documentation required.** — Since a tag is not the only form of documentation recognized by game and fish

laws, and since a tag, even when required, need not be directly affixed to game animal parts stored or displayed within a home, a reasonable officer with a working knowledge of game and fish laws would not have assumed that the game animal parts visible within defendant's home were "unaccompanied" by proper documentation merely because they were untagged. *State v. Moran*, 2008-NMCA-160, 145 N.M. 297, 197 P.3d 1079.

### 17-3-34. Revocation of license, certificate or permit for violation of law; notice and hearing; judicial review.

A. If the holder of any license, certificate or permit persistently, flagrantly or knowingly violates or countenances the violation of any of the provisions of Chapter 17 NMSA 1978 or of any regulations referred to in Section 17-2-10 NMSA 1978, the license, certificate or permit shall be revoked by the state game commission after reasonable notice given the accused of the alleged violation and after the accused is afforded an opportunity to appear and show cause against the charges.

B. At the hearing, the state game commission shall cause a record of the hearing to be made and shall allow the person charged to examine witnesses testifying at the hearing. Any person whose license, certificate or permit has been revoked by the commission may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**History:** Laws 1912, ch. 85, § 35; Code 1915, § 2458; C.S. 1929, § 57-244; 1941 Comp., § 43-322; 1953 Comp., § 53-3-28; Laws 1977, ch. 290, § 4; 1998, ch. 55, § 26; 1999, ch. 265, § 27.

**Cross references.** — For procedures governing administrative appeals to the district court, see Rule 1-074 NMRA.

**The 1999 amendment**, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection B.

**The 1998 amendment**, effective September 1, 1998, in Subsection A, deleted "shall" following "permit", substituted "violates" for "violate" and "countenances" for "countenance", inserted "after the accused is afforded" and deleted "afforded" following "opportunity"; and rewrote Subsection B.

## PART 2

### REGULATED SHOOTING PRESERVE ACT

#### 17-3-35. Short title.

This act [17-3-35 to 17-3-42 NMSA 1978] may be cited as the Regulated Shooting Preserve Act.

**History:** 1953 Comp., § 53-3-29, enacted by Laws 1957, ch. 194, § 1.

**Cross references.** — For licensed private parks or lakes, see 17-4-8 to 17-4-28 NMSA 1978.

#### 17-3-36. Regulated shooting preserves; fees.

The state game commission may issue licenses authorizing the establishment and operation of regulated propagated game bird shooting preserves on private lands when in the judgment of the commission such areas will not conflict with any reasonable prior interest. The commission shall govern and prescribe by regulation the following:

- A. the minimum and maximum size of the areas, including the type of fences and signs;
- B. the method of hunting;
- C. the open and closed seasons, which need not conform to the regular hunting seasons;
- D. the releasing, possession and use of legally propagated pen-raised game birds on the preserves; and
- E. the fee for the licenses, which shall be just and reasonable.

**History:** 1953 Comp., § 53-3-30, enacted by Laws 1957, ch. 194, § 2; 1992, ch. 29, § 5.

**The 1992 amendment**, effective April 1, 1992, deleted the former second sentence, which read "The fee for such

permit shall be twenty-five dollars (\$25.00) per license year"; in Subsection D, substituted "game birds on the preserves" for "game birds thereon"; and added Subsection E and made related stylistic changes.

#### 17-3-37. Definition.

"Game bird," as used in the Regulated Shooting Preserve Act [17-3-35 NMSA 1978], means pheasant, quail, chukar and mallards.

**History:** 1953 Comp., § 53-3-31, enacted by Laws 1957, ch. 194, § 3; 1961, ch. 33, § 1; 1967, ch. 5, § 1.

#### 17-3-38. Tags.

All game birds taken from preserves shall be tagged, with tags to be furnished by the commission at a reasonable fee, before being transported.

**History:** 1953 Comp., § 53-3-32, enacted by Laws 1957, ch. 194, § 4.

#### 17-3-39. Special nonresident licenses.

The commission may issue special nonresident bird licenses to nonresidents to hunt on regulated shooting preserves with the owner's consent for legally propagated game birds upon the



payment of a license fee of five dollars and twenty-five cents (\$5.25). The license must be carried on the person at all times when hunting on private shooting preserves.

Five dollars (\$5.00) of the special nonresident bird license fee is to be paid to the state game and fish department. Twenty-five cents (\$.25) of the fee is to be retained by the issuing agent.

**History:** 1953 Comp., § 53-3-33, enacted by Laws 1957, ch. 194, § 5.

### 17-3-40. Regular licenses.

Residents or nonresidents may hunt on private shooting preserves when possessed of the appropriate bird or hunting license. All hunting on shooting preserves covered in the Regulated Shooting Preserve Act shall be done only with the consent of the owner of the private preserve.

**History:** 1953 Comp., § 53-3-34, enacted by Laws 1957, ch. 194, § 6; 2011, ch. 186, § 6.

The 2011 amendment, effective April 1, 2012, eliminated the category of general hunting license.

### 17-3-41. Commercial operation of.

Operators of private shooting preserves may charge fees for hunting on the preserves.

**History:** 1953 Comp., § 53-3-35, enacted by Laws 1957, ch. 194, § 7.

### 17-3-42. Revocation of permits.

Any permit issued under the Private [Regulated] Shooting Preserve Act [17-3-35 NMSA 1978] may be revoked for a violation of any provision or any regulation made by the commission relating to the act.

**History:** 1953 Comp., § 53-3-36, enacted by Laws 1957, ch. 194, § 8.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## PART 3

## AIRBORNE HUNTING ACT

### 17-3-43. Short title.

Sections 17-3-43 through 17-3-47 NMSA 1978 may be cited as the "Airborne Hunting Act".

**History:** 1953 Comp., § 53-3-37, enacted by Laws 1973, ch. 13, § 1.

### 17-3-44. Definitions.

As used in the Airborne Hunting Act [17-3-43 NMSA 1978]:

- A. "aircraft" means any contrivance used for flight in the air; and
- B. "menacing" means threatening, harassing or having the intent to injure, capture or kill.

**History:** 1953 Comp., § 53-3-38, enacted by Laws 1973, ch. 13, § 2.

**17-3-45. Shooting from aircraft; causing injury by aircraft; penalty.**

It is a misdemeanor punishable by imprisonment in excess of six months but less than one year or a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for any person while airborne in an aircraft to:

A. shoot or attempt to shoot for the purpose of injuring, capturing or killing any bird, fish or other animal;

B. fly or attempt to fly the aircraft in any manner intentionally menacing to any bird, fish or other nondomestic animal which causes the bird, fish or other nondomestic animal to move from its chosen place of rest or change its direction of travel; or

C. knowingly participate in using an aircraft for any purpose referred to in Subsection A or B.

**History:** 1953 Comp., § 53-3-39, enacted by Laws 1973, ch. 13, § 3.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 35 Am. Jur. 2d Fish and Game § 47.

**17-3-46. Applicability.**

The Airborne Hunting Act [17-3-43 NMSA 1978] shall not apply to any person who is employed as an authorized agent of the state or federal government or is operating under a permit of the state granted by the director of the department of game and fish.

**History:** 1953 Comp., § 53-3-40, enacted by Laws 1973, ch. 13, § 4.

**17-3-47. Permit.**

The director of the department of game and fish may grant a permit to any person to carry out acts which are prohibited by the Airborne Hunting Act [17-3-43 NMSA 1978]. Permits shall be granted only to protect or aid in the administration or protection of land, water, wildlife, livestock, domesticated animals, human life or crops. Each person operating under a permit shall report to the director of the department of game and fish each calendar quarter, the number of birds, fishes or other animals so injured, captured or killed.

**History:** 1953 Comp., § 53-3-41, enacted by Laws 1973, ch. 13, § 5.

**PART 4****PENALTIES****17-3-48. Purchase or use of license, certificate or permit, or hunting or fishing while under suspension or revocation; penalty.**

Any person who purchases a hunting or fishing license, or hunts or fishes during the period in which his hunting or fishing license, permit or certificate has been revoked or suspended in accordance with Section 17-2-10 or 17-3-34 NMSA 1978 is guilty of a misdemeanor and shall be punished as provided by Section 17-2-10 NMSA 1978.

**History:** 1978 Comp., § 17-3-48, enacted by Laws 1979, ch. 340, § 11.



### 17-3-49. Computer-assisted remote hunting prohibited; penalties.

#### A. A person shall not:

- (1) engage in computer-assisted remote hunting;
- (2) provide or operate facilities for the purpose of computer-assisted remote hunting;
- (3) create, maintain, provide, advertise or sell computer software or an internet web site for the purpose of computer-assisted remote hunting; or
- (4) entice, possess or confine an animal or bird for the purpose of computer-assisted remote hunting.

B. A person who violates the provisions of this section shall be sentenced in accordance with the provisions of Section 17-2-10 NMSA 1978.

C. When a person who violates the provisions of this section possesses a license, certificate or permit issued by the state game commission, the license, certificate or permit shall be subject to revocation by the commission pursuant to Sections 17-1-14 and 17-3-34 NMSA 1978.

#### D. As used in this section:

(1) "computer-assisted remote hunting" means the use of a computer or other electronic device, equipment or software to access the internet and remotely control the aiming and discharge of a bow, crossbow or firearm of any kind for the purpose of hunting, taking or capturing an animal or bird; and

(2) "facilities for computer-assisted remote hunting" means the real property and improvements on the property associated with computer-assisted remote hunting, including hunting blinds, offices and rooms equipped to facilitate computer-assisted remote hunting.

**History:** Laws 2006, ch. 86, § 1.

**Effective dates.** — Laws 2006, ch. 86, § 2 made the act effective July 1, 2006.

## ARTICLE 4

### Propagation of Fish and Game

- | Sec.   | Sec.   |
|--|--|
| 17-4-1. Power of state game commission to acquire land.  | 17-4-16. Invoice to be delivered to purchaser; form; duplicate mailed to director.                                 |
| 17-4-2. Eminent domain power; abandonment or relinquishment of property acquired.  | 17-4-17. Invoice to be attached during shipment.   |
| 17-4-3. Exchange, sale, lease, sublease and assignment of lands by commission; proceeds.   | 17-4-18. Offering game or fish for sale; storage; keeping in hotel or eating place; invoice to remain attached.    |
| 17-4-4. Sale of former state bird farm; mineral rights reserved.   | 17-4-19. Copy of invoice to be furnished purchaser upon resale.  |
| 17-4-5. Fish hatcheries established by United States; exemption from state laws.   | 17-4-20. Misstatements render invoice void; violation of law; possession of game or fish without invoice unlawful. |
| 17-4-6. Hunting and fishing on private property; posting; penalty.   | 17-4-21. Proprietors of licensed private parks and lakes to furnish reports to director.                           |
| 17-4-7. Liability of landowner permitting persons to hunt, fish or use lands for recreation; duty of care; exceptions.   | 17-4-22. Channels connecting private lakes under one license; use of screens.                                      |
| 17-4-8. Parks or waters for propagation of game or fish; license required.   | 17-4-23. Lease or grant of private park or lake; lessee or grantee deemed proprietor.                              |
| 17-4-9. Unlicensed parks or lakes deemed public nuisance; abatement; liberation of game or fish; each day separate offense.  | 17-4-24. Series of lakes may be included in one license.   |
| 17-4-10. Transportation of game or fish taken from unlicensed parks or waters prohibited.  | 17-4-25. Diverse proprietorship; joint or separate licenses.   |
| 17-4-11. Licensing of private lakes and parks; "proprietor" defined.   | 17-4-26. Notices against trespassing to be posted.   |
| 17-4-12. Application for license; contents; maximum area; fencing.   | 17-4-27. Transfer of license required upon transfer of interest.   |
| 17-4-13. Form of license.  | 17-4-28. Parks, lakes and preserves; license; fees.  |
| 17-4-14. Reduction in flow of water detrimental to fish in stream prohibited.  | 17-4-29. Floating logs in fish stream; restocking; penalty.  |
| 17-4-15. Game and fish in licensed private parks or lakes property of licensee; hunting or fishing in any licensed park or lake without consent prohibited; reduction of game or fish in private preserve; permit. | 17-4-30. Federal aid.  |
|  | 17-4-31. Federal funds; disbursement.  |
|  | 17-4-32. Destruction of boundary markers; penalty.   |
|  | 17-4-33. Gaining access into nature program; policy; additional powers of state game commission.                   |
|  | 17-4-34. Habitat management stamp; fund; expenditure for habitat management; exception.                            |
|  | 17-4-35. Aquatic invasive species control.   |

### 17-4-1. [Power of state game commission to acquire land.]

The state game commission of the state of New Mexico is hereby authorized and empowered to acquire by purchase, gift, bequest or lease; and to hold, develop and improve lands for fish hatcheries, game farms, game refuges, bird refuges, resting and nesting grounds, field stations, dams, lakes, ditches, flumes, waterways, pipelines, canals, rights-of-way, trails, roads and for all purposes incidental to the propagation, preservation, protection and management of the game, birds, fish and wildlife of the state of New Mexico.

**History:** Laws 1939, ch. 223, § 1; 1941 Comp., § 43-401; Laws 1947, ch. 48, § 1; 1953 Comp., § 53-4-1.

#### ANNOTATIONS

**Commission may pay rentals and charge fees to defray them.** — This section is a broad grant of power to the state game commission. First, it includes the express power to acquire lands (including lakes) by lease for fish and game purposes. Such necessarily includes the power to pay rentals (within fiscal limits) to continue the lease, and keeping in mind the nature of the statute, it may be fairly implied that the state game commission would have authority to impose fees or other charges to help defray

the expenses necessitated by the lease and operations thereunder, particularly where the fees charged and collected are directly related to the rentals paid the lessor. 1957-58 Op. Att'y Gen. No. 58-80.

**County ordinance cannot limit authority of state game commission.** — County land use ordinances attempting to restrict traditional federal and state regulatory authority are preempted by this section which allows the state game commission to acquire land for fish hatcheries, game farms, game refuges, and other relevant purposes and, thus, such county ordinances are of no consequence. 1994 Op. Att'y Gen. No. 94-01.

### 17-4-2. Eminent domain power; abandonment or relinquishment of property acquired.

Any property or rights-of-way required for use by the state game commission may be acquired as for a public purpose and as a matter of public necessity under the power of eminent domain, by and with the written approval of the board of county commissioners of the county in which the property or rights-of-way sought are located, in an action instituted and prosecuted in the name of the state, according to the procedure for condemnation provided by the Eminent Domain Code [42A-1-1 NMSA 1978]. Provided nevertheless, that any property right acquired under the provisions of this section, if and when the use for which it was acquired has been abandoned for three years or otherwise relinquished, shall revert to the grantor from whom it was derived.

**History:** Laws 1939, ch. 223, § 2; 1941 Comp., § 43-402; Laws 1947, ch. 48, § 2; 1953 Comp., § 53-4-2; Laws 1981, ch. 125, § 47.

### 17-4-3. [Exchange, sale, lease, sublease and assignment of lands by commission; proceeds.]

The state game commission, except as herein limited, is authorized to exchange, sell, lease, sublease or assign any interest in any lands and leases heretofore or hereafter acquired including but not limited to the sale or lease of timber, oil, gas, minerals or any other severable product of or interest in real estate, when, in the judgment of said commission, such transaction will be in the interest of the state game commission and said lands, leases, products or severable parts thereof, are, in the opinion of such commission, no longer necessary for the purposes for which such lands were acquired or where such lease or sublease will not materially interfere with or conflict with the use of such lands for the purpose for which they were acquired. The proceeds of any such sale, exchange, lease or assignment shall be converted into the game protection fund and disbursed as the other moneys in said fund are disbursed.

**History:** Laws 1939, ch. 223, § 3; 1941 Comp., § 43-403; 1953 Comp., § 53-4-3; Laws 1955, ch. 86, § 1.

#### ANNOTATIONS

**Whether to lease is left to commission's sole discretion.** — Whether or not a lease should be executed is a

question to be determined by the judgment and discretion of the game commission. 1957-58 Op. Att'y Gen. No. 57-149.

**Commission may itself conduct sale of lands.** — Under this section the state game commission is itself authorized to sell its lands, or interests therein, unfettered by the provisions of the general statute governing the sale



of property by state agencies or local public bodies. 1957-58 Op. Att'y Gen. No. 58-76.

If the commission chooses to itself sell the lands, it could, if it wanted, advertise the proposed sale, or

otherwise notify prospective purchasers. But such is a matter to be determined by the commission in its sound discretion. 1957-58 Op. Att'y Gen. No. 58-76.

#### **17-4-4. [Sale of former state bird farm; mineral rights reserved.]**

The sale of the surface and water rights, but not the mineral rights, notwithstanding any other provision of the law, to the highest bidder after advertised for public bid of approximately eighty-seven acres of land and improvements, known as the former state bird farm, located at the northern boundary of the city of Carlsbad in Eddy county, New Mexico is approved. The advertisement for public bid shall be made after the effective date of this act.

**History:** 1953 Comp., § 53-4-3.1, enacted by Laws 1973, ch. 260, § 1.

#### **17-4-5. [Fish hatcheries established by United States; exemption from state laws.]**

In case the United States shall establish one or more fish hatching and fish cultural stations in the state of New Mexico, the United States commissioner of fisheries and his duly authorized agents are hereby accorded the right to conduct fish hatching and fish culture and all operations connected therewith, in any manner and at any time that may be by them considered necessary and proper, any fisheries laws of this state to the contrary notwithstanding.

**History:** Laws 1927, ch. 59, § 1; C.S. 1929, § 57-601; 1941 Comp., § 43-404; 1953 Comp., § 53-4-4.

#### **17-4-6. Hunting and fishing on private property; posting; penalty.**

A. Whenever the owner or lessee desires to protect or propagate game birds, animals or fish within the owner's or lessee's enclosure or pasture, the owner or lessee shall publish notices in English and Spanish warning all persons not to hunt or fish within the enclosure or pasture. The notices shall be posted in at least six conspicuous places on the premises and published for three consecutive weeks in a newspaper of general circulation in the county where the premises are situated. In the event a public road enters or crosses the enclosure or pasture, an additional notice shall be posted conspicuously within three hundred yards of the point where each public road enters the posted property.

B. After the publication and posting, it is a misdemeanor for any person to enter the premises for the purpose of hunting or fishing or to kill or injure any bird, animal or fish within the enclosure or pasture without permission of the owner or lessee.

C. No person engaged in hunting, fishing, trapping, camping, hiking, sightseeing, the operation of watercraft or any other recreational use shall walk or wade onto private property through non-navigable public water or access public water via private property unless the private property owner or lessee or person in control of private lands has expressly consented in writing.

D. Nothing in this act shall be interpreted to affect or influence whether a water is a navigable water or a water of the United States for purposes of the federal Clean Water Act of 1977, 33 U.S.C. 1251 et seq.

**History:** Laws 1912, ch. 85, § 10; Code 1915, § 2433; C.S. 1929, § 57-215; 1941 Comp., § 43-405; 1953 Comp., § 53-4-5; Laws 1963, ch. 213, § 5; 1965, ch. 172, § 1; 2015, ch. 34, § 1.

**Cross references.** — For prohibition against hunting or fishing in licensed private park or lake without permission, see 17-4-15 NMSA 1978.

For posting notices against trespassing on licensed private parks or lakes, see 17-4-26 NMSA 1978.

For publication of notices generally, see 14-11-1 to 14-11-13 NMSA 1978.

**The 2015 amendment**, effective July 1, 2015, prohibited persons engaged in hunting and fishing from entering private property without the consent of the land owner or lessee; in Subsection A, after "within", deleted "his" and added "the owner's or lessee's", and after "pasture," deleted "he" and added "the owner or lessee"; and added Subsections C and D.

### ANNOTATIONS

**Both publication and posting are required.** — Only by publishing a notice in English and Spanish, and by the posting of handbills in English and Spanish in six conspicuous places on the premises does the owner put into effect on his property a penal statute which protects him against trespassers. *State v. Barnett*, 1952-NMSC-065, 56 N.M. 495, 245 P.2d 833.

**An appeal does not lie to supreme court from an order** overruling a motion to quash an information brought against defendants for violation of this section in the absence of express statutory authority therefor. *State v. Barnett*, 1951-NMSC-084, 56 N.M. 1, 238 P.2d 694.

**English notice only is insufficient.** — Where the publication and posting were in English only, this section imposing criminal sanctions, did not become operative. *State v. Barnett*, 1952-NMSC-065, 56 N.M. 495, 245 P.2d 833.

**A tract of land which is not enclosed by fences may not be posted** under the terms of this section so as to subject persons who enter for the purpose of hunting and fishing to the penalties therein provided. 1957-58 Op. Att'y Gen. No. 57-237.

**The lessee of state lands for grazing purposes may post it** against hunting, but cannot charge for hunting privileges. 1933-34 Op. Att'y Gen. No. 160.

**Posting by lessee permitted provided lessee does not conflict with action by commissioner of public lands.** — Assuming full and strict compliance with this section, as interpreted, a lessee of state land could not in

all cases post under the statute. This section, insofar as this problem is concerned, must be read in light of the peculiar nature of the land involved. It must be borne in mind that under the Enabling Act, the constitution and statutes based thereon, the complete dominion and control over state lands is vested in the commissioner of public lands. In short, the lessee of state lands, even if he acts strictly in accordance with this section, could not do so in a manner in conflict with a duly taken action of the commissioner. 1957-58 Op. Att'y Gen. No. 58-194.

**Posting does not prevent hunting or fishing by owner or permittees.** — If posting is duly accomplished, the landowner does not thereby deprive himself of hunting and fishing privileges on these lands. The owner, or those permitted by him to do so, could still hunt or fish so long as done in accordance with the game and fish laws and lawful game fish regulations. 1957-58 Op. Att'y Gen. No. 58-194.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Title to fish and game taken by trespasser, 23 A.L.R. 1402.

Injunction against repeated or continuing trespasses by fishing, 32 A.L.R. 463, 60 A.L.R. 2d 310.

Reservation in grant of land of right to hunt and fish, with like right to the grantee, as limiting the right of the grantee to actual owners of the land, 32 A.L.R. 1533.

Rights, title and remedies of hunter in respect of game which he is pursuing or has killed or wounded, 49 A.L.R. 1498.

Inland lakes as public fisheries, 57 A.L.R. 2d 569.

36A C.J.S. Fish § 34; 38 C.J.S. Game § 59.

## 17-4-7. Liability of landowner permitting persons to hunt, fish or use lands for recreation; duty of care; exceptions.

A. Any owner, lessee or person in control of lands who, without charge or other consideration, other than a consideration paid to the landowner by the state, the federal government or any other governmental agency, grants permission to any person or group to use the owner's, lessee's or land controller's lands for the purpose of hunting, fishing, trapping, camping, hiking, sightseeing, the operation of aircraft, cave exploring or any other recreational use does not thereby:

- (1) extend any assurance that the premises are safe for such purpose;
- (2) assume any duty of care to keep such lands safe for entry or use;
- (3) assume responsibility or liability for any injury or damage to or caused by such person or group; or
- (4) assume any greater responsibility, duty of care or liability to such person or group than if permission had not been granted and the person or group were trespassers.

B. This section shall not limit the liability of any landowner, lessee or person in control of lands that may otherwise exist by law for injuries to any person granted permission to hunt, fish, trap, camp, hike, sightsee, operate aircraft, explore caves or use the land for recreation in exchange for a consideration, other than a consideration paid to the landowner by the state, the federal government or any other governmental agency.

C. For the purposes of this section, "cave" means a natural, geologically formed void or cavity beneath the surface of the earth, but does not mean a mine, tunnel, aqueduct or other manmade excavation.

**History:** 1953 Comp., § 53-4-5.1, enacted by Laws 1967, ch. 6, § 1; 2011, ch. 63, § 1; 2019, ch. 24, § 1.

**The 2019 amendment**, effective June 14, 2019, limited the liability of landowners permitting persons to explore caves on private property, and defined "cave"; in Subsection A, after "operation of aircraft", added "cave exploring"; in Subsection B, after "operate aircraft", added "explore caves"; and added Subsection C.

**The 2011 amendment**, effective June 17, 2011, limited the liability of owners, lessees and persons in control

of land who, without consideration, permit the use of the land by others for the operation of aircraft.

### ANNOTATIONS

**Organized team sports not a protected activity.** — Protections of the statute apply only when landowners allow free public access for a limited range of outdoor activities, and organized team sports do not fall within that range of activities. *Lucero v. Richardson & Richardson*,



*Inc.*, 2002-NMCA-013, 131 N.M. 522, 39 P.3d 739, cert. denied, 131 N.M. 737, 42 P.3d 842.

**Comparison with off-highway recreational vehicle use statute.** — Since the general recreational land use statute contained in Section 17-4-7 NMSA 1978 broadly immunizes landowners who permit entry upon their lands for "any . . . recreational use", the legislature in adopting Section 66-3-101 NMSA 1978, obviously intended to extend the immunity of landowners as to claims resulting from injuries to operators or passengers of off-highway recreational vehicles beyond that provided by Section 17-4-7 NMSA 1978.

*Matthews v. State*, 1991-NMCA-116, 113 N.M. 291, 825 P.2d 224.

**United States liability.** — The United States was not liable under the New Mexico recreational use statute, Section 17-4-7 NMSA 1978, for the plaintiff's injuries resulting from a diving accident in a national forest since the United States was exempt from liability under the New Mexico statute. *Maldonado v. United States*, 893 F.2d 267 (10th Cir. N.M. 1990).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 62 Am. Jur. 2d Premises Liability § 156 et seq.  
65 C.J.S. Negligence § 10.

## 17-4-8. [Parks or waters for propagation of game or fish; license required.]

No person shall have or maintain any park, enclosure, lake or body of water for the purpose of keeping or propagating therein any game or game fish for sale, nor shall any living game or game fish from such park, enclosure, lake or body of water be sold or offered for sale, unless the owner, proprietor or lessee thereof shall first procure a license as hereinafter provided.

**History:** Laws 1912, ch. 85, § 59; Code 1915, § 2482; C.S. 1929, § 57-301; 1941 Comp., § 43-406; 1953 Comp., § 53-4-6.

**Cross references.** — For regulated shooting preserves, see 17-3-35 to 17-3-42 NMSA 1978.

### ANNOTATIONS

**Section applies to breeding game for sale.** — Any person breeding game for sale is required to have a permit

under this section. A person desiring to propagate birds only for his own use without barter, sale or exchange may secure a permit under the provisions of 17-3-29 NMSA 1978. 1955-56 Op. Att'y Gen. No. 6176.

**Fishing license and season requirements held applicable.** — Anyone authorized to fish on the Story irrigation project must first have a valid and subsisting license, and under no circumstances would such person be permitted to fish during the closed season. 1923-24 Op. Att'y Gen. No. 52.

## 17-4-9. [Unlicensed parks or lakes deemed public nuisance; abatement; liberation of game or fish; each day separate offense.]

Any park, enclosure, lake or body of water maintained in violation of this chapter shall be deemed a continuing public nuisance and may be abated as provided by law for the abatement of public nuisances and the game or game fish therein liberated, or any obstruction to the free ingress or egress of fish removed, and each day the same is maintained in violation hereof, shall be a separate offense.

**History:** Laws 1912, ch. 85, § 60; Code 1915, § 2483; C.S. 1929, § 57-302; 1941 Comp., § 43-407; 1953 Comp., § 53-4-7.

**Compiler's notes.** — The compilers of the 1915 Code substituted the words "this chapter" for the words "this

act." Chapter 47, 1915 Code, comprised the whole of Laws 1912, ch. 85. For disposition of Chapter 47, 1915 Code, in NMSA 1978, see note to 17-2-11 NMSA 1978.

## 17-4-10. [Transportation of game or fish taken from unlicensed parks or waters prohibited.]

No persons shall transport or sell, keep or expose or offer for transportation or sale any game or game fish, taken from any park, enclosure, lake or body of water, public or private, unless the same be licensed as provided in this chapter, and then only as provided in this division, and this section shall apply to game and fish held by private ownership as well as to game and fish the ownership of which may be acquired under this chapter.

**History:** Laws 1912, ch. 85, § 61; Code 1915, § 2484; C.S. 1929, § 57-303; 1941 Comp., § 43-408; 1953 Comp., § 53-4-8.

**Compiler's notes.** — The words "this division" refer to Laws 1912, ch. 85, §§ 59 to 80, which comprised Division A of that law, and are compiled as 17-4-8 to 17-4-29 NMSA 1978. For meaning of words "this chapter," see compiler's note to 17-2-11 NMSA 1978.

## ANNOTATIONS

**Fee may be charged for breeder's license.** — The state game commission and the state game warden (now

director) may charge a fee for a game breeder's license. 1953-54 Op. Att'y Gen. No. 5874.

### 17-4-11. [Licensing of private lakes and parks; "proprietor" defined.]

The provisions of this article in relation to private parks and lakes, the licensing thereof for the keeping and propagation of game and game fish therein, and permitting the same thereof, shall apply to every park or lake or such part thereof, as is on land held by private ownership, and to every lake, the water of which, or the right to use of such water, in whole or in part, has been or may hereafter be acquired under the laws of this state or of the United States, for irrigation purposes, and the owner of such land or water right shall be deemed the proprietor of such park or lake, and of the game or fish therein to the extent of his ownership of such land or water right.

**History:** Laws 1912, ch. 85, § 62; Code 1915, § 2485; C.S. 1929, § 57-304; 1941 Comp., § 43-409; 1953 Comp., § 53-4-9.

**Cross references.** — For lessee or grantee being deemed proprietor, *see* 17-4-23 NMSA 1978.

**Compiler's notes.** — The compilers of the 1915 Code substituted the words "this article" for the words "this division." "This division" would refer to "Division A" of Laws 1912, ch. 85. See compiler's notes to 17-4-10 NMSA 1978. "This article" would mean Article 2, Chapter 47, 1915 Code, compiled as 17-2-27, 17-4-8 to 17-4-29 NMSA 1978.

### 17-4-12. [Application for license; contents; maximum area; fencing.]

Any person having already established or desiring to establish or maintain a park or lake for the purpose of keeping or propagating and selling the game or game fish therein or to be placed therein, shall apply in writing to the warden [director of the department of game and fish] stating the name, location, extent and proprietorship of the same, and kind and as near as may be, the number of game or game fish kept or desired to be kept therein, the term for which the license is desired and inclosing the fee therefor, and if upon examination by the warden it shall appear that the application is in good faith, and in other respects proper and reasonable, he shall grant to such applicant a license therefor; provided that the maximum area that may be included within any park shall not exceed three thousand two hundred acres, and that every park shall be enclosed by a game proof fence which shall conform to specifications required by the state game commission.

**History:** Laws 1912, ch. 85, § 63; Code 1915, § 2486; C.S. 1929, § 57-305; Laws 1937, ch. 107, § 1; 1941 Comp., § 43-410; 1953 Comp., § 53-4-10.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 1955, ch. 59, § 2 transferred the duties of the state game warden. *See* 17-1-6 NMSA 1978.

**Cross references.** — For power of state game commission to suspend, revoke or withhold licenses, *see* 17-1-14 NMSA 1978.

For including series of lakes in license, *see* 17-4-24 NMSA 1978.

For licenses in case of diverse proprietorship, *see* 17-4-25 NMSA 1978.

For transfer of license upon transfer of interest, *see* 17-4-27 NMSA 1978.

For duration and renewal of licenses and license fees, *see* 17-4-28 NMSA 1978.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Licensing or otherwise regulating business of breeding and dealing in game or undomesticated animals, constitutionality of, 62 A.L.R. 473.

### 17-4-13. [Form of license.]

Such license shall be substantially in the following form:

STATE OF NEW MEXICO.  
Department of Game and Fish.  
Licensed Parks and Lakes.

No. .... Class A.

Santa Fe ... 19 ..

This certifies that ..... proprietor of a (public or private) (park or lake) called ..... and situated on ..... Sec. .... Twp. .... Range ... in ..... county, New Mexico, is hereby authorized to keep and propagate therein and dispose of as provided by law the following (game quadrupeds, birds or



fish), viz.: ..... together with such additions thereto (with the natural increase of all) as may be hereafter lawfully acquired. This license expires ..... years after date.

.....Warden [Director].

**History:** Laws 1912, ch. 85, § 64; Code 1915, § 2487; C.S. 1929, § 57-306; 1941 Comp., § 43-411; 1953 Comp., § 53-4-11.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws

1955, ch. 59, § 2 transferred the duties of the state game warden. See 17-1-6 NMSA 1978.

**Cross references.** — For licenses being for one year and renewable annually, see 17-4-28 NMSA 1978.

## 17-4-14. [Reduction in flow of water detrimental to fish in stream prohibited.]

No person owning or controlling any reservoir, lake or body of water into which public waters flow and which furnishes the water supply in whole or in part to any stream containing game fish shall divert or lessen such water in flow or supply to an extent detrimental to the fish in such stream, reservoir, lake or body of water.

**History:** Laws 1912, ch. 85, § 65; Code 1915, § 2488; C.S. 1929, § 57-307; 1941 Comp., § 43-412; 1953 Comp., § 53-4-12.

### ANNOTATIONS

**United States held not liable for injuries from dredging canals.** — Where the United States, acting through the bureau of reclamation, dredged and removed from the canals and ditches the silt and deposits which had accumulated therein over the years, and as a natural consequence of these dredging operations, the water in appellee's ponds seeped back into the irrigation canals and the ponds were emptied, the trial court, citing this section,

concluded that the act of the defendant in draining the plaintiff's property of all water, destroying plaintiff's fish and frogs, and leaving the plaintiff's land an arid desert land, constituted negligence per se. However, the court of appeals held that liability under the federal Tort Claims Act is not carte blanche, that the United States is liable as an individual only in the manner and to the extent to which it has consented, and that the facts fell clearly within the area of the exempted "discretionary function." *United States v. Gregory*, 300 F.2d 11 (10th Cir. 1962).

**Bodies of water covered.** — All reservoirs, lakes and other bodies of water into which public waters flow are covered by this section. 1947-48 Op. Att'y Gen. No. 5111.

## 17-4-15. [Game and fish in licensed private parks or lakes property of licensee; hunting or fishing in any licensed park or lake without consent prohibited; reduction of game or fish in private preserve; permit.]

Except as in this division otherwise provided, all game and fish, with the natural increase thereof, held or confined in any private preserve, park or lake, licensed under the provisions of this act shall, during the existence of the license or any renewal thereof, be deemed the property of the licensee of the same to the extent that he may lawfully retain, pursue, capture, kill, use, sell or dispose of the game or fish therein in any quantity, in any manner and at any time of the year, and the pursuit, capture, wounding or killing of any game or fish in any licensed preserve, park or lake, public or private, without the consent of the proprietor, shall be unlawful; provided, that the aggregate number of game animals or fish in any licensed private preserve, park or lake, which contained game or fish belonging to the state at the time or date of the issuing of such license, shall not be lessened by the killing, use, sale or disposition thereof, it being the purpose of this provision to restrict such killing, use, sale and disposition to a number not exceeding in the aggregate the natural increase. If by reason of controlling necessity or for the purpose of stocking or replenishing some other park or lake, any proprietor of a licensed preserve, park or lake may desire to lessen the aggregate number above provided for, the state game and fish warden [director of the department of game and fish] may, on being satisfied of the property [propriety] thereof, grant a permit therefor.

**History:** Laws 1912, ch. 85, § 66; Code 1915, § 2489; Laws 1915, ch. 101, § 18; C.S. 1929, § 57-308; 1941 Comp., § 43-413; 1953 Comp., § 53-4-13.

**Compiler's notes.** — The words "this division" refer to "Division A" of Laws 1912, ch. 85. See compiler's notes to 17-4-10 NMSA 1978.

The words "this act" first appeared in the 1915 amendment and Laws 1915, ch. 101, the presently effective provisions of which are compiled as 17-2-13, 17-2-19, 17-4-15 and 17-4-26 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 1955, ch. 59, § 2 transferred the duties of the state game warden. See 17-1-6 NMSA 1978.

**Cross references.** — For posting private property against hunting and fishing, see 17-4-6 NMSA 1978.

#### ANNOTATIONS

**The owner of land may prohibit fishing in streams thereon, as an act of trespass.** 1917-18 Op. Att'y Gen. No. 173.

**Game must be imprisoned before being sold.** — Before game can be sold by a licensee for "parks, lakes or preserves," the game must be reduced to actual possession by imprisonment in an enclosure through which or over which game cannot make its way. 1912-13 Op. Att'y Gen. No. 220.

### 17-4-16. [Invoice to be delivered to purchaser; form; duplicate mailed to director.]

When the proprietor of any licensed park or lake of class A shall sell or dispose of any game or game fish as herein provided, he shall, at the same time deliver to the purchaser or donee or attach thereto an invoice signed by such proprietor or his agent, stating the number of the license and name of such park, or lake, the date of disposition, the kind, and as near as practicable the number and weight of such game or fish, the name and address of the purchaser, consignee or donee. Such invoice shall authorize transportation within this state, possession and use for thirty days after its date, and shall be substantially in the following form:

STATE OF NEW MEXICO.  
Department of Game and Fish.  
Private Parks and Lakes - Invoice.

Name of park or lake ....., Class A. No. of license ....., Date ..... 19 .....

Kind and number of game and fish ..... Weight of same ..... lbs. Name of consignee ..... Address of consignee .....

This authorizes transportation within this state, possession and sale for thirty days after date if attached to article.

.....Proprietor.

By ..... Agent.

Such proprietor or his agent shall at the same time mail, postpaid, a duplicate of such invoice to the warden [director of the department of game and fish] at Santa Fe.

**History:** Laws 1912, ch. 85, § 67; Code 1915, § 2490; C.S. 1929, § 57-309; 1941 Comp., § 43-415; 1953 Comp., § 53-4-15.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 1955, ch. 59, § 2 transferred the duties of the state game warden. See 17-1-6 NMSA 1978.

### 17-4-17. [Invoice to be attached during shipment.]

When any such game or fish for which an invoice is required, is to be shipped by rail, express or other carrier, public or private, the invoice shall be securely attached thereto or to the package containing the same in plain sight, and the same may then be lawfully carried and delivered within this state to the consignee named in such invoice.

**History:** Laws 1912, ch. 85, § 68; Code 1915, § 2491; C.S. 1929, § 57-310; 1941 Comp., § 43-416; 1953 Comp., § 53-4-16.

### 17-4-18. [Offering game or fish for sale; storage; keeping in hotel or eating place; invoice to remain attached.]

If such game or game fish is held, exposed or offered for sale or sold by the consignee or kept in any storage, hotel, restaurant, cafe or boardinghouse, such invoice shall be kept attached thereto as aforesaid until the same shall have been prepared for consumption.



**History:** Laws 1912, ch. 85, § 69; Code 1915, § 2492; C.S. 1929, § 57-311; 1941 Comp., § 43-417; 1953 Comp., § 53-4-17.

**Cross references.** — For menu as evidence of possession of game or fish, *see* 17-2-18 NMSA 1978.

### **17-4-19. [Copy of invoice to be furnished purchaser upon resale.]**

In case of a sale or disposition of such game or game fish or any part thereof the vendor shall at the same time make a copy of such invoice and endorse thereon the date of sale, the number and kind of game or fish so disposed of and the name of the purchaser, and sign and deliver the same to the purchaser or donee, who shall keep it attached as aforesaid until the game or fish is prepared for consumption, and the same shall have the same force and effect as the original invoice.

**History:** Laws 1912, ch. 85, § 70; Code 1915, § 2493; C.S. 1929, § 57-312; 1941 Comp., § 43-418; 1953 Comp., § 53-4-18.

### **17-4-20. [Misstatements render invoice void; violation of law; possession of game or fish without invoice unlawful.]**

Any willful misstatement in or any omission of a substantial requirement from any invoice or copy thereof, shall render the same void and be deemed a violation of this chapter, and the possession of any game or game fish without such invoice or a copy thereof attached thereto when so as above required shall be unlawful.

**History:** Laws 1912, ch. 85, § 71; Code 1915, § 2494; C.S. 1929, § 57-313; 1941 Comp., § 43-419; 1953 Comp., § 53-4-19.

**Compiler's notes.** — For meaning of words "this chapter", *see* note to 17-2-11 NMSA 1978.

**Cross references.** — For menu as evidence of possession, *see* 17-2-18 NMSA 1978.

For possession without invoice being *prima facie* evidence of unlawful taking or possession, *see* 17-3-33 NMSA 1978.

### **17-4-21. [Proprietors of licensed private parks and lakes to furnish reports to director.]**

The proprietor of every private park and lake licensed under the preceding sections shall, whenever required by the warden [director of the department of game and fish], make and send to the warden [director of the department of game and fish] at Santa Fe a report showing as near as practicable the kind, number, age and sex of the game, and the kind and number or weight of the game fish, added and disposed of during the year preceding and on hand at the date of the report.

**History:** Laws 1912, ch. 85, § 72; Code 1915, § 2495; C.S. 1929, § 57-314; 1941 Comp., § 43-420; 1953 Comp., § 53-4-20.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 1955, ch. 59, § 2 transferred the duties of the state game warden. *See* 17-1-6 NMSA 1978.

### **17-4-22. [Channels connecting private lakes under one license; use of screens.]**

The rights acquired by the proprietor of a private lake licensed hereunder, and the prohibitions hereof, shall extend to and include all channels connecting a series or group of lakes under one license, and the warden [director of the department of game and fish] may authorize the use of such screens or other appliances as may be necessary to prevent the fish in a licensed lake of class A from escaping, and it shall be the duty of the proprietor to adopt and use such screens or other appliances as the warden [director of the department of game and fish] may direct to prevent the fish in public waters from entering such lake.

**History:** Laws 1912, ch. 85, § 73; Code 1915, § 2496; C.S. 1929, § 57-315; 1941 Comp., § 43-421; 1953 Comp., § 53-4-21.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws

1955, ch. 59, § 2 transferred the duties of the state game warden. *See* 17-1-6 NMSA 1978.

**Cross references.** — For including series of lakes in one license, *see* 17-4-24 NMSA 1978.

### **17-4-23. [Lease or grant of private park or lake; lessee or grantee deemed proprietor.]**

When the owner of a private park or lake has granted or leased to another the right to keep and propagate game or fish therein, the grantee or lessee shall be deemed the proprietor and entitled to the license.

**History:** Laws 1912, ch. 85, § 74; Code 1915, § 2497; C.S. 1929, § 57-316; 1941 Comp., § 43-422; 1953 Comp., § 53-4-22.

**Cross references.** — For transfer of license being required upon transfer of interest, *see* 17-4-27 NMSA 1978.

### **17-4-24. [Series of lakes may be included in one license.]**

A series or group of lakes under one proprietorship or lease and situated in a reasonable proximity to each other may be included in one license, either as a private lake or licensed preserve.

**History:** Laws 1912, ch. 85, § 75; Code 1915, § 2498; C.S. 1929, § 57-317; 1941 Comp., § 43-423; 1953 Comp., § 53-4-23.

**Cross references.** — For connecting channels being included, *see* 17-4-22 NMSA 1978.

### **17-4-25. [Diverse proprietorship; joint or separate licenses.]**

In case of diverse proprietorship the license may be joint if the proprietors so elect, otherwise a separate license shall be required for each interest and the rights thereunder shall be coextensive with or in proportion to such interest.

**History:** Laws 1912, ch. 85, § 76; Code 1915, § 2499; C.S. 1929, § 57-318; 1941 Comp., § 43-424; 1953 Comp., § 53-4-24.

### **17-4-26. [Notices against trespassing to be posted.]**

There shall be kept posted conspicuously at every gate where a road or trail enters or crosses each licensed park or preserve, and at conspicuous places along the border of each licensed lake, plain notices not less than one foot square, stating that the same is private property, and warning persons against trespassing thereon.

**History:** Laws 1912, ch. 85, § 77; Code 1915, § 2500; Laws 1915, ch. 101, § 19; C.S. 1929, § 57-319; 1941 Comp., § 43-425; 1953 Comp., § 53-4-25.

**Cross references.** — For posting notice of intention to protect game on private property, *see* 17-4-6 NMSA 1978.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Entry on private lands in pursuit of wounded game as criminal trespass, 41 A.L.R.4th 805.

### **17-4-27. [Transfer of license required upon transfer of interest.]**

In case of a transfer of proprietorship or interest in any park, lake or preserve, the transferee, shall, within thirty days thereafter procure from the warden [director of the department of game and fish] a transfer of the license endorsed on the back thereof.

**History:** Laws 1912, ch. 85, § 78; Code 1915, § 2501; C.S. 1929, § 57-320; 1941 Comp., § 43-426; 1953 Comp., § 53-4-26.

**Cross references.** — For lessee or grantee being deemed proprietor, *see* 17-4-23 NMSA 1978.



**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws

1955, ch. 59, § 2 transferred the duties of the state game warden. See 17-1-6 NMSA 1978.

## 17-4-28. Parks, lakes and preserves; license; fees.

A. Licenses for private parks, lakes and preserves may be for one year, and any license shall be renewed annually at the request of the licensee.

B. The director of the department of game and fish shall charge and collect just and reasonable fees for the following permits under Sections 17-4-8 through 17-4-28 NMSA 1978, as determined by regulation of the state game commission:

- (1) permit to capture or exchange;
- (2) quadruped park license;
- (3) each renewal of each quadruped park license;
- (4) one lake license;
- (5) each renewal of one lake license;
- (6) each additional lake license;
- (7) each renewal of each additional lake license; and
- (8) each certificate, permit or license not provided for in this section.

**History:** Laws 1912, ch. 85, § 79; Code 1915, § 2502; C.S. 1929, § 57-321; 1941 Comp., § 43-427; 1953 Comp., § 53-4-27; Laws 1973, ch. 141, § 1; 1992, ch. 29, § 6.

**The 1992 amendment**, effective April 1, 1992, rewrote the introductory language in Subsection B, deleted references to specific dollar amounts in Paragraphs (1) to (8); and made stylistic changes.

## 17-4-29. Floating logs in fish stream; restocking; penalty.

All persons floating logs, timber, lumber, ties or poles in any stream containing game fish shall, for each mile of the streams used, annually deposit one thousand trout fry or fingerlings at times and places designated by the department of game and fish. Any person failing to comply with the provisions of this section is guilty of a misdemeanor.

**History:** Laws 1912, ch. 85, § 80; Code 1915, § 2503; C.S. 1929, § 57-322; 1941 Comp., § 43-428; 1953 Comp., § 53-4-28; Laws 1963, ch. 213, § 6.

## 17-4-30. [Federal aid.]

The state of New Mexico hereby assents to the provisions of the act of congress of the United States of America entitled "An act to provide that the United States shall aid the states in fish restoration and management projects, and for other purposes," approved August 9, 1950 (Public Law 681, 81st Congress), and the state game commission is hereby authorized and directed to perform all such acts as may be necessary to the conduct and establishment of cooperative fish restoration and management projects, as defined by said act of congress and in compliance with said act, and rules and regulations promulgated by the secretary of agriculture [secretary of the interior] thereunder.

**History:** 1941 Comp., § 43-429, enacted by Laws 1951, ch. 66, § 1; 1953 Comp., § 53-4-29.

**Compiler's notes.** — For the act of congress referred to, see 16 U.S.C. § 777 et seq., under which regulations

are promulgated by the secretary of the interior, not the secretary of agriculture.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 17-4-31. [Federal funds; disbursement.]

The state game commission is authorized to receive any moneys to which the state of New Mexico may become entitled under the aforesaid act of congress, such moneys, when received, to be deposited with the treasurer of the state of New Mexico to the credit of the state game protection

fund, expended for the purpose designated and withdrawn as other moneys are withdrawn from the state game protection fund.

**History:** 1941 Comp., § 43-430, enacted by Laws 1951, ch. 66, § 2; 1953 Comp., § 53-4-30.

**Cross references.** — For game protection fund, see 17-1-14 NMSA 1978.

**Compiler's notes.** — For meaning of "aforesaid act of congress," see compiler's note to 17-4-30 NMSA 1978.

### 17-4-32. Destruction of boundary markers[; penalty].

Every person who shall wilfully [willfully], maliciously and without cause, break down, injure, remove or destroy any sign, marker or poster erected for the purpose of designating the boundaries of any tract of land, refuge, sanctuary for wildlife, or for the purpose of designating the boundaries of a hunting area set forth by the state game commission, or under the direction of the director of the department of game and fish, shall, upon conviction thereof, be guilty of a petty misdemeanor.

**History:** 1953 Comp., § 53-4-31, enacted by Laws 1965, ch. 73, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 17-4-33. Gaining access into nature program; policy; additional powers of state game commission.

A. It is the policy of the state of New Mexico to encourage and promote wildlife-associated recreation in New Mexico and to provide for public participation in the use of available natural resources in a manner that will benefit the general public in its enjoyment of public assets and the state and its political subdivisions in increased economic development.

B. To implement the state policy, the state game commission shall develop and administer a "gaining access into nature program" pursuant to the provisions of this section.

C. In addition to its other powers, in order to develop and administer the gaining access into nature program, the state game commission may:

(1) designate areas and properties under its control where activities other than hunting, fishing and trapping are available to the public;

(2) designate activities that may take place on properties under its control and designate conditions and qualifications for the activities;

(3) enter into partnership and joint powers agreements, leases and other contractual arrangements with other state agencies, private landowners and other private entities to jointly administer, promote and expand the gaining access into nature program;

(4) issue permits, special use licenses and other authorizations for access to individuals and organizations to access state game commission properties for purposes of participating in gaining access into nature programs and charge fees for the access privileges; provided that the fees do not exceed the reasonable costs associated with developing and administering the gaining access into nature program;

(5) engage in public outreach programs to identify through public meetings, surveys and educational programs the interests of the public that may be best served by the gaining access into nature program;

(6) adopt such rules as it deems necessary for programs, events or other activities to properly implement the goals and the administration of the gaining access into nature program; and

(7) subject to appropriation by the legislature, expend money from the game protection fund necessary to develop and administer the gaining access into nature program, including:

(a) the reasonable costs of improving habitat and properties in order to make them suitable for the public uses intended;

(b) costs of personnel necessary to service the properties being used for the program and to provide informational and interpretive services on the properties;

(c) the reasonable costs of maintenance and repair of habitat and properties being used for public access under the provisions of this section; and



(d) costs associated with issuing permits, licenses and other authorizations for access.

D. All money collected from issuing and selling gaining access into nature permits, licenses and other authorizations for access shall be deposited in the game protection fund.

**History:** Laws 2005, ch. 173, § 1.

**Effective dates.** — Laws 2005, ch. 173 contained no effective date provision, but, pursuant to N.M. Const.,

art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

**Cross references.** — For the Wildlife Violator Compact, see 11-16-1 NMSA 1978.

#### **17-4-34. Habitat management stamp; fund; expenditure for habitat management; exception.**

A. On and after April 1, 2006, each of the following licenses or permits shall include a habitat management stamp. The fee for a habitat management stamp shall be three dollars (\$3.00). Each of the following licenses or permits shall not be considered to be a proper and valid license unless the licensee can demonstrate, by a stamp, check off or other official mark, that the fee for the habitat management stamp has been paid, provided that an individual purchaser shall be required to purchase only one stamp each license year, regardless of the number of licenses or permits purchased by that purchaser:

(1) a resident or nonresident license specified in Section 17-3-13 NMSA 1978; or

(2) a wildlife-associated recreation permit issued by the state game commission pursuant to Section 17-1-4 NMSA 1978.

B. Revenue from the sale of habitat management stamps shall be deposited in the "habitat management fund", hereby created in the state treasury. The fund shall consist of money appropriated and transferred to the fund and revenue from the sale of habitat management stamps deposited in the fund. Earnings from investment of the fund shall be credited to the fund. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the director of the department of game and fish.

C. Upon appropriation by the legislature, money in the habitat management fund may be expended by the state game commission only for the improvement, maintenance, development and operation of property for fish and wildlife habitat management.

D. A habitat management stamp shall not be required for persons under the age of eighteen.

**History:** Laws 2005, ch. 177, § 2.

**Effective dates.** — Laws 2005, ch. 177 contained no effective date provision, but, pursuant to N.M. Const.,

art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

#### **17-4-35. Aquatic invasive species control.**

A. Based on a determination of credible scientific evidence, the director, after consulting with the secretary of energy, minerals and natural resources and with the concurrence of the director of the New Mexico department of agriculture, is authorized to designate:

- (1) species of exotic or nonnative animals or plants as aquatic invasive species;
- (2) water bodies within the state as infested waters; and
- (3) specific requirements to decontaminate conveyances and equipment.

B. Prior to entering a conveyance or equipment into any water body in the state, the owner or person in control of a warning-tagged conveyance or warning-tagged equipment or a conveyance or equipment that has been in an infested water body in New Mexico or elsewhere shall:

(1) have the conveyance or equipment decontaminated by a person or entity approved by the director to effect decontamination, and only the person legally effecting the decontamination is authorized to remove a warning tag and provide certification that the conveyance or equipment is free from infestation; or

(2) have the conveyance or equipment inspected and certified as free from infestation by trained personnel prior to entering a water body or if certification or other documentation of

decontamination is not available, otherwise demonstrate compliance with the decontamination requirements established by the director.

C. A law enforcement officer may impound a conveyance or equipment if the person transporting the conveyance or equipment refuses to submit to an inspection authorized by this section and the officer has reason to believe that an aquatic invasive species may be present, or if the conveyance or equipment has a warning tag affixed and the operator of the conveyance is attempting to enter a state water body and cannot provide evidence that the conveyance or equipment has been decontaminated. A law enforcement officer shall take action to prevent equipment or conveyances believed or known to contain an aquatic invasive species and warning-tagged equipment or conveyances from entering a state water body.

D. The impoundment of a conveyance or equipment may continue for a reasonable period necessary to inspect and decontaminate the conveyance or equipment.

E. Notwithstanding any provision to the contrary, no motor vehicle that is drawing a conveyance shall be impounded pursuant to this section.

F. Trained personnel may:

- (1) establish, operate and maintain aquatic invasive species check stations and conduct inspections at or adjacent to the entrance to any state-controlled water body or, pursuant to a cooperative agreement, at or adjacent to any county, municipal or federally or privately controlled water body or at or adjacent to the exit point of an infested water body or at a location agreed to by the owner of the conveyance or equipment in order to inspect conveyances and equipment prior to a conveyance or equipment entering, being launched onto or being directly exposed to water bodies of the state or upon the conveyance's or equipment's departure from infested waters;

- (2) affix a warning tag to equipment or a conveyance where the presence of an aquatic invasive species has been found;

- (3) affix a warning tag to a conveyance or equipment upon the conveyance or equipment leaving an infested water; or

- (4) affix a warning tag to a conveyance or equipment that the trained personnel have reason to believe is infested with an aquatic invasive species based on its point of origin or use.

G. Except for state, local, tribal or federal agencies and their respective agents, employees and contractors while performing their duties or contractual obligations specific to management or control of an aquatic invasive species, it is unlawful for a person to:

- (1) knowingly possess, import, export, ship or transport an aquatic invasive species into, within or from the state;

- (2) knowingly release, place, plant or cause to be released, placed or planted an aquatic invasive species into a water body or adjacent to a water body where it reasonably might be anticipated to be introduced into a water body that is not infested;

- (3) remove a warning tag other than as provided pursuant to this section;

- (4) introduce any tagged conveyance or equipment or any equipment or conveyance from which a warning tag has been unlawfully removed into a water body without first having that conveyance or equipment decontaminated and certified pursuant to the provisions of this section; or

- (5) knowingly introduce into any water body a conveyance or equipment that has been exposed to an infested water body or a water body in any other state known to contain aquatic invasive species without first being decontaminated and certified pursuant to the provisions of this section.

H. Knowingly or willfully violating any provision of this section as a first offense is a petty misdemeanor. A second or subsequent violation of any provision of this section is a misdemeanor. Any violation is punishable pursuant to Section 31-19-1 NMSA 1978.

I. The director or the director's designee shall coordinate the monitoring of the water bodies of the state for the presence of aquatic invasive species, including privately controlled waters if the director has authorized access to them or has received permission to monitor them from the persons controlling access to such waters.

J. Upon determination of an infested water body in New Mexico, the director shall immediately recommend to the person in control of the infested water body actions to limit access or take other actions to prevent the potential spread of an aquatic invasive species to other water bodies.



K. The commission is authorized to adopt rules pursuant to Section 17-1-26 NMSA 1978, and the secretary of energy, minerals and natural resources is authorized to adopt rules pursuant to Section 16-2-32 NMSA 1978 as necessary to implement and enforce the provisions of this section.

L. The director may enter into cooperative agreements with any federal, state, county or municipal authority or private entity that may be in control of a water body potentially affected by aquatic invasive species.

M. As used in this section:

(1) "aquatic invasive species" means quagga mussels and zebra mussels and other exotic or nonnative aquatic animals, including invertebrates but excluding those species listed as protected in Chapter 17 NMSA 1978, or any plant or animal species whose introduction into an aquatic ecosystem is determined by the director, after consulting with the secretary of energy, minerals and natural resources and with the concurrence of the director of the New Mexico department of agriculture, to cause or be likely to cause harm to the economy, environment or human health or safety;

(2) "commission" means the state game commission;

(3) "conveyance" means a motor vehicle, vessel, trailer or any associated equipment or containers, including, but not limited to, live wells, fish-hauling tanks, ballast tanks, motorized skis and bilge areas that may contain or carry an aquatic invasive species or any other equipment by which aquatic invasive species may be introduced into an aquatic ecosystem;

(4) "decontaminate" means to wash, drain, dry or otherwise treat a conveyance in accordance with guidelines established by the director in order to remove or destroy an aquatic invasive species;

(5) "director" means the director of the department of game and fish;

(6) "equipment" means an article, a tool, an implement, a device or a piece of clothing, including boots and waders, that is capable of containing or transporting water;

(7) "infested water" means a geographic region, water body or water supply system or facility within the state that the director, after consulting with the secretary of energy, minerals and natural resources and with the concurrence of the director of the New Mexico department of agriculture, identifies as carrying or containing an aquatic invasive species or a water body outside the state that has been identified as carrying or containing an aquatic invasive species;

(8) "inspect" means to examine a conveyance or equipment to determine whether an aquatic invasive species is present;

(9) "law enforcement officer" means a state or federal certified law enforcement officer;

(10) "trained personnel" means individuals who have successfully completed the United States fish and wildlife service's aquatic invasive species watercraft inspection and decontamination training, level I or level II, or an equivalent training recognized by the director;

(11) "warning tag" means a tag that is affixed to equipment or a conveyance upon the equipment or conveyance leaving an infested water or upon an inspection determining that the equipment or conveyance contains an aquatic invasive species that requires the equipment or conveyance to be decontaminated; and

(12) "water body" means a natural or impounded surface water, including a stream, river, spring, lake, reservoir, pond, wetland, tank or fountain.

**History: Laws 2009, ch. 38, § 1; 2010, ch. 89, § 1.**

The 2010 amendment, effective March 8, 2010, in Subsection B, in the introductory sentence, after "Prior to entering", added "a conveyance or equipment into"; in Subsection B(1), after "warning tag and", deleted "(2)"; after "provide certification" deleted "by a person legally authorized to effect decontamination"; and after "free from infestation", deleted "or otherwise demonstrate compliance with the decontamination requirements established by the director"; added Paragraph (2) of Subsection B; in Subsection F, after "Trained personnel", deleted "of the department of game and fish or the state parks division of the energy, minerals and natural resources department";

in Subsection F(1), after "species check stations", added "and conduct inspections" and after "infested water body", added "or at a location agreed to by the owner of the conveyance or equipment"; added Paragraph (4) of Subsection F; in Subsection G, in the introductory sentence, added the language preceding "it is unlawful for a person to"; in Subsection G(2), after "into a water body", added the remainder of the sentence; in Subsection G(4) and (5), after "decontaminated", added the remainder of the sentence; added Subsection J; in Subsection M(7), after "aquatic invasive species", added the remainder of the sentence; and in Subsection M(10), after "level II", added the remainder of the sentence.

## ARTICLE 5

### Trappers and Fur Dealers

Sec.	Sec.
17-5-1. Declaration of policy.	17-5-5. Trapper's licenses.
17-5-2. Fur-bearing and nongame animals defined; property of state.	17-5-6. Fur dealer licenses.
17-5-3. Seasons; special permits to take animals doing damage.	17-5-7. Disposition of license fees.
17-5-4. State game commission to administer act; rules and regulations.	17-5-8. Officers authorized to enforce act.
	17-5-9. Penalty; revocation of license; sale of pelts.

#### 17-5-1. Declaration of policy.

It is the purpose of Sections 17-5-1 through 17-5-9 NMSA 1978 and the policy of New Mexico to provide an adequate and flexible system for the protection of fur-bearing animals to the end that valuable fur resources shall not be wasted or depleted.

**History:** Laws 1939, ch. 178, § 1; 1941 Comp., § 43-501; 1953 Comp., § 53-5-1; Laws 1980, ch. 15, § 1.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 35 Am. Jur. 2d Fish and Game §§ 6, 16, 29, 38.

#### 17-5-2. Fur-bearing and nongame animals defined; property of state.

The following quadrupeds are hereby defined as fur-bearing animals, to wit: muskrat, mink, weasel, beaver, otter, nutria, masked or blackfooted ferret, ringtail cat, raccoon, pine marten, coati-mundi, badgers, bobcat and all species of foxes. These animals and their pelts are hereby declared to be the property of the state until they shall have been lawfully taken, killed or captured as provided by Sections 17-5-1 through 17-5-9 NMSA 1978, except as to beaver and beaver pelts, the taking of which shall be subjected to the application of Section 17-3-31 NMSA 1978.

**History:** Laws 1939, ch. 178, § 2; 1941 Comp., § 43-502; 1953 Comp., § 53-5-2; Laws 1955, ch. 57, § 1; 1980, ch. 15, § 2; 1981, ch. 342, § 1.

**Compiler's notes.** — Laws 1955, ch. 57, § 4, declares that the part of this section that includes beaver among the

nonpredatory fur-bearing animals shall be effective only upon enactment of a New Mexico statute excluding beaver from the list of game animals. Laws 1955, ch. 58, § 1, deleted beaver from the list of game animals. For present list of game mammals, birds and fish, see 17-2-3 NMSA 1978.

#### 17-5-3. Seasons; special permits to take animals doing damage.

Fur-bearing animals as defined in Section 17-5-2 NMSA 1978 shall be taken only during the seasons declared by regulation of the state game commission promulgated as provided in Section 17-5-4 NMSA 1978. The director may, however, issue permits at any time for the taking of fur-bearing animals doing damage to game, private property, poultry or livestock.

**History:** Laws 1939, ch. 178, § 3; 1941 Comp., § 43-503; 1953 Comp., § 53-5-3; Laws 1955, ch. 57, § 2; 1980, ch. 15, § 3.

**Cross references.** — For permit to destroy protected game doing damage, see 17-3-31 NMSA 1978.

#### 17-5-4. State game commission to administer act; rules and regulations.

The state game commission is authorized and directed to administer the provisions of Sections 17-5-1 through 17-5-9 NMSA 1978, and to make such rules and regulations and establish such service as it may deem necessary to carry out all the provisions and purposes of those sections. In making such rules and regulations and providing when and by what means fur-bearing animals may be hunted, taken, captured, possessed or killed, the state game commission shall give due regard to the zones of temperatures and to the distribution, abundance, economic value and



breeding habits of such animals. Provided, nothing in Sections 17-5-1 through 17-5-9 NMSA 1978 shall interfere with the authority granted to the president of New Mexico state university under Sections 77-15-1 through 77-15-5 NMSA 1978, or shall prevent livestock producers without a permit from the taking of bobcats that are doing damage to livestock.

**History:** Laws 1939, ch. 178, § 4; 1941 Comp., § 43-504; 1953 Comp., § 53-5-4; Laws 1980, ch. 15, § 4.

### 17-5-5. Trapper's licenses.

A. No resident who has reached his twelfth birthday shall capture, trap or possess any fur-bearing animal or attempt to do so without first procuring a resident trapper's license; or, in the case of a resident who has reached his twelfth birthday but not his eighteenth birthday, a resident junior trapper's license.

B. No nonresident shall capture, trap or possess any fur-bearing animal or skunk or coyote or attempt to do so without first procuring a nonresident trapper's license.

C. No nonresident who resides in a state that does not permit New Mexico residents to procure nonresident trapper's licenses may purchase a New Mexico nonresident trapper's license.

D. Trappers shall release all fur-bearing animals trapped during closed seasons, and resident trappers who release all fur-bearing animals during open seasons need not procure a trapper's license.

E. Trappers on official business, paid from state and federal funds and under supervision of the department of game and fish, the New Mexico department of agriculture or the United States fish and wildlife service need not purchase a trapper's license.

F. Trapping of animals, both fur-bearing and nongame, by a resident in order to protect his livestock or domesticated animals or fowl shall not be subject to rules and regulations on trapping made pursuant to Section 17-5-4 NMSA 1978 or to licensing requirements provided in this section.

G. The state game commission may by regulation require holders of trapper's licenses to use bobcat pelt tags and may specify the conditions for use of the tags.

**History:** Laws 1939, ch. 178, § 5; 1941 Comp., § 43-505; 1953 Comp., § 53-5-5; Laws 1955, ch. 57, § 3; 1964 (1st S.S.), ch. 17, § 9; 1980, ch. 15, § 5; 1981, ch. 342, § 2; 1983, ch. 117, § 5.

**Cross references.** — For power of commission to withhold license, *see* 17-1-14 NMSA 1978.

For duration of license, *see* 17-3-1 NMSA 1978.

For amount of license fee, *see* 17-3-13 NMSA 1978.

For revocation of license, *see* 17-5-9 NMSA 1978.

### 17-5-6. Fur dealer licenses.

A. Except for trappers selling their own catches, any person, firm or corporation engaged in the business of buying or selling unprocessed skins or pelts of any fur-bearing animal is a "fur dealer." It is a misdemeanor to engage in business as a fur dealer or solicit such business without first procuring a fur dealer license, except that resident fur dealers who buy and sell less than fifty skins or pelts of fur-bearing animals each year need not purchase a fur dealer license.

B. Every fur dealer shall file with the department of game and fish, not later than the tenth of each month, a sworn statement showing the number and kind of skins and pelts of fur-bearing animals purchased and sold during the preceding month.

C. The provisions of this section apply to fur dealers who buy and sell the skins or pelts of predatory animals as well as to those who buy and sell the skins or pelts of protected nonpredatory fur-bearing animals.

**History:** Laws 1939, ch. 178, § 6; 1941 Comp., § 43-506; 1953 Comp., § 53-5-6; Laws 1964 (1st S.S.), ch. 17, § 10.

**Cross references.** — For power of commission to withhold license, *see* 17-1-14 NMSA 1978.

For duration of license, *see* 17-3-1 NMSA 1978.

For amount of license fee, *see* 17-3-13 NMSA 1978.

For revocation of license, *see* 17-5-9 NMSA 1978.

#### ANNOTATIONS

**Effective date provision is invalid.** — Laws 1964 (1st S.S.), ch. 17, § 12, making the act effective on April 1, 1964, was a nullity under N.M. Const., art. IV, § 23. Since the act did not pass as an emergency measure, the

legislature was proscribed by the constitution from providing that the act would go into effect sooner than 90 days after adjournment on February 25, 1964. 1964 Op. Att'y Gen. No. 64-91.

**Permit required whether animals bred or trapped.** — All persons, whether dealing in pelts resulting from the commercial enterprise of fur-bearing animal

breeding or whether dealing in pelts resulting from the trapping of wild fur-bearing animals, are required by law to secure the permit provided for before engaging in such business. 1953-54 Op. Att'y Gen. No. 6043.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 51 Am. Jur. 2d Licenses and Permits § 31.

### 17-5-7. [Disposition of license fees.]

All fees for trappers' licenses and fur dealers' licenses shall be collected by the state game warden [director of the department of game and fish] and turned over to the state treasurer to be credited to the game protection fund; provided, that license vendors shall retain ten cents (10¢) for each license sold as compensation for his [their] services, but no regular employee of the state game department shall be entitled to such fee.

**History:** Laws 1939, ch. 178, § 7; 1941 Comp., § 43-507; 1953 Comp., § 53-5-7.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws

1955, ch. 59, § 2 transferred the duties of the state game warden. See 17-1-6 NMSA 1978.

**Cross references.** — For disposition of fees collected under fish and game laws, see 17-1-14 NMSA 1978.

For amount of license fees, see 17-3-13 NMSA 1978.

### 17-5-8. [Officers authorized to enforce act.]

All peace officers, port of entry employees [employees of the motor transportation divisions of the taxation and revenue department] and deputy game wardens [conservation officers] are hereby authorized and required to cooperate fully with the state game commission in the enforcement of this act [17-5-1 to 17-5-9 NMSA 1978]. It shall be the duty of all such persons to make searches, seizures and arrests as in the case of other misdemeanors.

**History:** Laws 1939, ch. 178, § 9; 1941 Comp., § 43-509; 1953 Comp., § 53-5-9.

**Compiler's notes.** — The law establishing ports of entry was repealed by Laws 1939, ch. 73, § 24, and the equipment and funds of ports of entry were transferred to the board of supervisors of the New Mexico state police by § 8 of said act. Laws 1939, ch. 73, also created a new division of the New Mexico state police named "the division of field administration," the duties of such division being similar to those formerly performed by the ports of entry. The division of field administration of the state police was changed to the division of courtesy and information of the state of New Mexico by Laws 1941, ch. 147, § 24, which act was then superseded by Laws 1943, ch. 125, which created a department of courtesy and information and transferred property used at ports of entry to the new department.

However, by Laws 1967, ch. 97, § 41, such property was transferred to the motor transportation department, which has now been abolished by Laws 1977, ch. 250, § 4, and the motor transportation division of the taxation and revenue department has been established and operates the former ports of entry. See 9-11-4, 65-5-1 to 65-5-3 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 1955, ch. 59, § 2 transferred the duties of the state game warden. See 17-1-6 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Jury trial in case of seizure or destruction of appliances, 17 A.L.R. 574, 50 A.L.R. 97.

### 17-5-9. Penalty; revocation of license; sale of pelts.

Any person who violates or aids, abets or assists in the violation of any provision of Sections 17-5-1 through 17-5-9 NMSA 1978 or any person who makes any false statement as to the residence of any applicant for a trapper's license or fur dealer's license or any nonresident who fraudulently procures a resident license is guilty of a misdemeanor. In addition, the department of game and fish may revoke, for the year in which the violation occurred, the trapper's or fur dealer's license of any person convicted. All skins, pelts or furs involved in the violation remain the property of the state and shall be sold for the benefit of the game protection fund.

**History:** Laws 1939, ch. 178, § 10; 1941 Comp., § 43-510; 1953 Comp., § 53-5-10; Laws 1963, ch. 213, § 7.

**Cross references.** — For power of commission to withhold license, see 17-1-14 NMSA 1978.

For seizure and destruction of illegal traps or devices, see 17-2-20 NMSA 1978.



## ARTICLE 6

### Habitat Protection

Sec. 17-6-1. Short title.

17-6-2. Definitions.

17-6-3. Restrictions on motor vehicle use; recommendations; rules and regulations.

17-6-4. Notices of restrictions; posting; publication.

17-6-5. Prohibition against vehicle travel.

Sec.

17-6-6. Exceptions.

17-6-7. Expenditure of funds; functions.

17-6-8. Limitation of liability on landowners.

17-6-9. Enforcement.

17-6-10. Commissioner of public lands exempt.

17-6-11. Violations; penalty.

#### 17-6-1. Short title.

This act [17-6-1 to 17-6-11 NMSA 1978] may be cited as the "Habitat Protection Act".

**History:** 1953 Comp., § 53-6-1, enacted by Laws 1973, ch. 242, § 1.

#### 17-6-2. Definitions.

As used in the Habitat Protection Act:

- A. "commission" means the state game commission;
- B. "cross-country" means travel over the countryside other than by road;
- C. "vehicle" means any motor-powered mechanical device used for conveyance; and
- D. "road" means any maintained or unmaintained right-of-way that has been utilized by the public and includes roads, streets, highways and state scenic, recreation or historical trails.

**History:** 1953 Comp., § 53-6-2, enacted by Laws 1973, ch. 242, § 2.

#### 17-6-3. Restrictions on motor vehicle use; recommendations; rules and regulations.

A. When the commission determines that the operation of vehicles within a certain area is or may be damaging to wildlife reproduction, wildlife management or the wildlife habitat of the area, the department, with the concurrence of the private land owner or the land management agency involved, after proper notice, shall hold public meetings in the area affected, on the necessity and desirability of closing such lands to the operation of any vehicles for a stated definite period. Upon finding, after public meetings, that the use of vehicles on such lands is or may be damaging to wildlife reproduction or habitat and that it is necessary and desirable to close such lands to vehicles in order to avoid such damage, the commission shall make and publish an order closing such lands to vehicle operation except on established roads that are marked by appropriate signs.

B. The commission may also recommend to the appropriate land management agency or the legislature that particular areas of land be set aside or made available for recreational vehicles.

C. The commission may also enter into agreements with or recommend to public land management agencies that certain areas be closed to camping during particular open hunting seasons or that camping be permitted only in designated areas during such open hunting seasons.

D. The commission may enter into agreements with private land owners and land management agencies controlling areas that the commission has made recommendations on pursuant to Subsection B of this section. Any such agreement shall stipulate the restrictions, prohibitions and permitted uses of vehicles in such area and the duties of the commission and such private land owner or land management agency relating to the enforcement of the terms of such agreement. Agreements with private land owners may also include provisions for sharing costs of performing any of the functions as set forth in Section 17-6-7 NMSA 1978.

E. The commission shall adopt and file, in accordance with the State Rules Act [14-4-1 NMSA 1978], rules and regulations necessary to carry out the provisions of the Habitat Protection Act, including regulations setting out procedures for hearings and notice.

**History:** 1953 Comp., § 53-6-3, enacted by Laws 1973, ch. 242, § 3; 1975, ch. 66, § 1.

**Cross references.** — For Off-Highway Motor Vehicle Act, see 66-3-1001 to 66-3-1020 NMSA 1978.

#### **17-6-4. Notices of restrictions; posting; publication.**

A. For all areas closed to vehicles pursuant to Section 17-6-3 NMSA 1978, the commission shall cause notices of the restrictions, prohibitions or permitted uses of such areas to be posted prior to their effective date on the main traveled roads entering such areas and at such other locations as the commission deems appropriate.

B. In addition to the public meetings required by Section 17-6-3 NMSA 1978 and posted notices required by Subsection A of this section, the commission shall publish a notice of such restrictions, prohibitions or permitted uses, together with a description of the area, in a newspaper of general circulation in the area of the state affected, for three consecutive weeks prior to the effective date of such restrictions, prohibitions or permitted uses. Copies of the notices of restrictions, prohibitions or permitted uses together with a description or appropriate map of the area affected by the notices shall be made available to the public by the commission.

**History:** 1953 Comp., § 53-6-4, enacted by Laws 1973, ch. 242, § 4.

**Cross references.** — For destroying boundary markers, see 17-4-32 NMSA 1978.

#### **17-6-5. Prohibition against vehicle travel.**

It is unlawful for any person to drive a vehicle cross-country on lands where such cross-country driving is prohibited by rule or regulation. Conservation officers may issue citations to and may arrest any person violating the provisions of this section.

**History:** 1953 Comp., § 53-6-5, enacted by Laws 1973, ch. 242, § 5; 1975, ch. 86, § 2.

#### **17-6-6. Exceptions.**

The restrictions, prohibitions or permitted uses established pursuant to the Habitat Protection Act do not apply to:

- A. public employees acting in the scope of their employment;
- B. valid licensees, permittees, lessees or their assignees or designees, of state agencies or public land management agencies, when traveling in the areas or for the specific purposes for which such licenses, permits, leases, assignments or designations were issued or granted; and
- C. emergency situations such as fire or other disasters, or where necessary to protect life or property.

**History:** 1953 Comp., § 53-6-6, enacted by Laws 1973, ch. 242, § 6.

#### **17-6-7. Expenditure of funds; functions.**

The commission may expend such funds as become available from the game protection fund, state or federal grants or other sources to carry out the provisions of the Habitat Protection Act including, but not limited to:

- A. investigations and surveys of actual or possible wildlife habitat damage by vehicles and the study of areas to be recommended for recreational vehicle use;
- B. posting notices of restrictions, prohibitions and permitted use of vehicles;



- C. providing maps and other necessary information to the public;
- D. an informational and educational program on wildlife habitat preservation and restoration; or
- E. the enforcement of the provisions of the Habitat Protection Act.

**History:** 1953 Comp., § 53-6-7, enacted by Laws 1973, ch. 242, § 7.

### **17-6-8. Limitation of liability on landowners.**

No person or corporation, or their successors in interest, who has granted a right-of-way or easement across his land to the commission for use under the Habitat Protection Act shall be liable to any user of the land for injuries suffered on said right-of-way or easement unless the injuries are caused by the willful or wanton misconduct of the grantor.

**History:** 1953 Comp., § 53-6-8, enacted by Laws 1973, ch. 242, § 8.

### **17-6-9. Enforcement.**

All peace officers of the state, counties and municipalities and other duly authorized state authorities shall enforce the provisions of the Habitat Protection Act.

**History:** 1953 Comp., § 53-6-9, enacted by Laws 1973, ch. 242, § 9.

### **17-6-10. Commissioner of public lands exempt.**

Nothing contained in the Habitat Protection Act shall alter, change, restrict or diminish the rights, powers and duties of the commissioner of public lands in the administration, management, care and control of state trust lands as provided for by the Enabling Act and other applicable state statutes.

**History:** 1953 Comp., § 53-6-10, enacted by Laws 1973, ch. 242, § 10.

### **17-6-11. Violations; penalty.**

Any person who violates any provision of the Habitat Protection Act or any rule or regulation adopted pursuant thereto is guilty of a misdemeanor.

**History:** 1953 Comp., § 53-6-11, enacted by Laws 1973, ch. 242, § 11.

## **ARTICLE 7**

### **Shooting Range Fund**

Sec. 17-7-1. Short title. Sec. 17-7-3. Administration.  
17-7-2. Fund created.

#### **17-7-1. Short title.**

This act [17-7-1 to 17-7-3 NMSA 1978] may be cited as the "Shooting Range Fund Act".

**History:** 1953 Comp., § 53-7-1, enacted by Laws 1976 (S.S.), ch. 43, § 1.

## 17-7-2. Fund created.

There is created in the state treasury a special fund to be known as the "shooting range fund". All money appropriated to this fund or accruing to it as a result of gift, deposit or from other sources, except interest earned on the fund which shall be credited to the general fund, shall not be transferred to another fund or encumbered or disbursed in any manner except as provided in the Shooting Range Fund Act. Appropriated money in the fund shall not revert to the general fund. Money in the fund shall be used for construction or improvement of public shooting ranges pursuant to the Shooting Range Fund Act. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the director of the department of game and fish.

**History:** 1953 Comp., § 53-7-2, enacted by Laws 1976 (S.S.), ch. 43, § 2; 1977, ch. 247, § 163; 1989, ch. 324, § 11.

**The 1989 amendment**, effective April 7, 1989, deleted "investments" following "deposit" in the second sentence.

**Interest earned credited to shooting range fund, not state fund.** — Any interest earned on the investment of money in the shooting range fund must be credited to that fund, not the state general fund. 1980 Op. Att'y Gen. No. 80-17.

### ANNOTATIONS

**General rule is that interest is accretion or increment to principal fund earning it, and becomes a part of that fund.** 1980 Op. Att'y Gen. No. 80-17.

## 17-7-3. Administration.

A. The state game commission shall administer the provisions of the Shooting Range Fund Act and shall, pursuant to the State Rules Act [14-4-1 NMSA 1978], adopt such rules and regulations as deemed necessary to carry out the provisions of the Shooting Range Fund Act.

B. Rules and regulations shall include:

- (1) a method for the determination of a county or municipality eligibility for grants from the shooting range fund;
- (2) procedures for applications, approvals and rejections of grant proposals;
- (3) a requirement that a county or municipality contribute at least twenty-five percent of the cost necessary to complete a shooting range grant proposal;
- (4) a requirement that one-half of the local contribution required by Paragraph (3) of this subsection is to be money;
- (5) a requirement that a shooting range project shall be undertaken in accordance with specifications determined by the department of game and fish. Such specifications may provide for pistol, rifle, shotgun and archery facilities; and
- (6) provisions for the operation and maintenance of shooting range facilities.

C. Grants from the shooting range fund shall be awarded by the state game commission only for new public shooting range construction or for improvements to existing public shooting ranges. No funds shall be approved for maintenance of shooting ranges nor for shooting range renovation prior to 1980. No grant from the money appropriated to the shooting range fund shall exceed:

- (1) twenty-five percent of the cost of any one project; nor
- (2) more than ten percent of the amount appropriated to the shooting range fund by the Shooting Range Fund Act.

D. The state game commission may expend not more than five percent of the appropriated money in the shooting range fund each fiscal year for administrative purposes to carry out the provisions of the Shooting Range Fund Act.

**History:** 1953 Comp., § 53-7-3, enacted by Laws 1976 (S.S.), ch. 43, § 3.



## ARTICLE 8

### Sport Shooting Range

Sec.

17-8-1. Short title.

17-8-2. Purpose of act.

17-8-3. Definition.

17-8-4. Immunity from nuisance actions based on noise or noise pollution.

Sec.

17-8-5. Local government authority.

17-8-6. Exemptions.

#### 17-8-1. Short title.

This act [17-8-1 to 17-8-6 NMSA 1978] may be cited as the "Sport Shooting Range Act".

**History:** Laws 2002, ch. 72, § 1.

**Cross references.** — For municipal zoning regulations, see 3-21-1 to 3-21-26 NMSA 1978.

For abatement of a public nuisance, see 30-8-8 NMSA 1978.

#### 17-8-2. Purpose of act.

The purpose of the Sport Shooting Range Act is to protect the normal operation and use of sport shooting ranges by establishing when a person who owns, operates or uses a sport shooting range is liable for civil penalties.

**History:** Laws 2002, ch. 72, § 2.

#### 17-8-3. Definition.

As used in the Sport Shooting Range Act, a "sport shooting range" is an area designed and operated for the use of rifles, shotguns or pistols as a means of silhouette, skeet, trap, black powder or other sport shooting or firearms training.

**History:** Laws 2002, ch. 72, § 3.

#### 17-8-4. Immunity from nuisance actions based on noise or noise pollution.

A. The use or operation of a sport shooting range shall not be enjoined as a nuisance on the basis of noise or noise pollution:

(1) if the sport shooting range is in compliance with noise control statutes, rules or ordinances that apply to the range and its operation at the time that the initial operation of the range commenced;

(2) due to changes made to noise control statutes, rules or ordinances that apply to the sport shooting range and its operation, if the changes take effect after the initial operation of the range commenced; or

(3) if noise control statutes, rules or ordinances were not in effect at the time that the original operation of the sport shooting range commenced.

B. The use or operation of a sport shooting range may not be enjoined as a nuisance on the basis of noise or noise pollution by a person who acquires an interest in real property adversely affected by the normal operation and use of a sport shooting range that commenced operation prior to the time the person acquired the interest in real property.

**History:** Laws 2002, ch. 72, § 4.

### 17-8-5. Local government authority.

The provisions of the Sport Shooting Range Act shall not prohibit a local government from regulating the location and construction of sport shooting ranges after July 1, 2002.

**History:** Laws 2002, ch. 72, § 5.

### 17-8-6. Exemptions.

The provisions of the Sport Shooting Range Act do not apply:

- A. to recovery for an act or omission relating to recklessness, negligence, wanton misconduct or willful misconduct in the operation or use of a sport shooting range;
- B. to a nuisance action on the basis of trespass involving the operation or use of a sport shooting range;
- C. to the operation or use of a sport shooting range that substantially and adversely affects public health or public safety; or
- D. if there has been a substantial change in the primary use of a sport shooting range.

**History:** Laws 2002, ch. 72, § 6.

## ARTICLE 9

### Wildlife Corridors

Sec.

17-9-1. Short title.

17-9-2. Definitions.

Sec.

17-9-3. Wildlife corridors action plan; creation; department coordination.

17-9-4. Prioritized wildlife corridors project list; publication.

#### 17-9-1. Short title.

This act [17-9-1 through 17-9-4 NMSA 1978] may be cited as the "Wildlife Corridors Act".

**History:** Laws 2019, ch. 97, § 1.

**Effective dates.** — Laws 2019, ch. 97 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

#### 17-9-2. Definitions.

As used in the Wildlife Corridors Act:

- A. "human-caused barrier" means a road, culvert, commercial or residential development or other human-made structure that has the potential to affect the natural movement of wildlife across the landscape;
- B. "large mammal" includes mule deer, elk, pronghorn antelope, bighorn sheep, black bear and mountain lions;
- C. "species of concern" means a wildlife species identified by the department of game and fish as being adversely affected by habitat fragmentation exacerbated by human-caused barriers and the high potential of wildlife-vehicle collisions; and
- D. "wildlife corridors" means those areas used routinely by wildlife to travel through their habitat and includes corridors used by migrating wildlife.

**History:** Laws 2019, ch. 97, § 2.

**Effective dates.** — Laws 2019, ch. 97 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.



### 17-9-3. Wildlife corridors action plan; creation; department coordination.

A. The department of game and fish, in coordination with the department of transportation, shall create a state "wildlife corridors action plan".

B. The wildlife corridors action plan shall contain:

- (1) identification of existing highway crossings that pose a risk to successful wildlife migration or that pose a risk to the traveling public because large mammals use the crossing;
- (2) identification of other human-caused barriers, especially road segments that negatively affect wildlife habitat and movement;
- (3) information about the habitat and movement needs of species of concern with particular attention to large mammals or other species that pose a risk to the traveling public;
- (4) projections of anticipated effects that drought and other stressors will have on wildlife habitat, dispersal and movement;
- (5) information about the habitat quality needed to support and maintain viable populations of wildlife;
- (6) information about how increased movement of species could benefit overused and highly impacted habitat areas;
- (7) maps that identify locations of:
  - (a) existing populations of species of greatest concern;
  - (b) existing wildlife crossings; and
  - (c) areas requiring additional monitoring or research;
- (8) protocols for post-completion monitoring of wildlife corridors projects in order to assess their effectiveness in establishing, maintaining and promoting wildlife movements;
- (9) economic benefits anticipated from preserving wildlife movement patterns, including the potential impact of reduced wildlife-vehicle collisions;
- (10) opportunities to collaborate with and enter into joint powers agreements as provided in the Joint Powers Agreements Act [11-1-1 through 11-1-7 NMSA 1978] as necessary with New Mexico Indian nations, tribes or pueblos; relevant agencies or Indian nations, tribes or pueblos in neighboring states; and relevant federal agencies to protect wildlife corridors that cross state or tribal lines;
- (11) the wildlife corridors project list; and
- (12) additional information that the department of game and fish and the department of transportation deem necessary and appropriate to carry out the intent and purposes of the Wildlife Corridors Act.

C. The department of game and fish and the department of transportation shall consult with and actively seek the involvement of tribal governments in the development of the wildlife corridors action plan.

D. The initial wildlife corridors action plan shall be:

- (1) open for public comment before being finalized; provided that, once finalized, the department of game and fish and the department of transportation shall publish the initial action plan on their websites and shall submit the action plan to the governor and the legislature on or before January 15, 2020; and
- (2) updated at least every ten years and may be amended prior to a full update as new research and data become available or changes in conditions affecting wildlife and wildlife-human interactions arise.

E. The wildlife corridors action plan or the provisions of the Wildlife Corridors Act do not apply to private property or private property owners, unless private property owners choose to participate voluntarily.

**History:** Laws 2019, ch. 97, § 3.

**Effective dates.** — Laws 2019, ch. 97 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

#### 17-9-4. Prioritized wildlife corridors project list; publication.

A. As part of the wildlife corridors action plan, the department of game and fish and the department of transportation shall publish a prioritized "wildlife corridors project list" of projects to be undertaken.

B. The department of game and fish and the department of transportation shall prioritize projects within the wildlife corridors project list by assessing the following criteria, listed in order of importance:

- (1) the potential to reduce wildlife-vehicle collision and enhance safety to the traveling public;
- (2) the relative current population size of select large mammal species and species of concern or the value of proposed infrastructure that will improve wildlife corridors;
- (3) the feasibility and constructability of wildlife corridors infrastructure;
- (4) the potential costs and economics of wildlife corridors infrastructure, including benefits or other effects on local communities;
- (5) local community support for proposed wildlife corridors infrastructure;
- (6) the value of the project to native large mammals and other native species; and
- (7) surrounding land-use and ownership, especially tribal lands, and an evaluation of the need for conservation easements or other real estate instrument necessary to maintain the viability of a proposed wildlife corridor.

C. On an annual basis following the issuance of the first wildlife corridors project list, the department of game and fish and the department of transportation shall issue a report to the governor and the legislature stating the progress toward completing the enumerated projects as of the current fiscal year. The report shall represent progress toward completion of a project as a percentage, with a corresponding explanation for the represented number and plans for future progress.

**History:** Laws 2019, ch. 97, § 4.

**Effective dates.** — Laws 2019, ch. 97 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## ARTICLE 10

### Wildlife Trafficking

Sec.

17-10-1. Short title.

17-10-2. Definitions.

17-10-3. Prohibited acts.

Sec.

17-10-4. Exceptions.

17-10-5. Criminal and civil penalties.

17-10-6. Enforcement authority.

#### 17-10-1. Short title.

This act [17-10-1 to 17-10-6 NMSA 1978] may be cited as the "Wildlife Trafficking Act".

**History:** Laws 2020, ch. 77, § 1.

**Effective dates.** — Laws 2020, ch. 77, § 7 made Laws 2020, ch. 77, § 1 effective July 1, 2020.

#### 17-10-2. Definitions.

As used in the Wildlife Trafficking Act:

A. "covered animal part or product" means any portion of a covered animal species; any item that contains, is advertised as containing or is wholly or partially made from a part that comes from a covered animal species; or shark fins;

B. "covered animal species" means any extant species of elephant, lion, rhinoceros or other species covered by Appendix 1 of the Convention on International Trade in Endangered Species of Wild Fauna and Flora;



C. "distribute" means either a change in possession for consideration or a change in legal ownership;

D. "educational or scientific institution" means an institution that has an educational or scientific tax exemption from the federal internal revenue service or the institution's national or state tax authority;

E. "sell" includes bartering for, exchanging, trading or possessing with the intent to sell and each such transaction made by any person, with or without remuneration, including any intra-state sale through the internet; and

F. "total value of the covered animal species or covered animal part or product" means the fair market value of such part or product, the price at which the part or product was offered for sale or the actual price paid for the part or product, whichever is greater.

**History:** Laws 2020, ch. 77, § 2. **Effective dates.** — Laws 2020, ch. 77, § 7 made Laws 2020, ch. 77, § 2 effective July 1, 2020.

### 17-10-3. Prohibited acts.

A. Except as provided in Section 4 [17-10-4 NMSA 1978] of the Wildlife Trafficking Act, it is unlawful for a person to knowingly sell or purchase any covered animal species or covered animal part or product.

B. The act of obtaining an appraisal of any covered animal species or covered animal part or product alone does not constitute possession with intent to sell.

**History:** Laws 2020, ch. 77, § 3. **Effective dates.** — Laws 2020, ch. 77, § 7 made Laws 2020, ch. 77, § 3 effective July 1, 2020.

### 17-10-4. Exceptions.

It is not a violation of Section 3 [17-10-3 NMSA 1978] of the Wildlife Trafficking Act if any of the following conditions are satisfied:

A. the covered animal part or product is a fixed component of an antique product that is not made wholly or primarily of covered animal parts or products; provided that the antique status is established by the owner or seller with evidence proving origin and showing that:

(1) the covered animal part or product is more than one hundred years old;

(2) the total weight of the covered animal part or product is less than two hundred grams;

and

(3) at least fifty percent of the value of the antique product does not stem from the covered animal part or product;

B. the covered animal part or product is a component of a gun or musical instrument, including stringed instruments and bows, wind and percussion instruments and pianos;

C. the covered animal species or covered animal part or product is lawfully possessed by an enrolled member of a federally recognized Indian nation, tribe or pueblo for traditional, cultural or religious purposes;

D. the owner distributed the covered animal species or covered animal part or product to an educational or scientific institution, and such institution establishes, through evidence, that it is in compliance with all federal laws regulating the covered animal species or covered animal part or product;

E. the noncommercial transfer of ownership of the covered animal species or covered animal part or product is to a legal beneficiary of an estate, trust or other inheritance upon the death of the owner of the covered animal species or covered animal part or product or is a gift;

F. the sale, trade or purchase of the covered animal species or covered animal part or product is authorized by the Convention on International Trade in Endangered Species of Wild Fauna and Flora or by federal or state law or permit; or

G. the alleged violation of a provision of Section 3 of the Wildlife Trafficking Act is by an employee or agent of a federal, state or local law enforcement agency who is operating in the employee's or agent's official capacity as a federal, state or local law enforcement officer.

**History:** Laws 2020, ch. 77, § 4.

**Effective dates.** — Laws 2020, ch. 77, § 7 made Laws 2020, ch. 77, § 4 effective July 1, 2020.

### 17-10-5. Criminal and civil penalties.

A. A person who violates Section 3 [17-10-3 NMSA 1978] of the Wildlife Trafficking Act is guilty of a misdemeanor and upon conviction shall be punished pursuant to the provisions of Section 31-19-1 NMSA 1978.

B. Each covered animal species or covered animal part or product sold or purchased in violation of Section 3 of the Wildlife Trafficking Act is a separate offense. Two or more offenses may be charged in the same complaint, information or indictment and punished as separate offenses for each covered animal species or covered animal part or product involved.

C. With or without a criminal conviction, a person who violates Section 3 of the Wildlife Trafficking Act and anyone who benefited or would have benefited from the violation may be sued in district court and is subject to a penalty not to exceed ten thousand dollars (\$10,000) or three times the total value of the covered animal species or covered animal part or product, whichever is greater.

D. Upon conviction in a criminal court or a finding in a civil court for a violation of Section 3 of the Wildlife Trafficking Act, the court shall order that the covered animal species or covered animal part or product be:

- (1) given to the United States fish and wildlife service, if requested by that agency;
- (2) destroyed; or
- (3) donated to an educational or scientific institution.

**History:** Laws 2020, ch. 77, § 5.

**Effective dates.** — Laws 2020, ch. 77, § 7 made Laws 2020, ch. 77, § 5 effective July 1, 2020.

### 17-10-6. Enforcement authority.

A. The criminal enforcement provisions of the Wildlife Trafficking Act may be enforced by any commissioned law enforcement officer, including an officer employed by the department of game and fish and the state parks division of the energy, minerals and natural resources department.

B. The civil enforcement provision of the Wildlife Trafficking Act may be enforced by any agency or political subdivision of the state that employs commissioned law enforcement officers or by any person authorized by the attorney general.

**History:** Laws 2020, ch. 77, § 6.

**Effective dates.** — Laws 2020, ch. 77, § 7 made Laws 2020, ch. 77, § 6 effective July 1, 2020.

## ARTICLE 11

### Wildlife Conservation and Public Safety

Sec. 17-11-1. Short title. Sec.

17-11-2. Definitions. 17-11-4. Exceptions.

17-11-3. Prohibitions on public land. 17-11-5. Penalties.



### 17-11-1. Short title.

Chapter 17, Article 11 NMSA 1978 may be cited as the "Wildlife Conservation and Public Safety Act".

**History:** 1978 Comp., § 17-11-1, enacted by Laws 2021, ch. 25, § 1.

**Effective dates.** — Laws 2021, ch. 25, § 6 made Laws 2021, ch. 25, § 1 effective April 1, 2022.

### 17-11-2. Definitions.

As used in the Wildlife Conservation and Public Safety Act:

A. "bona fide scientific research" means a research project that is not being conducted for commercial gain from the sale of animal parts and that is conducted by employees or contractors of the department or authorized by a scientific collection permit from the department;

B. "cage trap" means a trap that captures a live animal but does not grip an animal's body or body part and is not intended to kill the animal, including a live trap, a cage or box trap, a colony trap, a net and a suitcase-type live beaver trap, but does not include a corral;

C. "department" means the department of game and fish;

D. "depredation trapping" means the act of setting traps, snares or poisons on public land to reduce or prevent damage caused by wildlife to property or waterways, including harvested and stored crops and livestock;

E. "domestic animal" means any animal that is bred for and is typically subject to human control;

F. "ecosystem management" means actions that are necessary to maintain or increase the long-term sustainability and integrity of an entire system of living wildlife and their environment, including the restoration and conservation of wildlife populations and habitat, wildlife relocation, medical treatment of wildlife and the protection of threatened or endangered species;

G. "feral animal" means a domestic animal existing in an untamed state outside captivity or domestication and not under human control;

H. "government entity" means a local, state or federal government body or agency, a political subdivision of the state or an employee, agent or representative of the body, agency or political subdivision when acting within the scope of its governmental duties, but does not include an Indian nation, tribe or pueblo;

I. "leghold trap" means a spring-actuated device, either padded or unpadded, designed to capture an animal by the foot, leg or other limb, including a steel-jawed leghold trap, a padded-jaw leghold trap, a foot-hold trap, an egg trap, a duffer trap and all other similar traps;

J. "lethal body-gripping trap" means a rotating jaw trap designed to capture an animal by the body that is intended to fatally crush or otherwise kill the animal and includes conibear traps and all other similar traps;

K. "public land" means state-owned land, state-leased land, lands held in trust by the state, lands administered by the United States fish and wildlife service, the United States forest service, the federal bureau of land management, the national park service, the United States department of defense, state parks and any county or municipality, but does not include the interior of physical structures or land belonging to or held in trust for an Indian nation, tribe or pueblo;

L. "snare" means a wire or cable with a single closing device, often with a noose, with or without stops, that is used to capture, strangle or otherwise entangle an animal, but does not include use of a catch pole, leash or tether lawfully used by a person to temporarily restrain or relocate an animal;

M. "trap" includes a leghold trap, lethal body-gripping trap or cage trap;

N. "wildlife" means a member of a vertebrate species that is native to or found in New Mexico that is not under the direct control of a human or in captivity, but does not include a feral or escaped domestic animal; and

O. "wildlife poison" means an explosive compound or deleterious substance used in a manner intended to kill wildlife.

**History:** 1978 Comp., § 17-11-2, enacted by Laws 2021, ch. 25, § 2.

**Effective dates.** — Laws 2021, ch. 25, § 6 made Laws 2021, ch. 25, § 2 effective April 1, 2022.

### 17-11-3. Prohibitions on public land.

It is a violation of the Wildlife Conservation and Public Safety Act to use a trap, snare or wildlife poison for purposes of capturing, injuring or killing an animal on public land except as provided in Section 17-11-4 NMSA 1978.

**History:** 1978 Comp., § 17-11-3, enacted by Laws 2021, ch. 25, § 3.

**Effective dates.** — Laws 2021, ch. 25, § 6 made Laws 2021, ch. 25, § 3 effective April 1, 2022.

### 17-11-4. Exceptions.

The provisions of the Wildlife Conservation and Public Safety Act do not apply to:

- A. the taking of wildlife with firearms, fishing equipment, archery equipment, falconry equipment or other implements in hand, when used as authorized by law;
- B. the taking or control of birds, fish or rodents not defined as furbearers in Section 17-5-2 NMSA 1978;
- C. a government entity acting in the course of its official duties to prevent or mitigate actual threats to human health and safety;
- D. ecosystem management conducted by the department, the United States fish and wildlife service or a conservancy district of the state or its employee, agent or representative acting in the course of its official duties;
- E. bona fide scientific research;
- F. depredation trapping conducted by the department or a designated agent of the department using non-lethal traps or non-lethal snares, but only when accompanied by visible signs at the location of each device notifying the public of the presence of such devices;
- G. the use of cage traps to recover or to provide veterinary care or husbandry to a domestic animal or feral animal as authorized by law, or to abate damages caused by any animal to property, crops or livestock; provided that:
  - (1) once the damage has been abated, use of the cage trap shall cease; and
  - (2) any captured animal is disposed of in accordance with rules established by the department or appropriate animal agency; or
- H. enrolled members of a federally recognized Indian nation, tribe or pueblo when trapping is conducted solely for religious or ceremonial purposes pursuant to rules issued by the department of game and fish in collaboration with the secretary of Indian affairs and consistent with federal procedures for recognition and protection of bona fide Indian nation, tribe or pueblo religious ceremonies.

**History:** 1978 Comp., § 17-11-4, enacted by Laws 2021, ch. 25, § 4.

**Effective dates.** — Laws 2021, ch. 25, § 6 made Laws 2021, ch. 25, § 4 effective April 1, 2022.

### 17-11-5. Penalties.

- A. A person who violates the Wildlife Conservation and Public Safety Act is guilty of a misdemeanor. Each individual trap, snare or application of wildlife poison shall constitute a single violation of that act.
- B. Any penalties under this section shall be cumulative to any other available penalties provided by law.
- C. In addition to other penalties, upon conviction, the court may consider appropriate restitution to a state agency that incurs costs in enforcing the Wildlife Conservation and Public Safety Act.

**History:** 1978 Comp., § 17-11-5, enacted by Laws 2021, ch. 25, § 5.

**Effective dates.** — Laws 2021, ch. 25, § 6 made Laws 2021, ch. 25, § 5 effective April 1, 2022.



## CHAPTER 18

### Libraries, Museums and Cultural Properties

#### Art.

1. Supreme Court Law Library, Repealed
2. State Library Commission, 18-2-1 to 18-2-23
3. State Museums and Societies, 18-3-1 to 18-3-18
- 3A. Natural History Museum, 18-3A-1 to 18-3A-9.1
4. Old Lincoln County Memorial, 18-4-1 to 18-4-6
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- 6A. Cultural Properties Protection, 18-6A-1 to 18-6A-6
7. Museum of Space History, 18-7-1 to 18-7-5
8. Prehistoric and Historic Sites Preservation, 18-8-1 to 18-8-8
9. Library Privacy, 18-9-1 to 18-9-6
10. Abandoned Cultural Properties, 18-10-1 to 18-10-5
11. Farm and Ranch Heritage Museum, 18-11-1 to 18-11-10
12. Hispanic Cultural Center, 18-12-1 to 18-12-9
13. Historic Landscapes, 18-13-1 to 18-13-7
14. Film Museum, 18-14-1 to 18-14-6
15. Rural Library Development Act, Repealed
16. Music Commission, 18-16-1 to 18-16-4
17. Veterans Museum, 18-17-1 to 18-17-8
18. Rural Library Development, 18-18-1 to 18-18-4

## ARTICLE 1

### Supreme Court Law Library

#### Sec.

- 18-1-1. Repealed.  
18-1-2. Repealed.  
18-1-3. Repealed.  
18-1-4. Repealed.  
18-1-5. Repealed.  
18-1-6. Recompiled.

#### Sec.

- 18-1-7. Repealed.  
18-1-8. Repealed.  
18-1-9. Repealed.  
18-1-10. Recompiled.  
18-1-11. Recompiled.  
18-1-12. Repealed.

#### 18-1-1. Repealed.

**Repeals.** — Laws 2018, ch. 39, § 10 repealed 18-1-1 NMSA 1978, as enacted by Laws 1915, ch. 47, § 1, relating to board of trustees, membership, effective July 1, 2018.

For provisions of former section, see the 2017 NMSA 1978 on *NMOneSource.com*.

#### 18-1-2. Repealed.

**Repeals.** — Laws 2018, ch. 39, § 10 repealed 18-1-2 NMSA 1978, as enacted by Laws 1915, ch. 47, § 2, relating to supreme court law library board of trustees, chairman

and secretary, effective July 1, 2018. For provisions of former section, see the 2017 NMSA 1978 on *NMOneSource.com*.

#### 18-1-3. Repealed.

**Repeals.** — Laws 2018, ch. 39, § 10 repealed 18-1-3 NMSA 1978, as enacted by Laws 1915, ch. 47, § 3, relating to power to prescribe rules and regulations, effective

July 1, 2018. For provisions of former section, see the 2017 NMSA 1978 on *NMOneSource.com*.

#### 18-1-4. Repealed.

**Repeals.** — Laws 2018, ch. 39, § 10 repealed 18-1-4 NMSA 1978, as enacted by Laws 1915, ch. 47, § 4, relating to duties, purchase of books and management of affairs,

effective July 1, 2018. For provisions of former section, see the 2017 NMSA 1978 on *NMOneSource.com*.

#### 18-1-5. Repealed.

**Repeals.** — Laws 2018, ch. 39, § 10 repealed 18-1-5 NMSA 1978, as enacted by Laws 1966, ch. 28, § 16, relating to law library board, publishing opinions of supreme

court, effective July 1, 2018. For provisions of former section, see the 2017 NMSA 1978 on *NMOneSource.com*.

#### 18-1-6. Recompiled.

**Recompilations.** — Laws 2018, ch. 39, § 2 recompiled and amended former 18-1-6 NMSA 1978 as 34-2-12 NMSA 1978, effective July 1, 2018.

#### 18-1-7. Repealed.

**Repeals.** — Laws 2018, ch. 39, § 10 repealed 18-1-7 NMSA 1978, as enacted by Laws 1915, ch. 47, § 6, relating to librarian, appointment by board, custody of property,

effective July 1, 2018. For provisions of former section, see the 2017 NMSA 1978 on *NMOneSource.com*.

#### 18-1-8. Repealed.

**Repeals.** — Laws 2018, ch. 39, § 10 repealed 18-1-8 NMSA 1978, as enacted by Laws 1915, ch. 47, § 7, relating to bond of librarian, approval, effective July 1, 2018. For

provisions of former section, see the 2017 NMSA 1978 on *NMOneSource.com*.

#### 18-1-9. Repealed.

**Repeals.** — Laws 2018, ch. 39, § 10 repealed 18-1-9 NMSA 1978, as enacted by Laws 1915, ch. 47, § 9, relating to unauthorized removal of books or property, criminal

liability of librarian, effective July 1, 2018. For provisions of former section, see the 2017 NMSA 1978 on *NMOneSource.com*.

#### 18-1-10. Recompiled.

**Recompilations.** — Laws 2018, ch. 39, § 4 recompiled and amended former 18-1-10 NMSA 1978 as 34-2-14 NMSA 1978, effective July 1, 2018.

#### 18-1-11. Recompiled.

**Recompilations.** — Laws 2018, ch. 39, § 5 recompiled and amended former 18-1-11 NMSA 1978 as 34-2-15 NMSA 1978, effective July 1, 2018.

#### 18-1-12. Repealed.

**Repeals.** — Laws 2018, ch. 39, § 10 repealed 18-1-12 NMSA 1978, as enacted by Laws 1939, ch. 4, § 1, relating to trade, barter and exchange of books and periodicals,

powers of board of trustees, effective July 1, 2018. For provisions of former section, see the 2017 NMSA 1978 on *NMOneSource.com*.



## ARTICLE 2

### State Library Commission

Sec.		Sec.	
18-2-1.	State library commission created.	18-2-12.	Grade II certificate.
18-2-2.	State library commission; duties.	18-2-13.	Temporary certificates.
18-2-3.	Library division; creation; director.	18-2-14.	Applications; who may apply.
18-2-4.	Duties of the state librarian.	18-2-15.	Certificates required.
18-2-4.1.	State publications; copies required.	18-2-16.	Fees.
18-2-5.	State library administrative agency.	18-2-17.	Libraries receiving public funds; compliance required.
18-2-6.	Organization; officers.	18-2-18.	List of certificated librarians.
18-2-7.	Construction of provisions of act.	18-2-19.	Short title.
18-2-7.1.	Distribution system; limitation.	18-2-20.	Execution of compact.
18-2-8.	Certification of librarians.	18-2-21.	Compact administrator.
18-2-9.	Types of certificates.	18-2-22.	Agreements.
18-2-10.	Permanent professional certificate.	18-2-23.	Fund created; administration; purpose.
18-2-11.	Grade I certificate.		

#### 18-2-1. State library commission created.

There is created a "New Mexico state library commission," composed of five members, which shall have its headquarters at the state capitol. Four members of the commission shall be appointed by the governor from among resident citizens of the state interested in and informed with regard to library conditions, the appointees insofar as practicable to represent different sections of the state. Two of the members shall be originally appointed for a term of two years; one member shall be originally appointed for a term of four years; and one member shall be originally appointed for a term of six years. After the expiration of the original appointments, all appointments shall be for terms of six years. The fifth member of the commission shall be a member of the state board of education chosen by vote of the board's membership. The term of the fifth member shall be for so long as he serves on the state board of education, but not to exceed six years. At least one member of the commission shall be a professionally trained librarian. Members of the commission shall be entitled to per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] while engaged in the performance of their official duties for the commission.

**History:** Laws 1941, ch. 129, § 1; 1941 Comp., § 3-801; 1953 Comp., § 4-11-1; Laws 1961, ch. 126, § 1; 1975, ch. 34, § 1.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 81A C.J.S. States §§ 144, 147.

#### 18-2-2. State library commission; duties.

The New Mexico state library commission shall provide advice, upon request, to the state librarian on:

- A. matters germane to the powers and duties of the library division or the state library; and
- B. any other matters related to libraries.

**History:** 1953 Comp., § 4-11-2, enacted by Laws 1977, ch. 246, § 9.

**Repeals and reenactments.** — Laws 1977, ch. 246, § 9, repeals 4-11-2, 1953 Comp., relating to the creation of the state library, and enacted a new section.

#### 18-2-3. Library division; creation; director.

- A. The "library division" is created within the cultural affairs department.
- B. Subject to the authority of the secretary of cultural affairs, the administrative and executive head of the library division is the "state librarian". The state librarian shall be appointed by the secretary.

**History:** 1953 Comp., § 4-11-3, enacted by Laws 1977, ch. 246, § 10; 1980, ch. 151, § 22; 2004, ch. 25, § 11.

**Repeals and reenactments.** — Laws 1961, ch. 126, § 3, repealed a former 4-11-3, 1953 Comp., relating to the duties and function of the state library commission, and enacted a new 4-11-3, 1953 Comp.

Laws 1977, ch. 246, § 10, repeals a former 4-11-3, 1953 Comp., relating to duties and functions of the state library commission, and enacted a new 4-11-3, 1953 Comp.

**The 2004 amendment,** effective May 19, 2004, changed "office of cultural affairs" to "cultural affairs department" and changed "state cultural affairs officer" to "secretary of cultural affairs".

## 18-2-4. Duties of the state librarian.

### A. The state librarian shall:

- (1) administer the state library;
- (2) administer grants-in-aid and encourage local library service and generally promote an effective statewide library system;
- (3) make studies and surveys of public library needs;
- (4) supply advice and information to existing libraries and aid in the establishment of new libraries;
- (5) obtain each year, from all libraries in the state, reports showing the conditions, growth and development together with such other facts and statistics regarding them as are of public interest;
- (6) cooperate with other educational services and governmental agencies of the state and with library agencies of other states and with national library agencies;
- (7) cooperate with the administrative services division of the cultural affairs department in preparing the budget for the state library;
- (8) administer the library extension service;
- (9) make rules and regulations necessary to administer the library division as provided by law and to perform other duties as provided by law; and
- (10) establish and administer a library depository and distribution system for state documents and publications.

B. The state librarian may solicit and receive funds or property, including federal funds and public and private grants, for programs and activities administered by the state librarian.

**History:** 1953 Comp., § 4-11-3.1, enacted by Laws 1961, ch. 126, § 4; 1977, ch. 246, § 11; 1978, ch. 140, § 1; 2018, ch. 23, § 1.

**Cross reference.** — For powers and duties of state libraries relating to rural libraries and other services, see 22-9-9 NMSA 1978.

**The 2018 amendment,** effective May 16, 2018, authorized the state librarian to solicit and receive funds or property, including federal funds and public and private grants, for programs and activities administered by the state librarian; designated the former undesignated introductory clause as Subsection A and redesignated former Subsections A through J as Paragraphs A(1) through A(10), respectively; in Paragraph A(7), after "services

division", added "of the cultural affairs department"; and added a new Subsection B.

### ANNOTATIONS

**Conflict with federal law.** — Section 18-2-7 NMSA 1978, which has a limiting effect on this section, is in conflict with the requirements of the federal Library Services and Construction Act, § 203(a), (Pub. L. No. 269, 88th Cong., 2nd Sess., Feb. 11, 1964 (repealed in 1996)), if the boards or agencies that control the local public libraries of New Mexico have a different policy of supervision than that required by the Library Services and Construction Act. 1964 Op. Att'y Gen. No. 64-51.

## 18-2-4.1. State publications; copies required.

A. Unless otherwise directed by the state librarian, every state agency shall deposit at least twenty-five copies of all its publications intended for public distribution, when issued, with the state library depository for depository and distribution purposes, excluding those publications issued strictly for internal use.

B. The state librarian shall determine the number of copies of regularly issued publications required to meet the needs of the various libraries in the state and shall inform the affected agencies of the exact number of copies required.

**History:** 1953 Comp., § 4-11-3.2, enacted by Laws 1978, ch. 140, § 2; 1987, ch. 40, § 2.



## 18-2-5. State library administrative agency.

The library division of the office of cultural affairs is designated a state library administrative agency and is empowered to accept gifts or grants of any nature from federal, state, county, local or private agencies for the purpose of carrying on its work. Any grant of money so received shall be deposited in the state treasury to the credit of the library division and shall be used only for the purpose for which it is given or granted.

**History:** Laws 1941, ch. 129, § 3; 1941 Comp., § 3-804; 1953 Comp., § 4-11-4; Laws 1961, ch. 126, § 5; 1977, ch. 246, § 12; 1980, ch. 151, § 23.

## 18-2-6. Organization; officers.

The commission shall organize by electing a chairman and a vice chairman from its membership.

**History:** Laws 1941, ch. 129, § 4; 1941 Comp., § 3-805; 1953 Comp., § 4-11-5; Laws 1961, ch. 126, § 6; 1977, ch. 246, § 13.

## 18-2-7. Construction of provisions of act.

The provisions of this act shall not divest any state, county, municipal or other governing board or agency of its control and supervision of any library under its jurisdiction, except as the provisions of this act apply to the control and management of the state library. Specifically, nothing herein is intended to alter or amend the provisions of Sections 18-1-1 through 18-1-12 NMSA 1978.

**History:** Laws 1941, ch. 129, § 5; 1941 Comp., § 3-806; 1953 Comp., § 4-11-6; Laws 1961, ch. 126, § 7.

**Meaning of "this act".** — The term "this act," referred to near the beginning of this section, first appears in Laws 1941, Chapter 129, which is presently compiled as 18-2-1, 18-2-5 and 18-2-6 NMSA 1978 and this section.

The term also appears in Laws 1961, Chapter 126, which is presently compiled as 18-2-1, 18-2-4, 18-2-5, 18-2-6, 22-9-7 to 22-9-10 and 22-9-12 NMSA 1978 and this section.

### ANNOTATIONS

**Conflict with federal law.** — This section, which has a limiting effect on 18-2-4 NMSA 1978, is in conflict with the requirements of the federal Library Services and Construction Act, § 203(a), (Pub. L. No. 269, 88th Cong., 2nd Sess., Feb. 11, 1964 (repealed in 1996)), if the boards or agencies that control the local public libraries of New Mexico have a different policy of supervision than that required by the Library Services and Construction Act, 1964 Op. Att'y Gen. No. 64-51.

The limitation expressly defined by this section conflicts with Section 130.3(b) of the proposed regulations to the federal Library Services and Construction Act (repealed in 1996), which provides that to the extent that locally controlled public libraries participate in a plan for services or construction, their administration of activities under such a plan must be under the supervision of the state agency. 1964 Op. Att'y Gen. No. 64-51.

**And resolution thereof.** — The conflicts between this section and the Library Services and Construction Act, § 203, (Pub. L. No. 269, 88th Cong., 2nd Sess., Feb. 11, 1964 (repealed in 1996)) and § 130.3(b) of the proposed regulations under the federal act can be resolved by a contractual arrangement whereby the local public libraries agree to divest themselves of control and supervision to the extent that the New Mexico plan may be approved under the Library Services and Construction Act, § 203. 1964 Op. Att'y Gen. No. 64-51.

### 18-2-7.1. Distribution system; limitation.

The state library depository shall not engage in the direct distribution of state publications to the general public except in those cases where the state library does so in the course of operating as a library or a state extension service.

**History:** 1953 Comp., § 4-11-6.1, enacted by Laws 1978, ch. 140, § 3.

## 18-2-8. Certification of librarians.

The state librarian is hereby authorized to issue certificates to librarians. He shall have authority to prescribe and hold examinations, or require submission of credentials to establish the

qualifications of those seeking certificates as librarians, and to issue certificates of librarianship to qualified persons, in accordance with such reasonable rules and regulations as he may provide.

**History:** 1941 Comp., § 3-807, enacted by Laws 1947, ch. 91, § 1; 1953 Comp., § 4-11-7; Laws 1977, ch. 246, § 14.

### 18-2-9. Types of certificates.

The types of certificates issued by the state librarian shall be:

- A. permanent professional librarian;
- B. grade I librarian;
- C. grade II librarian; and
- D. temporary librarian.

**History:** 1953 Comp., § 4-11-8, enacted by Laws 1963, ch. 283, § 1; 1977, ch. 246, § 15.

**Repeals and reenactments.** — Laws 1963, ch. 283, § 1, repealed former 4-11-8, 1953 Comp., relating to

applications for librarian certificates, and the granting of same, and enacted a new 4-11-8, 1953 Comp.

### 18-2-10. Permanent professional certificate.

A permanent professional librarian's certificate shall be issued without examination to an applicant, otherwise qualified under the rules and regulations of the state librarian who is a graduate of a library school accredited by the American library association.

**History:** 1953 Comp., § 4-11-8.1, enacted by Laws 1963, ch. 283, § 2; 1977, ch. 246, § 16.

### 18-2-11. Grade I certificate.

A. A grade I librarian's certificate shall be issued to an applicant without examination when:

(1) the applicant meets the minimum educational requirements established by the rules and regulations of the state librarian, which shall require completion of a minimum number of years of undergraduate work plus a minimum number of semester hours of library science courses in an institution accredited by its state department of education or a regional accrediting agency; and

(2) the applicant demonstrates ability to perform the duties of a grade I librarian ably and efficiently.

B. A grade I librarian's certificate shall be issued by examination to an applicant who lacks the minimum educational requirements for a grade I certificate, and who:

- (1) demonstrates ability to perform the duties of a grade I librarian ably and efficiently; and
- (2) successfully passes the examination given by the state librarian for a grade I certificate.

**History:** 1953 Comp., § 4-11-8.2, enacted by Laws 1963, ch. 283, § 3; 1977, ch. 246, § 17.

### 18-2-12. Grade II certificate.

A. A grade II librarian's certificate shall be granted to an applicant without examination when the applicant is a graduate of a college or university accredited by its state department of education or a regional accrediting agency, and has a major in library science or has completed a minimum of twenty-one semester hours of library science courses beyond the requirements of a grade I certificate.

B. A grade II librarian's certificate shall be granted by examination to an applicant who lacks the educational requirements for a grade II certificate, and who:



- (1) demonstrates ability to perform the duties of a grade II librarian ably and efficiently; and
- (2) successfully passes the examination given by the state librarian for a grade II certificate.

**History:** 1953 Comp., § 4-11-8.3, enacted by Laws 1963, ch. 283, § 4; 1977, ch. 246, § 18.

### 18-2-13. Temporary certificates.

A. The state librarian shall issue a temporary certificate without examination to an applicant who is unqualified for any other type of librarian certificate when the state librarian receives written recommendation for the issuance of a temporary certificate for the applicant from the library board or governing body concerned which states that no qualified applicant is available for the position.

B. Temporary librarian's certificates shall be issued for all grades and are valid only for one year, but may be renewed or extended for one-year periods upon written recommendation from the library board or governing body concerned stating that no qualified applicant is available for the position.

**History:** 1953 Comp., § 4-11-8.4, enacted by Laws 1963, ch. 283, § 5; 1977, ch. 246, § 19.

### 18-2-14. [Applications; who may apply.]

Any person who is actively engaged in, or who expects to engage actively in library service may apply for a certificate, either with or without examination, and if found competent and qualified shall be granted the certificate so applied for, in the manner and upon the payment of the fees provided for in this act [18-2-8, 18-2-14, 18-2-17, 18-2-18 NMSA 1978].

**History:** 1941 Comp., § 3-809, enacted by Laws 1947, ch. 91, § 4; 1953 Comp., § 4-11-9.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 18-2-15. Certificates required.

A. A permanent professional librarian's certificate is required for the chief librarian of any library:

- (1) supported in whole or in part by public funds, and serving a municipality or other political subdivision having a population in excess of fifteen thousand persons as shown by the last federal decennial census; or
- (2) of any state agency or state-supported institution.

B. A grade I librarian's certificate is required for the chief librarian of any library, supported in whole or in part by public funds, serving a municipality or other political subdivision having a population of at least three thousand, but not more than ten thousand persons, as shown by the last federal decennial census.

C. A grade II librarian's certificate is required for the chief librarian of any library, supported in whole or in part by public funds, serving a municipality or other political subdivision having a population of at least ten thousand and one, but not more than fifteen thousand persons, as shown by the last federal decennial census.

D. The provisions of this section do not apply to libraries of public schools or county law libraries.

**History:** 1953 Comp., § 4-11-10, enacted by Laws 1963, ch. 283, § 6.

**Repeals and reenactments.** — Laws 1963, ch. 283, § 6, repeals 4-11-10, 1953 Comp., relating to temporary librarian certificates, and enacted a new section.

**18-2-16. Fees.**

A. The fee for any certificate provided for in Section 18-2-9 NMSA 1978 may be prescribed by the state librarian, but the minimum fee for a certificate issued without examination shall be five dollars (\$5.00) and the minimum fee for a certificate issued by examination shall be ten dollars (\$10.00).

B. All fee money shall be deposited in the general fund.

**History:** 1953 Comp., § 4-11-11, enacted by Laws 1963, ch. 283, § 7; 1977, ch. 246, § 20.

**Repeals and reenactments.** — Laws 1963, ch. 283, § 7, repealed former 4-11-11, 1953 Comp., relating to

application fees for librarian certificates, and enacted a new 4-11-11, 1953 Comp.

**18-2-17. [Libraries receiving public funds; compliance required.]**

No public funds shall be paid to any library failing to comply with the provisions of this act [18-2-8, 18-2-14, 18-2-17, 18-2-18 NMSA 1978].

**History:** 1941 Comp., § 3-813, enacted by Laws 1947, ch. 91, § 8; 1953 Comp., § 4-11-13.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**18-2-18. List of certificated librarians.**

The library division of the office of cultural affairs shall issue annually a list of all persons holding librarians' certificates.

**History:** 1941 Comp., § 3-814, enacted by Laws 1947, ch. 91, § 9; 1953 Comp., § 4-11-14; Laws 1977, ch. 246, § 21; 1980, ch. 151, § 24.

**18-2-19. Short title.**

This act [18-2-19 through 18-2-22 NMSA 1978] may be cited as the "Interstate Library Compact Act".

**History:** 1953 Comp., § 4-11-15, enacted by Laws 1969, ch. 20, § 1.

**Compiler's notes.** — Of the states bordering New Mexico, Colorado and Oklahoma have enacted an Interstate Library Compact Act.

**18-2-20. Execution of compact.**

The interstate library compact is hereby enacted into law and is entered into on behalf of this state with any state bordering on New Mexico which legally joins therein in substantially the following form:

**INTERSTATE LIBRARY COMPACT**

The contracting states agree that:

**ARTICLE I - PURPOSE**

Because the desire for the services provided by public libraries transcends governmental boundaries and can be provided most effectively by giving such services to communities of people regardless of jurisdictional lines, it is the policy of the states who are parties to this compact to cooperate and share their responsibilities in providing joint and cooperative library services in areas where the distribution of population makes the provision of library service on an interstate basis the most effective way to provide adequate and efficient services.



## ARTICLE II - PROCEDURE

The appropriate officials and agencies of the party states or any of their political subdivisions may, on behalf of said states or political subdivisions, enter into agreements for the cooperative or joint conduct of library services when they shall find that the executions of agreements to that end as provided herein will facilitate library services.

## ARTICLE III - CONTENT

Any such agreement for the cooperative or joint establishment, operation or use of library services, facilities, personnel, equipment, materials or other items not excluded because of failure to enumerate shall, as among the parties of the agreement: (1) detail the specific nature of the services, facilities, properties or personnel to which it is applicable; (2) provide for the allocation of costs and other financial responsibilities; (3) specify the respective rights, duties, obligations and liabilities; (4) stipulate the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriate to the proper effectuation and performance of said agreement.

## ARTICLE IV - CONFLICT OF LAWS

Nothing in this compact or in any agreement entered into hereunder shall be construed to supersede, alter or otherwise impair any obligation imposed on any public library by otherwise applicable laws.

## ARTICLE V - ADMINISTRATOR

Each state shall designate a compact administrator with whom copies of all agreements to which his state or any subdivision thereof is party shall be filed. The administrator shall have such powers as may be conferred upon him by the laws of his state and may consult and cooperate with the compact administrators of other party states and take such steps as may effectuate the purposes of this compact.

## ARTICLE VI - EFFECTIVE DATE

This compact shall become operative immediately upon its enactment by any state or between it and any other contiguous state or states so enacting.

## ARTICLE VII - RENUNCIATION

This compact shall continue in force and remain binding upon each party state until six months after any such state has given notice of repeal by the legislature. Such withdrawal shall not be construed to relieve any party to an agreement authorized by Articles II and III of the compact from the obligation of that agreement prior to the end of its stipulated period of duration.

## ARTICLE VIII - SEVERABILITY

The provisions of this compact shall be severable. It is intended that the provisions of this compact be reasonably and liberally construed.

History: 1953 Comp., § 4-11-16, enacted by Laws  
1969, ch. 20, § 2.

### 18-2-21. Compact administrator.

- A. The state librarian, ex officio, is the compact administrator.
- B. The compact administrator shall:

- (1) receive copies of all agreements entered into by the state or its political subdivisions and other states or political subdivisions;
- (2) consult with, advise and aid the state and its political subdivisions in the formulation of such agreements;
- (3) make recommendations to the governor, legislature, state agencies and departments and to the political subdivisions of the state, as he deems desirable to carry out the purposes of the interstate library compact; and
- (4) consult and cooperate with the compact administrators of other party states.

**History:** 1953 Comp., § 4-11-17, enacted by Laws 1969, ch. 20, § 3.

## 18-2-22. Agreements.

The compact administrator and the governing authority of any municipality or county may enter into agreements with other states or their political subdivisions pursuant to the interstate library compact. Such agreements made pursuant to the interstate library compact on behalf of the state shall be made by the compact administrator. Such agreements made on behalf of a political subdivision shall be made after due notice to the compact administrator and after consultation with him.

**History:** 1953 Comp., § 4-11-18, enacted by Laws 1969, ch. 20, § 4.

## 18-2-23. Fund created; administration; purpose.

A. The "tribal libraries endowment fund" is created in the state treasury. The fund shall consist of all money appropriated to the fund and any grants, gifts and bequests made to the fund. Any money in the fund shall not revert to the general fund at the end of any fiscal year.

B. The tribal library program of the library division of the office of cultural affairs shall administer the tribal libraries endowment fund and shall make disbursements from the earnings on the investment of the fund for the purpose of funding the establishment, development and administration of tribal libraries in New Mexico.

C. The library division of the office of cultural affairs may adopt rules and procedures as necessary or appropriate to administer the tribal libraries endowment fund after consultation with the tribal librarians.

**History:** Laws 2001, ch. 205, § 1.

**Effective dates.** — Laws 2001, ch. 205 contained no effective date provision, but, pursuant to N.M. Const.,

art. IV, § 23, was effective June 15, 2001, 90 days after adjournment of the legislature.

# ARTICLE 3

## State Museums and Societies

Sec.

- 18-3-1. Museum of New Mexico established; location; property.
- 18-3-2. Museum board of regents; appointment; terms; vacancies.
- 18-3-3. Museum of New Mexico board of regents; powers and duties.
- 18-3-3.1. Admission policy.
- 18-3-4. Repealed.
- 18-3-5. Repealed.
- 18-3-6. Repealed.
- 18-3-7. Repealed.

Sec.

- 18-3-8. Recompiled.
- 18-3-9. Recompiled.
- 18-3-10. Temporary provision; transfers.
- 18-3-11. Laboratory of anthropology; acceptance of deed and title.
- 18-3-12. New Mexico museum of art division created; location; board of regents.
- 18-3-13. Palace of the governors state history museum division created; location; board of regents.
- 18-3-14. Museum of international folk art division created; location; board of regents.



Sec. 18-3-15. Museum of Indian arts and culture division created; location; board of regents.  
 18-3-16. State historic sites and monuments division created; board of regents.

Sec. 18-3-17. Archaeological services division created; board of regents.  
 18-3-18. Museum of New Mexico divisions; directors; powers and duties.

### 18-3-1. Museum of New Mexico established; location; property.

A. The "museum of New Mexico" is established. All properties, real or personal, now held for museum purposes and all properties, real or personal, that may be acquired for museum purposes at any time in the future shall be under the control of the museum board of regents of the museum of New Mexico.

B. The museum of New Mexico consists of:

- (1) the palace of the governors state history museum;
- (2) the New Mexico museum of art;
- (3) the museum of Indian arts and culture;
- (4) the museum of international folk art;
- (5) the archaeology division; and
- (6) the state historic sites:
  - (a) Coronado historic site;
  - (b) Jemez historic site;
  - (c) Fort Selden historic site;
  - (d) Bosque Redondo memorial and Fort Sumner historic site;
  - (e) Lincoln historic site;
  - (f) El Camino Real historic trail site;
  - (g) Fort Stanton historic site;
  - (h) Taylor Reynolds Barela Mesilla historic site; and
  - (i) Los Luceros historic site.

**History:** 1953 Comp., § 4-12-32, enacted by Laws 1975, ch. 264, § 1; 1977, ch. 246, § 25; 1980, ch. 151, § 25; 2004, ch. 25, § 19; 2007, ch. 269, § 5; 2013, ch. 67, § 3; 2019, ch. 113, § 1.

**Cross references.** — For special recreation and museum privileges for veterans and their immediate families on Veteran's Day, see 28-13A-1 NMSA 1978.

**The 2019 amendment,** effective June 14, 2019, added Los Luceros historic site to the list of state historic sites that are part of the museum of New Mexico; and in Subsection B, in Paragraph B(6), added new Subparagraph B(6)(i).

**The 2013 amendment,** effective June 14, 2013, renamed the archaeological services division as the archaeology division; renamed state monuments as historic sites; in Paragraph (5) of Subsection B, deleted "archaeological services" and added "the archaeology division"; in Paragraph (6) of Subsection B, in the introductory sentence, after "the state", deleted "monuments" and added "historic site"; in Subparagraphs (a) through (e) and (h) of Paragraph (6) of Subsection B, deleted "state monument" and added "historic site"; in Subparagraph (d) of Paragraph (6) of Subsection B, at the beginning of the sentence, added

"Bosque Redondo memorial and"; in Subparagraph (f) of Paragraph (6) of Subsection B, after "El Camino Real", deleted "international heritage center; and" and added "historic trail site"; and added Subparagraph (g) of Paragraph (6) of Subsection B.

**The 2007 amendment,** effective June 15, 2007, changes the museum of fine art to the "New Mexico museum of art".

**The 2004 amendment,** effective May 19, 2004, designated the formerly undesignated provisions of this section as Subsection A and in Subsection A, deleted Santa Fe as the headquarters of the museum and changed "museum division of office of cultural affairs" to "museum board of regents of the museum of New Mexico"; and added Subsection B.

#### ANNOTATIONS

**Investment of fund.** — Under former law the board of regents of the museum of New Mexico was not given authority to determine the type of investment that its permanent fund would be invested in. 1964 Op. Att'y Gen. No. 64-29.

### 18-3-2. Museum board of regents; appointment; terms; vacancies.

The "museum board of regents", comprised of nine members appointed by the governor with the advice and consent of the senate, is created. In making the appointments, the governor shall appoint residents of New Mexico and give due consideration to geographical distribution of the members. The members shall be persons conversant with or showing a continuing interest in history, fine arts, Indian art, folk art or anthropology. The members shall be appointed for terms of six years or less in such manner that the terms of at least two but no more than three members expire on July 8 of each odd-numbered year. Vacancies shall be filled by the governor for the remainder of

the original terms. Members of the museum board of regents shall receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

**History:** 1953 Comp., § 4-12-33, enacted by Laws 1978, ch. 164, § 1; 2005, ch. 71, § 1.

**Repeals and reenactments.** — Laws 1978, Chapter 164 repeals 4-12-33, relating to establishment of the museum of New Mexico, effective March 31, 1978, and enacted a new section.

**The 2005 amendment,** effective July 1, 2005, increased the number of members on the museum board of regents to nine members.

### 18-3-3. Museum of New Mexico board of regents; powers and duties.

The museum board of regents shall:

- A. elect from among its members a president and other officers deemed necessary by it;
- B. establish museum of New Mexico policy and determine the mission and direct the development of the museum;
- C. solicit funds for the purpose of developing, restoring and equipping the museum and its property and for the purchase of objects and works of art for its collections and for the development of exhibits and other public programs;
- D. exercise trusteeship over the collections of the museum;
- E. hold title to all property for museum use;
- F. acquire objects of historical, archaeological and ethnological interest and works of fine art, folk art and craft of interest to the public and real property for museum use or benefit by purchase, donation and bequest;
- G. adopt rules as appropriate governing:
  - (1) the loan of objects and exhibits to qualified institutions and agencies for the purpose of exhibition;
  - (2) gifts, donations or loans of exhibit or collection materials for the museum;
  - (3) the licensure of the museum's intellectual property; and
  - (4) other matters necessary to carry out the provisions of Chapter 18, Article 3 NMSA 1978;
- H. enter into leases with public or private agencies or organizations for the use of museum premises or facilities as appropriate for periods that exceed forty-five days;
- I. cooperate with other agencies and political subdivisions of municipal, state, tribal and federal governments and private organizations and individuals to the extent necessary to establish and maintain the museum and its programs;
- J. subject to other provisions of law and excepting temporary statewide initiatives of the secretary of cultural affairs, impose admission fees to the museum facilities and programs; and
- K. review annually the performance of its directors and report its findings to the secretary of cultural affairs.

**History:** 1953 Comp., § 4-12-34, enacted by Laws 1978, ch. 164, § 2; 1991, ch. 242, § 1; 2015, ch. 19, § 3.

**Repeals and reenactments.** — Laws 1978, Chapter 164 repeals 4-12-34, 1953 Comp., relating to compensation of members of the board of regents, effective March 31, 1978, and enacted a new section.

**The 2015 amendment,** effective July 1, 2015, amended the duties of the museum of New Mexico board of regents; in the catchline, added "Museum of New Mexico"; added new Subsection B and redesignated former Subsections B, C, D, E, F and G as Subsections C, D, E, F, G and H respectively; in Subsection C, after "solicit", deleted "and receive private", and after "museum", deleted "of New Mexico"; in Subsection F, after "acquire", deleted "preserve and exhibit"; at the beginning of Subsection G, added "adopt rules as appropriate governing"; designated the remaining language of Subsection G as Paragraph (1), and added "the" preceding "loan", and after "loan", added "of", and added new Paragraphs (2), (3) and (4); in Subsection H,

after "enter into", deleted "contracts" and added "leases", after "for the", deleted "rental" and added "use", after "facilities", added "as appropriate", after the second occurrence of "for", deleted "the conduct of programs and activities in the public interest," and added "periods that exceed forty-five days"; deleted former Subsection H relating to the power to enter into contracts; deleted former Subsection I relating to the power to publish and sell museum publications; and deleted Subsection J relating to the power to enter into agreements to obtain donations or collection materials for the museum; redesignated former Subsections K and L as Subsections I and J; in Subsection I, after "state", added "tribal"; in Subsection J, after "subject to", deleted "the provisions of Section 18-3-3.1 NMSA 1978" and added "other provisions of law and excepting temporary statewide initiatives of the secretary of cultural affairs"; deleted former Subsection M relating to the power to adopt rules and regulations; and added Subsection K.



The 1991 amendment, effective June 14, 1991, inserted "museum" in the introductory phrase; added "subject to the provisions of Section 18-3-3.1 NMSA 1978" at the beginning of Subsection L; and made minor stylistic changes in Subsections B and H.

#### ANNOTATIONS

**Charging fees to finance program.** — The Museum of New Mexico can charge participants in the Palace of the Governors Portal Vendor Program an annual admission fee to help finance the costs of the program. 1988 Op. Att'y Gen. No. 88-25.

Before the board of regents can adopt an amendment to the Palace of Governors Portal Vendor Program rules and regulations to impose a fee, the officer of cultural affairs or a hearing officer appointed by him, must conduct a public hearing in accordance with the provisions of 9-6-11 NMSA 1978 (now repealed). 1988 Op. Att'y Gen. No. 88-25.

If the Museum of New Mexico imposes a fee on the Palace of the Governors Portal Vendor Program participants, the museum must deposit the funds so generated with the state treasurer because the money is public money within the meaning of 6-10-3 NMSA 1978. 1988 Op. Att'y Gen. No. 88-25.

### 18-3-3.1. Admission policy.

The museum board of regents shall establish a policy to permit New Mexico residents age sixty years and above to enter all publicly accessible exhibit and program areas, except special exhibits and programs where commissions or royalties are paid by contract, free of charge every Wednesday that is not a holiday that the museum is open.

**History:** 1978 Comp., § 18-3-3.1, enacted by Laws 1991, ch. 242, § 2.

### 18-3-4. Repealed.

**Repeals.** — Laws 2004, ch. 25, § 53 repealed 18-3-4 NMSA 1978, as enacted by Laws 1978, ch. 164, § 3, relating to the museum division of the office of cultural affairs,

effective May 19, 2004. For provisions of former section, see the 2003 NMSA 1978 on *NMOneSource.com*.

### 18-3-5. Repealed.

**Repeals.** — Laws 2004, ch. 25, § 53 repealed 18-3-5 NMSA 1978, as enacted by Laws 1978, ch. 164, § 4, relating to the museum division of the office of cultural affairs,

effective May 19, 2004. For provisions of former section, see the 2003 NMSA 1978 on *NMOneSource.com*.

### 18-3-6. Repealed.

**Repeals.** — Laws 1978, ch. 164, § 5 repealed former 4-12-36 and 4-12-37, 1953 Comp., effective March 31, 1978.

### 18-3-7. Repealed.

**Repeals.** — Laws 1978, ch. 164, § 5 repealed former 4-12-36 and 4-12-37, 1953 Comp., effective March 31, 1978.

### 18-3-8. Recompiled.

**Recompilations.** — Laws 2004, ch. 25, § 52 recompiled former 18-3-8 NMSA 1978 as 9-4A-11 NMSA 1978, effective May 19, 2004.

### 18-3-9. Recompiled.

**Recompilations.** — Laws 2015, ch. 19, § 1 recompiled and amended former 18-3-9 NMSA 1978 as 9-4A-22 NMSA 1978, effective July 1, 2015.

### 18-3-10. Temporary provision; transfers.

On the effective date of this act:

A. all functions, personnel, money, appropriations, records, files, furniture, equipment and other property of the museum of fine art or the museum of fine art division of the cultural affairs department shall be transferred to the New Mexico museum of art or the New Mexico museum of art division of that department, respectively;

B. all functions, personnel, money, appropriations, records, files, furniture, equipment and other property of the museum services division of the cultural affairs department shall be transferred to the museum resources division of that department;

C. all contractual obligations of the museum of fine art or museum of fine art division of the cultural affairs department shall be binding on the New Mexico museum of art or the New Mexico museum of art division of that department, respectively;

D. all contractual obligations of the museum services division of the cultural affairs department shall be binding on the museum resources division of that department;

E. all statutory references to the museum of fine art or museum of fine art division of the cultural affairs department shall be deemed to be references to the New Mexico museum of art or the New Mexico museum of art division of that department, respectively; and

F. all statutory references to the museum services division of the cultural affairs department shall be deemed to be references to the museum resources division of that department.

**History:** Laws 2007, ch. 269, § 6.

**Effective dates.** — Laws 2007, ch. 269 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

### 18-3-11. Laboratory of anthropology; acceptance of deed and title.

The state of New Mexico accepts the deed and bill of sale and the title of the laboratory of anthropology building and land described in the deed dated September 30, 1947 and directs that the property become part of the museum of New Mexico and be controlled and administered by the cultural affairs department.

**History:** 1941 Comp., § 3-3-931, enacted by Laws 1949, ch. 74, § 1; 1953 Comp., § 4-12-31; Laws 1977, ch. 246, § 24; 1978 Comp., § 18-3-8; 1980, ch. 151, § 28; 2004, ch. 25, § 20; recompiled as § 9-4A-11 by Laws 2004, ch. 25, § 52; 1978 Comp., § 9-4A-11, recompiled as § 18-3-11 by Laws 2015, ch. 19, § 19.

**Recompilations.** — Laws 2015, ch. 19, § 19 recompiled former 9-4A-11 NMSA 1978 as 18-3-11 NMSA 1978, effective July 1, 2015.

**The 2004 amendment,** effective May 19, 2004, changed "museum division of office of cultural affairs" to "cultural affairs department".

### 18-3-12. New Mexico museum of art division created; location; board of regents.

A. The "New Mexico museum of art division" is created in the department. The New Mexico museum of art located in Santa Fe shall be operated as a division of the department under the imprimatur of the museum of New Mexico. The museum of New Mexico board of regents shall exercise trusteeship over the New Mexico museum of art.

B. The director of the division shall meet the following minimum qualifications:

(1) hold a bachelor's or higher degree in a discipline related to the function of the division; and

(2) have significant experience in the management and operation of an organization similar to the division.

C. The director shall be appointed by the secretary from a list of no less than three names provided by the museum of New Mexico board of regents.



**History:** Laws 2004, ch. 25, § 13; 2007, ch. 269, § 4; 1978 Comp., § 9-4A-13, recompiled as § 18-3-12 by Laws 2015, ch. 19, § 19.

**Recompilations.** — Laws 2015, ch. 19, § 19 recompiled former 9-4A-13 NMSA 1978 as 18-3-12 NMSA 1978, effective July 1, 2015.

**The 2007 amendment**, effective June 15, 2007, renamed the museum of fine art division to the "New Mexico museum of art division".

### **18-3-13. Palace of the governors state history museum division created; location; board of regents.**

A. The "palace of the governors state history museum division" is created in the cultural affairs department. The palace of the governors state history museum located in Santa Fe shall be operated as a division of the cultural affairs department under the imprimatur of the museum of New Mexico. The museum of New Mexico board of regents shall exercise trusteeship over the palace of the governors state history museum.

B. The director of the division shall meet the following minimum qualifications:

- (1) hold a bachelor's or higher degree in a discipline related to the function of the division; and
- (2) have significant experience in the management and operation of an organization similar to the division.

C. The director shall be appointed by the secretary of cultural affairs from a list of no less than three names provided by the museum of New Mexico board of regents.

**History:** Laws 2004, ch. 25, § 14; 1978 Comp., § 9-4A-14, recompiled as § 18-3-13 by Laws 2015, ch. 19, § 19.

**Recompilations.** — Laws 2015, ch. 19, § 19 recompiled former 9-4A-14 NMSA 1978 as 18-3-13 NMSA 1978, effective July 1, 2015.

### **18-3-14. Museum of international folk art division created; location; board of regents.**

A. The "museum of international folk art division" is created in the cultural affairs department. The museum of international folk art located in Santa Fe shall be operated as a division of the cultural affairs department under the imprimatur of the museum of New Mexico. The museum of New Mexico board of regents shall exercise trusteeship over the museum of international folk art.

B. The director of the division shall meet the following minimum qualifications:

- (1) hold a bachelor's or higher degree in a discipline related to the function of the division; and
- (2) have significant experience in the management and operation of an organization similar to the division.

C. The director shall be appointed by the secretary of cultural affairs from a list of no less than three names provided by the museum of New Mexico board of regents.

**History:** Laws 2004, ch. 25, § 15; 1978 Comp., § 9-4A-15, recompiled as § 18-3-14 NMSA 1978 by Laws 2015, ch. 19, § 19.

**Recompilations.** — Laws 2015, ch. 19, § 19 recompiled former 9-4A-15 NMSA 1978 as 18-3-14 NMSA 1978, effective July 1, 2015.

### **18-3-15. Museum of Indian arts and culture division created; location; board of regents.**

A. The "museum of Indian arts and culture division" is created in the cultural affairs department. The museum of Indian arts and culture located in Santa Fe shall be operated as a division of the cultural affairs department under the imprimatur of the museum of New Mexico. The museum of New Mexico board of regents shall exercise trusteeship over the museum of Indian arts and culture.

B. The director of the division shall meet the following minimum qualifications:

- (1) hold a bachelor's or higher degree in a discipline related to the function of the division; and

(2) have significant experience in the management and operation of an organization similar to the division.

C. The director shall be appointed by the secretary of cultural affairs from a list of no less than three names provided by the museum of New Mexico board of regents.

**History:** Laws 2004, ch. 25, § 16; 1978 Comp., § 9-4A-16, recompiled as § 18-3-15 by Laws 2015, ch. 19, § 19.

**Recompilations.** — Laws 2015, ch. 19, § 19 recompiled former 9-4A-16 NMSA 1978 as 18-3-15 NMSA 1978, effective July 1, 2015.

### 18-3-16. State historic sites and monuments division created; board of regents.

A. The "state historic sites and monuments division" is created in the cultural affairs department. The division shall manage the state's historic sites and monuments, including:

- (1) Coronado historic site;
- (2) Jemez historic site;
- (3) Fort Selden historic site;
- (4) Bosque Redondo memorial and Fort Sumner historic site;
- (5) Lincoln historic site;
- (6) El Camino Real historic trail site;
- (7) Fort Stanton historic site;
- (8) Taylor Reynolds Barela Mesilla historic site; and
- (9) Los Luceros historic site.

B. The state's historic sites shall operate under the imprimatur of the museum of New Mexico. The museum of New Mexico board of regents shall exercise trusteeship over state historic sites.

C. The director of the division shall meet the following minimum qualifications:

- (1) hold a bachelor's or higher degree in a discipline related to the function of the division; and
- (2) have significant experience in the management and operation of an organization similar to the division.

D. The director shall be appointed by the secretary of cultural affairs from a list of no less than three names provided by the museum of New Mexico board of regents.

**History:** Laws 2004, ch. 25, § 17; 2013, ch. 67, § 2; 1978 Comp., § 9-4A-17, recompiled as § 18-3-16 by Laws 2015, ch. 19, § 19; 2019, ch. 113, § 2.

**Recompilations.** — Laws 2015, ch. 19, § 19 recompiled former 9-4A-17 NMSA 1978 as 18-3-16 NMSA 1978, effective July 1, 2015.

**The 2019 amendment,** effective June 14, 2019, added Los Luceros historic site to the list of state historic sites that are managed by the state historic sites and monuments division of the cultural affairs department; and added Paragraph A(9).

**The 2013 amendment,** effective June 14, 2013, renamed the monuments division as the state historic sites and monuments division; renamed state monuments as historic sites; added Fort Stanton as a historic site; in the

title, deleted "monuments" and added "historic sites and monuments"; in Subsection A, in the introductory sentences, deleted "monuments" and added "historic sites and monuments"; in Paragraphs (1) through (5), and (8), deleted "state monument" and added "historic site"; in Paragraph (4) of Subsection A, at the beginning of the sentence, added "Bosque Redondo memorial"; in Paragraph (6) of Subsection A, after "El Camino Real", deleted "international heritage center; and" and added "historic trail site"; added Paragraph (7) of Subsection A; and in Subsection B, in the first sentence, at the beginning of the sentence, deleted "state monuments" and added "state's historic sites"; and in the second sentence, after "trusteeship", deleted "the" and after "state", deleted "monuments" and added "historic sites".

### 18-3-17. Archaeological services division created; board of regents.

A. The "archaeological services division" is created in the cultural affairs department. The division shall be operated as a division of the cultural affairs department under the imprimatur of the museum of New Mexico.

B. The museum of New Mexico board of regents shall exercise trusteeship over the archaeological services division.

C. The director of the division shall meet the following minimum qualifications:

- (1) hold a bachelor's or higher degree in a discipline related to the function of the division; and
- (2) have significant experience in the management and operation of an organization similar to the division.



D. The director shall be appointed by the secretary of cultural affairs from a list of no less than three names provided by the museum of New Mexico board of regents.

**History:** Laws 2004, ch. 25, § 18; 1978 Comp., § 9-4A-18, recompiled as § 18-3-17 by Laws 2015, ch. 19, § 19.

**Recompilations.** — Laws 2015, ch. 19, § 19 recompiled former 9-4A-18 NMSA 1978 as 18-3-17 NMSA 1978, effective July 1, 2015.

## 18-3-18. Museum of New Mexico divisions; directors; powers and duties.

Consistent with the policies of the secretary of cultural affairs and the board of regents, each director of a museum of New Mexico division:

### A. may:

- (1) solicit and receive funds or property, including federal funds and public and private grants, for the development of the museum, its collections and its programs;
- (2) as authorized by the secretary, enter into contracts related to the programs and operations of the museum, including services related to the location, acquisition, preservation, restoration, salvage or development of culturally related sites, structures or objects in the state;
- (3) as authorized by the board of regents, lend collections or materials to qualified persons for purposes of exhibition and study and borrow collections or materials from other persons for like purposes;
- (4) conduct facilities rentals for forty-five days or less and such retail sales as appropriate for the operation of the museum; and
- (5) publish journals, books, reports and other materials as appropriate to the operation of the museum; and

### B. shall:

- (1) administer and operate the museum in accordance with applicable statutes and rules;
- (2) develop exhibits and programs of an educational nature for the benefit of the public and in particular the students of the state;
- (3) recommend acquisitions to the board of regents, by donation or other means, of collections and related materials appropriate to the mission of the museum;
- (4) direct research, preservation and conservation as is appropriate to render the collections beneficial to the public;
- (5) cooperate with educational institutions and other agencies and political subdivisions of state, tribal and federal governments to establish, maintain and extend the programs of the museum;
- (6) employ and discharge personnel necessary for the operation of the museum in accordance with the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978];
- (7) propose budgets for operations and capital improvements;
- (8) collect admission fees as determined by the board of regents; and
- (9) perform such other appropriate duties as may be delegated by the board of regents, the secretary of cultural affairs or the governor or as may be provided by law.

**History:** 1978 Comp., § 18-3-18, enacted by Laws 2015, ch. 19, § 4.

**Effective dates.** — Laws 2015, ch. 19, § 20 made Laws 2015, ch. 19, § 4 effective July 1, 2015.

## ARTICLE 3A

### Natural History Museum

#### Sec.

- 18-3A-1. Short title.
- 18-3A-2. Declaration and purpose of act.
- 18-3A-3. Definitions.
- 18-3A-4. Natural history and science museum division; creation; location; property.
- 18-3A-5. Board of trustees created; appointment; terms; officers.

#### Sec.

- 18-3A-6. Board; compensation.
- 18-3A-7. Board; powers and duties.
- 18-3A-8. Director; appointment; qualifications.
- 18-3A-9. Director; powers and duties.
- 18-3A-9.1. Museum admission policy.

### 18-3A-1. Short title.

Chapter 18, Article 3A NMSA 1978 may be cited as the "Natural History and Science Museum Act".

**History:** Laws 1980, ch. 128, § 1; 1990, ch. 106, § 1.

**Cross references.** — For museum of New Mexico, *see* 18-3-1 to 18-3-3 NMSA 1978.

For Cultural Properties Act, *see* 18-6-1 NMSA 1978 et seq.

For special recreation and museum privileges for veterans and their immediate families on Veteran's Day, *see* 28-13A-1 NMSA 1978.

**The 1990 amendment**, effective May 16, 1990, rewrote this section which formerly read "Sections 1 through 9 of this act may be cited as the 'Natural History Museum Act.'"

### 18-3A-2. Declaration and purpose of act.

The legislature declares that the natural history and physical science resources of the state constitute a common heritage concerning which all persons should receive knowledge and benefit. The purpose of the Natural History and Science Museum Act, therefore, is to create a state museum of natural history and physical sciences which shall hereafter collect, preserve, study and interpret materials representative of the natural history of the state and region and develop and maintain educational exhibits and programs on natural history and physical science for the benefit of the citizens of New Mexico and visitors to the state.

**History:** Laws 1980, ch. 128, § 2; 1990, ch. 106, § 2.

**The 1990 amendment**, effective May 16, 1990, inserted "and physical science" and "and physical sciences" following "natural history" in the first and second sentences, substituted "Natural History and Science Museum

Act" for "Natural History Museum Act" and "educational exhibits and programs on natural history and physical science" for "exhibits and programs of an educational nature" in the second sentence and made a stylistic change.

### 18-3A-3. Definitions.

As used in the Natural History and Science Museum Act:

- A. "board" means the board of trustees of the New Mexico museum of natural history and science;
- B. "director" means the director of the division;
- C. "division" means the natural history and science museum division of the cultural affairs department;
- D. "museum" means the New Mexico museum of natural history and science;
- E. "natural history" means that which pertains to the earth and its life, including but not limited to the fields of biology, geology and related life sciences; and
- F. "physical science" means that which pertains to mathematics, physics, chemistry, astronomy and related sciences and technologies.

**History:** Laws 1980, ch. 128, § 3; 1987, ch. 38, § 1; 1990, ch. 106, § 3; 2004, ch. 25, § 21.

**Cross references.** — For merger of educational finance and cultural affairs department with the department of finance and administration, *see* 9-1-11 NMSA 1978.

**The 2004 amendment**, effective May 19, 2004, in Subsection B, deleted references to the office of cultural affairs and natural history and science museum; and in

Subsection C, changed "office of cultural affairs" to "cultural affairs department".

**The 1990 amendment**, effective May 16, 1990, added "and science" following "natural history" throughout the section, substituted "Natural History and Science Museum Act" for "Natural History Museum Act" in the introductory phrase, added Subsection F and made a minor stylistic change.

### 18-3A-4. Natural history and science museum division; creation; location; property.

A. The "natural history and science museum division" is created within the cultural affairs department. The principal facility of this division is the "New Mexico museum of natural history and science" located in Albuquerque. The site shall be held in the name of the state.

B. All property, real or personal, now held or subsequently acquired for the operation of the museum shall be under the control and authority of the board.



C. Funds or other property received by gift, endowment or legacy shall remain under the control of the board and shall, upon acceptance, be employed for the purpose specified.

**History:** Laws 1980, ch. 128, § 4; 1987, ch. 38, § 2; 1990, ch. 106, § 4; 2004, ch. 25, § 22.

**The 2004 amendment**, effective May 19, 2004, in Subsection A, changed "office of cultural affairs" to "cultural affairs department", and made other non-substantive amendments.

**The 1990 amendment**, effective May 16, 1990, substituted "Natural History and Science Museum Division" for "Natural History Museum Division" in the catchline, and, in Subsection A, added "and science" following "natural history" in two places, and substituted "site shall be" for "site will be" in the third sentence.

### 18-3A-5. Board of trustees created; appointment; terms; officers.

A. The "board of trustees of the New Mexico museum of natural history and science" is created. The board shall consist of thirteen residents of New Mexico appointed as follows:

(1) eleven public members shall be appointed by the governor with the advice and consent of the senate. In making these appointments, the governor shall give due consideration to the geographic distribution of places of residence and to individual interest and background in natural history and physical science; provided that:

(a) not less than two of these public members shall be employees of state institutions of higher learning or appropriate state agencies;

(b) not less than two members shall be from the science community; and

(c) not less than two members shall be from the natural history community.

The public members shall be appointed for terms of four years or less so that all terms are co-terminous with the current term of the governor appointing them and shall serve at the pleasure of the governor; and

(2) two private members shall be appointed by the board of the New Mexico museum of natural history foundation, inc. for terms of one year or less expiring on June 30 each year. Vacancies in the position of private member shall be filled by the board of the New Mexico museum of natural history foundation, inc.

B. The director shall be an ex-officio nonvoting member of the board.

C. The president of the board shall be designated by the governor and shall serve in that capacity at the pleasure of the governor. Other officers as deemed necessary by the board shall be elected by the board annually at its first scheduled meeting after July 1.

**History:** Laws 1980, ch. 128, § 5; 1987, ch. 38, § 3; 1990, ch. 106, § 5; 1993, ch. 130, § 1.

**The 1993 amendment**, effective June 18, 1993, in Subsection A, substituted "eleven" for "nine" at the beginning of Paragraph (1), deleted former Paragraph (3) relating to appointment of private members and made minor stylistic changes throughout the subsection.

**The 1990 amendment**, effective May 16, 1990, in Subsection A, added "and science" following "natural history" in the first sentence, substituted "thirteen residents" for "eleven residents" in the second sentence, rewrote the second sentence of Paragraph (1) to add the reference to "physical science" and the provisions of Subparagraphs (b) and (c), added Paragraph (3), and made minor stylistic changes.

### 18-3A-6. Board; compensation.

The public members of the board shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance. Private members shall serve without per diem or other compensation.

**History:** Laws 1980, ch. 128, § 6; 1987, ch. 38, § 4.

### 18-3A-7. Board; powers and duties.

The board shall:

A. exercise trusteeship over the collections of the museum;

B. accept and hold title to all property for museum use;

C. acquire objects of natural history and science of interest to the public and real property for museum use or benefit by purchase, donation or bequest;

D. review annually the performance of the director and report its findings to the secretary of cultural affairs;

E. adopt rules as appropriate governing:

- (1) the loan of objects and exhibits to qualified institutions and agencies for the purpose of exhibition;
- (2) gifts, donations or loans of exhibit or collection materials for museum use;
- (3) the licensure of the museum's intellectual property; and
- (4) other matters necessary to carry out the provisions of this section;

F. enter into leases with public or private organizations or agencies for the use of museum premises or facilities for periods of time that exceed forty-five days;

G. solicit funds or property of any nature for the development, restoration or equipping of the museum, its collections, exhibits and programs;

H. cooperate with other agencies and political subdivisions of state, tribal and federal governments and private organizations and individuals to the extent necessary to establish and maintain the museum and its programs;

I. subject to other provisions of law and excepting temporary statewide initiatives of the secretary of cultural affairs, impose admission fees to the museum facilities and programs; and

J. establish museum policy and determine the mission and direct the development of the institution subject to the approval of the secretary of cultural affairs:

**History:** 1978 Comp., § 18-3A-7, enacted by Laws 1987, ch. 38, § 5; 2004, ch. 25, § 23; 2015, ch. 19, § 5.

**Repeals and reenactments.** — Laws 1987, ch. 38, § 5, effective June 19, 1987, repealed former 18-3A-7 NMSA 1978, as enacted by Laws 1980, ch. 128, § 7, relating to the powers of the policy advisory committee, and enacted a new section.

**The 2015 amendment**, effective July 1, 2015, amended the powers and duties of the board of trustees of the New Mexico museum of natural history and science; added Subsection C, redesignated former Subsection C as Subsection D; deleted former Subsection D relating to the power to enter into agreements for the purpose of obtaining property for the museum; added Subsections E and

F; in former Subsection E, deleted "authorize the director to" and redesignated former Subsection E as Subsection G; in Subsection G, after "solicit", deleted "and receive", after "development," added "restoration or equipping", after "collections", added "exhibits", and after "and", deleted "its"; deleted Subsection F relating to the power to adopt rules; added Subsections H and I; redesignated former Subsection G as Subsection J, and after "subject to the", deleted "decision" and added "approval", and after "affairs", deleted "in event of conflict between the board and the cultural affairs department".

**The 2004 amendment**, effective May 19, 2004, in Subsections C and G, changed "cultural affairs officer" to "secretary of cultural affairs" and made other minor revisions.

## 18-3A-8. Director; appointment; qualifications.

A. Subject to the authority of the state cultural affairs officer or his successor, the administrative and executive officer of the division and the museum is the "director" of the division.

B. The director shall be appointed by the state cultural affairs officer or his successor with the approval of the governor from a list of qualified candidates provided by the board.

C. The position of director shall require previous experience in an administrative capacity in a museum of related character and a degree or the equivalent thereof in one or more of the fields of natural history and science from an institution of higher learning.

**History:** Laws 1980, ch. 128, § 8; 1987, ch. 38, § 6; 1990, ch. 106, § 6.

**The 1990 amendment**, effective May 16, 1990, substituted "cultural affairs officer or his successor" for

"cultural affairs or his successor officer" in Subsection A, and inserted "and science" following "natural history" in Subsection C.

## 18-3A-9. Director; powers and duties.

Consistent with the policies agreed to by the board and the secretary of cultural affairs, the director:

A. may:

- (1) solicit and receive funds or property, including federal funds and public and private grants, for the development of the museum, its collections and its programs;



(2) as authorized by the secretary, enter into contracts related to the programs and operations of the museum, including services related to the location, acquisition, preservation, restoration, salvage or development of culturally related sites, structures or objects in the state;

(3) as authorized by the board, lend collections or materials to qualified persons for purposes of exhibition and study and borrow collections or materials from other persons for like purposes;

(4) conduct facilities rentals for forty-five days or less and such retail sales as appropriate for the operation of the museum; and

(5) publish journals, books, reports and other materials as appropriate to the operation of the museum; and

**B. shall:**

(1) administer and operate the museum in accordance with applicable statutes and rules;

(2) develop exhibits and programs of an educational nature for the benefit of the public and in particular the students of the state;

(3) recommend acquisitions to the board, by donation or other means, of collections and related materials appropriate to the mission of the museum;

(4) direct research, preservation and conservation as is appropriate to render the collections beneficial to the public;

(5) cooperate with educational institutions and other agencies and political subdivisions of state, tribal and federal governments to establish, maintain and extend the programs of the museum;

(6) employ and discharge personnel necessary for the operation of the museum in accordance with the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978];

(7) propose budgets for operations and capital improvements;

(8) collect admission fees as determined by the board; and

(9) perform such other appropriate duties as may be delegated by the board, the secretary of cultural affairs or the governor or as may be provided by law.

**History:** Laws 1980, ch. 128, § 9; 1987, ch. 38, § 7; 1990, ch. 106, § 7; 1991, ch. 242, § 3; 1978 Comp., § 18-3A-9, repealed and reenacted by Laws 2015, ch. 19, § 6.

**Repeals and reenactments.** — Laws 2015, ch. 19, § 6 repealed former 18-3A-9 NMSA 1978, and enacted a new section, effective July 1, 2015.

**The 1991 amendment,** effective June 14, 1991, in Subsection I, added "subject to the provisions of

Section 18-3A-9.1 NMSA 1978" at the beginning and substituted "a museum of natural history and science" for "natural history and science museums" at the end and made a minor stylistic change in Subsection K.

**The 1990 amendment,** effective May 16, 1990, inserted "state" preceding "cultural affairs officer" in the introductory phrase and added "and science" following "natural history" in Subsections C and I.

## 18-3A-9.1. Museum admission policy.

The board, the state cultural affairs officer and the director shall establish and implement a policy to permit New Mexico residents age sixty years and above to enter all publicly accessible exhibit and program areas, except special exhibits and programs where commissions or royalties are paid by contract, free of charge every Wednesday that is not a holiday that the museum is open.

**History:** 1978 Comp., § 18-3A-9.1, enacted by Laws 1991, ch. 242, § 4.

## ARTICLE 4

### Old Lincoln County Memorial

**Sec. 18-4-1.** Repealed.  
**18-4-2.** Repealed.  
**18-4-3.** Repealed.  
**18-4-4.** Repealed.

**Sec. 18-4-5.** Repealed.  
**18-4-6.** Lincoln historic site; state historic sites and monuments division; powers and duties.

### 18-4-1. Repealed.

**Repeals.** — Laws 2004, ch. 25, § 53 repealed former 18-4-1 NMSA 1978, as enacted by Laws 1949, ch. 138, § 1, relating to the old Lincoln county memorial commission, effective May 19, 2004. For provisions of former section, see the 2003 NMSA 1978 on *NMOneSource.com*.

### 18-4-2. Repealed.

**Repeals.** — Laws 2004, ch. 25, § 53 repealed former 18-4-2 NMSA 1978, as enacted by Laws 1949, ch. 138, § 2, relating to the old Lincoln county memorial commission, effective May 19, 2004. For provisions of former section, see the 2003 NMSA 1978 on *NMOneSource.com*.

### 18-4-3. Repealed.

**Repeals.** — Laws 2004, ch. 25, § 53 repealed former 18-4-3 NMSA 1978, as enacted by Laws 1949, ch. 138, § 3, relating to the old Lincoln county memorial commission, effective May 19, 2004. For provisions of former section, see the 2003 NMSA 1978 on *NMOneSource.com*.

### 18-4-4. Repealed.

**Repeals.** — Laws 2004, ch. 25, § 53 repealed former 18-4-4 NMSA 1978, as enacted by Laws 1949, ch. 138, § 4, relating to the old Lincoln county memorial commission, effective May 19, 2004. For provisions of former section, see the 2003 NMSA 1978 on *NMOneSource.com*.

### 18-4-5. Repealed.

**Repeals.** — Laws 2004, ch. 25, § 53 repealed former 18-4-5 NMSA 1978, as enacted by Laws 1977, ch. 246, § 22, relating to the old Lincoln county memorial commission, effective May 19, 2004. For provisions of former section, see the 2003 NMSA 1978 on *NMOneSource.com*.

## 18-4-6. Lincoln historic site; state historic sites and monuments division; powers and duties.

The state historic sites and monuments division of the cultural affairs department shall be entrusted with the protection and preservation of the old Lincoln county courthouse. The historic sites division shall:

- A. maintain and operate the historic site as a state museum of old Lincoln county;
- B. acquire and hold real estate in the name of the state;
- C. act in cooperation with the federal government or any of its agencies in preserving the historic site; and
- D. accept gifts, grants and donations from any person, firm, corporation, agency or any group of persons for the collections of the museum or the maintenance and operation of the historic site.

**History:** 1941 Comp., § 3-927, enacted by Laws 1949, ch. 138, § 5; 1951, ch. 139, § 1; 1953 Comp., § 4-12-27; Laws 1963, ch. 62, § 1; 1977, ch. 246, § 23; 1980, ch. 151, § 29; 2004, ch. 25, § 24; 2013, ch. 67, § 4.

**The 2013 amendment,** effective June 14, 2013, renamed state monuments as historic sites; in the catchline, after "Lincoln", deleted "monument" and added "historic site" and after "state", deleted "monuments" and added "historic sites and monuments"; in Subsections A, in the first sentence, deleted "monuments" and added "historic sites and monuments" and in the second sentence, deleted "state monuments" and added "historic sites"; in Subsections A, C, and D, deleted "monument" and added "historic site"; in Subsection A, after "historic site as a", deleted "memorial and", and after "Lincoln county", deleted "shall have power to"; in Subsection B, after "state", deleted "and

to"; and in Subsection C, after "historic site; and", deleted "shall have power to".

**The 2004 amendment,** effective May 19, 2004, changed "museum division" to "cultural affairs department".

### ANNOTATIONS

**Advertising.** — The duty formerly belonging to the old Lincoln county memorial commission (now belonging to the cultural affairs department) to maintain and operate the monument as a memorial and state museum, coupled with the power and authority to make necessary rules and regulations for the proper operation and maintenance thereof, permitted the commission to expend appropriated funds for advertising the memorial and state museum. 1970 Op. Att'y Gen. No. 70-83.



## ARTICLE 5

### Arts Commission and Division

Sec.	Sec.
18-5-1. Findings; declaration.	18-5-5. Commission; duties.
18-5-2. Definitions.	18-5-6. Division; creation; director; appointment.
18-5-3. Commission; creation; members; terms; compensation.	18-5-7. Division; powers; duties.
18-5-4. Commission; officers; meetings.	18-5-8, 18-5-9. Repealed.

#### 18-5-1. Findings; declaration.

The legislature finds and declares:

- A. that many people in this state lack the opportunity to view, enjoy or participate in living theatrical performances, musical concerts, operas, dance and ballet recitals, art exhibits, examples of fine architecture and the performing and visual arts, generally;
- B. that many people in this state possess talents of an artistic and creative nature which cannot be utilized to their fullest extent under existing conditions;
- C. that the general welfare of the people of this state will be promoted by giving further recognition to the arts as a vital part of our culture and heritage and as an important means of expanding the scope of our educational program; and
- D. that increased activity in the arts will increase employment by encouraging the production of artistic events in various communities of this state, thus utilizing the talents and services of many local citizens.

**History:** 1953 Comp., § 4-23-1, enacted by Laws 1965, ch. 138, § 1.

#### 18-5-2. Definitions.

As used in Chapter 18, Article 5 NMSA 1978:

- A. "commission" means the New Mexico arts commission;
- B. "creative arts" means the act of writing, composing or designating and executing literature, including poetry; drama; music, including opera and choral works; ballet and dance; painting; sculpturing; graphic arts; photography; crafts; architecture; and films and television;
- C. "director" means the executive head of the division;
- D. "division" means the arts division of the cultural affairs department; and
- E. "interpretative arts" means the act of interpreting the creative arts, including designing, publishing, printing and collecting of books; the producing, directing and performing of dramas; the performing of music and the producing, directing and performing of operas and choral works; the producing, directing and performing of ballet and dance; the conservation of architecture; and the producing, directing and performing of films and television.

**History:** 1953 Comp., § 4-23-2, enacted by Laws 1978, ch. 70, § 1; 1980, ch. 151, § 30; 2004, ch. 25, § 25.

**Repeals and reenactments.** — Laws 1978, Chapter 70 repealed former 4-23-2, 1953 Comp. (former 18-5-2 to 18-5-9 NMSA 1978), relating to the arts commission,

effective March 31, 1978, and enacted a new 4-23-2, 1953 Comp.

**The 2004 amendment**, effective May 19, 2004, in Subsection D, changed "office of cultural affairs" to "cultural affairs department".

#### 18-5-3. Commission; creation; members; terms; compensation.

- A. There is created the "New Mexico arts commission."
- B. The commission is composed of fifteen members, appointed by the governor. Members shall be broadly representative of all fields of the creative and interpretative arts.

C. Members of the commission shall be residents of this state and shall be persons who are widely known for their professional competence and experience in connection with the creative or interpretive [interpretative] arts.

D. Members of the commission shall initially be appointed for terms as follows: five members shall be appointed for terms of one year, five members shall be appointed for terms of two years and five members shall be appointed for terms of three years. The first members of the commission shall be appointed on or before September 1, 1965, with the date of office of all these members to commence on the same day. After the expiration of the initial terms, all members shall be appointed for terms of three years. Vacancies resulting from the death or resignation of a member shall be filled by appointment for the unexpired portion of the term of the member creating the vacancy.

E. Members of the commission shall receive per diem and mileage as provided for nonsalaried public employees in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

**History:** 1953 Comp., § 4-23-3, enacted by Laws 1978, ch. 70, § 2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Repeals and reenactments.** — Laws 1978, Chapter 70 repealed former 4-23-3, 1953 Comp., relating to the arts commission, effective March 31, 1978, and enacted a new section.

#### 18-5-4. Commission; officers; meetings.

A. Annually, at the November meeting, the commission as a whole shall organize by the nomination, election and installation of a vice chairman and a secretary of the commission. The chairman of the commission, to be appointed by the governor, will take office at this time.

B. The commission shall hold at least four meetings in each calendar year.

C. All meetings of the commission shall be open to the public.

**History:** 1953 Comp., § 4-23-4, enacted by Laws 1978, ch. 70, § 3.

**Repeals and reenactments.** — Laws 1978, Chapter 70 repealed former 4-23-4, 1953 Comp., relating to the

arts commission, effective March 31, 1978, and enacted a new section.

#### 18-5-5. Commission; duties.

A. The commission will be advisory to the director of the arts division, to the state cultural affairs officer and to state government in general where not in conflict with other statutory agencies. The governor will receive general counsel on the arts from the commission and from the division.

B. The commission will advise the director on all division policies, and the director shall provide the commission with all information requisite to such advice.

C. The commission shall be consulted by the director before he approves, disapproves or modifies the distribution of federal and state program funds. The director shall provide the commission with all information requisite to such consultation.

D. The director shall keep the commission informed of the fiscal affairs of the division, including budget requests, appropriations and disbursements.

**History:** 1953 Comp., § 4-23-5, enacted by Laws 1978, ch. 70, § 4; 1980, ch. 151, § 31.

**Repeals and reenactments.** — Laws 1978, Chapter 70 repealed former 4-23-5, 1953 Comp., relating to the

arts commission, effective March 31, 1978, and enacted a new 4-23-5, 1953 Comp.

#### 18-5-6. Division; creation; director; appointment.

A. The "arts division" is created within the cultural affairs department.

B. Subject to the authority of the secretary of cultural affairs, the administrative and executive head of the arts division is the "director" of the arts division. The director shall be hired by the secretary from a list of three to five names supplied by the commission.



**History:** 1953 Comp., § 4-23-6, enacted by Laws 1978, ch. 70, § 5; 1980, ch. 151, § 32; 2004, ch. 25, § 26.

**Repeals and reenactments.** — Laws 1978, Chapter 70 repealed former 4-23-6, 1953 Comp., relating to the arts commission, effective March 31, 1978, and enacted a new 4-23-6, 1953 Comp.

**The 2004 amendment**, effective May 19, 2004, in Subsection A, changed "office of cultural affairs" to "cultural affairs department"; and Subsection B, changed "state cultural affairs officer" to "secretary of cultural affairs".

## 18-5-7. Division; powers; duties.

The powers and duties of the arts division of the office of cultural affairs shall be:

- A. to advise and assist public agencies in planning civic beautification;
- B. to foster appreciation for the fine arts;
- C. to make this state more appealing to the world;
- D. to encourage the creative activity in the arts of residents of this state, and to attract to this state's residency additional outstanding creators in the field of fine arts through appropriate programs of publicity, education, coordination and direct activities such as sponsorship of performing and visual arts;
- E. to accept on behalf of the state such donations of money, property or memorials as, in its discretion, are suitable and shall best further the aims of Sections 18-5-1 through 18-5-7 NMSA 1978. The division shall be empowered to accept any additional gifts, contributions or bequests from private persons, corporations, foundations or agencies or the federal government. Such money so gained may be reemployed as part of a revolving fund to be used to further the purpose of Sections 18-5-1 through 18-5-7 NMSA 1978;
- F. to make, through its director, rules and regulations necessary to administer the division and as provided by law; and
- G. to perform other duties as provided by law.

**History:** 1953 Comp., § 4-23-7, enacted by Laws 1978, ch. 70, § 6; 1980, ch. 151, § 33.

**Repeals and reenactments.** — Laws 1978, Chapter 70 repealed 4-23-2 to 4-23-6.1, 1953 Comp. (former 18-5-2 to 18-5-9 NMSA 1978), relating to the arts commission, effective March 31, 1978, and enacted new §§ 4-23-2 to 4-23-7, 1953 Comp.

## ANNOTATIONS

**Artists-in-the-schools not employees of division.** — Artists participating in the artists-in-the-schools program are not employees of the New Mexico arts division and, therefore, are ineligible for unemployment compensation benefits through the division. 1980 Op. Att'y Gen. No. 80-08.

## 18-5-8, 18-5-9. Repealed.

**Repeals.** — Laws 1978, ch. 70, § 7 repealed 4-23-2 to 4-23-6.1, 1953 Comp. (former 18-5-2 to 18-5-9 NMSA 1978), relating to the arts commission, effective March 31, 1978.

# ARTICLE 6

## Cultural Properties

- |  |   |
|--|---|
| Sec.   | Sec.  |
| 18-6-1. Short title.   | 18-6-9. Cultural property; unauthorized excavation, injury or destruction; criminal damage to property. |
| 18-6-2. Purpose of act.  |   |
| 18-6-3. Definitions.   | 18-6-9.1. Cultural property; unauthorized appropriation; larceny.                                       |
| 18-6-4. Committee created; membership; compensation; voting; term; chairman; meetings.   | 18-6-9.2. Cultural property; unauthorized damage or appropriation; civil penalties.                     |
| 18-6-5. Committee; powers and duties.  | 18-6-9.3. Cultural property; forfeiture of instruments.   |
| 18-6-6. Cultural affairs department; powers and duties relating to the cultural properties act.                                      | 18-6-10. Cultural properties on private land.   |
| 18-6-7. Historic preservation division; planning; fiscal administration and cooperation for purposes of the cultural properties act. | 18-6-11. Permit required for excavation of archaeological sites; penalty.                               |
| 18-6-8. State historic preservation officer; appointment; qualifications; duties.  | 18-6-11.1. Confidentiality of site location.  |
| 18-6-8.1. Review of proposed state undertakings.   | 18-6-11.2. Permit required for excavation of unmarked burials; penalty.                                 |

Sec. 18-6-12. Emergency classification pending investigation.  
 18-6-13. Repealed.  
 18-6-14. State historian.  
 18-6-15. State archaeologist.  
 18-6-16. Preparation and sale of cultural properties publications; revolving fund; report.  
 18-6-17. Designation of state historic sites; reservation of lands for historic site care and management.  
 18-6-18. Short title.

Sec. 18-6-19. Purpose.  
 18-6-20. Definitions.  
 18-6-21. Fund created; administration.  
 18-6-22. Loan program; duties of division and committee.  
 18-6-23. Loans; criteria.  
 18-6-24. Short title.  
 18-6-25. Definitions.  
 18-6-26. Remains designated for reburial.  
 18-6-27. Designation of reburial grounds site.

## 18-6-1. Short title.

Sections 18-6-1 through 18-6-17 NMSA 1978 may be cited as the "Cultural Properties Act".

**History:** 1953 Comp., § 4-27-4, enacted by Laws 1969, ch. 223, § 1; 1977, ch. 246, § 34; 2004, ch. 25, § 27.

**The 2004 amendment**, effective May 19, 2004, converted 1953 statutory citations to NMSA 1978 citations.

## 18-6-2. Purpose of act.

The legislature hereby declares that the historical and cultural heritage of the state is one of the state's most valued and important assets; that the public has an interest in the preservation of all antiquities, historic and prehistoric ruins, sites, structures, objects and similar places and things for their scientific and historical information and value; that the neglect, desecration and destruction of historical and cultural sites, structures, places and objects results in an irreplaceable loss to the public; and that therefore it is the purpose of the Cultural Properties Act [18-6-1 through 18-6-17 NMSA 1978] to provide for the preservation, protection and enhancement of structures, sites and objects of historical significance within the state, in a manner conforming with, but not limited by, the provisions of the National Historic Preservation Act of 1966 (P.L. 89-665).

**History:** 1953 Comp., § 4-27-5, enacted by Laws 1969, ch. 223, § 2.

**Cross references.** — For the National Historic Preservation Act of 1966 (P.L. 89-665), see 16 U.S.C. § 470 et seq.

### ANNOTATIONS

**Law reviews.** — For note, "Cultural Properties Act — Turley v. State and the New Mexico Cultural Properties Act: A Matter of Interpretation", see 13 N.M.L. Rev. 737 (1983).

For student article, "The Efficacy of State Law in Protecting Native American Sacred Places: A Case Study of

the Paseo Del Norte Extension," see 47 Nat. Resources J. 969 (2007).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity and construction of statute or ordinance protecting historical landmarks, 18 A.L.R.4th 990.

Application and construction of § 106 of the National Historic Preservation Act of 1966 (16 USCS § 470f), dealing with federally sponsored projects which affect historic properties, 68 A.L.R. Fed. 578.

## 18-6-3. Definitions.

As used in the Cultural Properties Act [18-6-1 through 18-6-17 NMSA 1978]:

- A. "committee" means the cultural properties review committee;
- B. "cultural property" means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance;
- C. "registered cultural property" means a cultural property that has been placed on the official register on either a permanent or temporary basis by the committee;
- D. "official register" means the New Mexico register of cultural properties maintained by the committee for the purpose of recording cultural properties deemed worthy of preservation; and
- E. "state land" means property owned, controlled or operated by a department, agency, institution or political subdivision of the state.

**History:** 1953 Comp., § 4-27-6, enacted by Laws 1969, ch. 223, § 3; 1993, ch. 176, § 7.

**The 1993 amendment**, effective June 18, 1993, added Subsection E and made several minor stylistic changes throughout the section.



#### **18-6-4. Committee created; membership; compensation; voting; term; chairman; meetings.**

A. The "cultural properties review committee" is created, which consists of nine members as follows:

- (1) the state historian at the state archives and record center;
- (2) one person professionally recognized in the discipline of architectural history;
- (3) one person professionally recognized in the discipline of history;
- (4) one person professionally recognized in the discipline of architecture;
- (5) one person professionally recognized in the discipline of prehistoric archaeology;
- (6) one person professionally recognized in the discipline of historic archaeology;
- (7) one additional person who is professionally recognized in:
  - (a) history;
  - (b) architectural history or architecture; or
  - (c) archaeology;
- (8) one person who is a member of a New Mexico Indian nation, tribe or pueblo; and
- (9) one person who is a resident of New Mexico and represents the general public.

Other than the state historian, all members shall be appointed by the governor. Each appointed professional member shall have achieved recognition for accomplishment in that member's field in the American southwest, and each shall have specialized knowledge of New Mexico.

B. Any member of the committee shall be reimbursed for necessary expenses in the discharge of the member's official duties in accordance with the rates set by the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978]. Any committee member who receives a salary from state funds shall not be entitled to per diem and mileage for service on the committee unless the service is away from the town in which the member's duty station is located, and, in that case, the member shall receive per diem and mileage allowance at the rate set for salaried state employees. Committee members shall receive no other compensation, perquisite or allowance for committee service, but this does not mean that committee members who receive a salary from state funds shall not continue to draw such salary while discharging committee duties.

C. A simple majority shall constitute a quorum. A member of the committee shall abstain from voting or the member's vote shall be disqualified on any matter in which the member has a pecuniary interest.

D. Appointed members shall serve terms of four years. Members shall be appointed without regard to partisan political affiliation, and any member may be reappointed to the committee.

E. A chairman, vice chairman and secretary shall be elected from the membership to serve for one year, subject to reelection.

F. The committee shall meet at least once each quarter.

**History:** 1953 Comp., § 4-27-7, enacted by Laws 1969, ch. 223, § 4; 1986, ch. 10, § 1; 2005, ch. 50, § 1.

The 2005 amendment, effective July 1, 2005, expanded the membership of the cultural properties review

committee to include one person who is a member of a New Mexico Indian nation, tribe or pueblo and one person who is a resident of New Mexico and represents the general public.

#### **18-6-5. Committee; powers and duties.**

The primary function of the committee is to review proposals for the preservation of cultural properties. The committee is authorized to take such actions as are reasonable and consistent with law to identify cultural properties and to advise on the protection and preservation of those properties. Among such actions as may be necessary and proper to the fulfillment of these responsibilities, and without being limited hereby, the committee:

A. shall determine what constitutes historical, archaeological, scientific, architectural and other cultural significance for the purpose of identifying cultural properties as used in the Cultural Properties Act [18-6-1 through 18-6-17 NMSA 1978];

B. shall prepare and keep up to date the official register. This official register shall be composed of properties identified by the committee as having historical or other cultural significance and integrity, being suitable for preservation and having educational significance;

C. shall prepare and maintain proper documentation of the historic or other significance of cultural properties. The committee is granted access to all state and local public documents that may be necessary for the documentation, and such state and local agencies as have custody of such documents are authorized to allow the committee to examine and reproduce those documents useful for the documentation;

D. shall inspect all registered cultural properties periodically to assure proper cultural or historical integrity and proper maintenance. The inspection may be made by an authorized representative of the committee or historic preservation division of the office of cultural affairs. Such inspection shall be made only with the written consent of the owner or his authorized representative.

E. shall, based upon the inspection of a registered cultural property, recommend such repairs, maintenance and other measures as should be taken to maintain registered status;

F. shall issue regulations pertaining to the identification, preservation and maintenance of registered cultural properties in order to maintain the integrity of those properties;

G. may delete from the official register any registered cultural property whose owner does not comply with the committee's regulations or follow its recommendations for repair and maintenance, or which upon presentation of further evidence does not merit continued official registry;

H. may recommend to the museum division of the office of cultural affairs and other public administrators of registered cultural properties measures for the investigation, restoration and protection of such properties;

I. may encourage and render technical advice to private owners of registered cultural properties in order that such properties may be preserved;

J. may encourage and provide technical assistance to municipalities and counties in acquiring, preserving and developing cultural properties within their jurisdictions;

K. shall cooperate with federal, state, local and private agencies and persons engaged in the administration, development or other work relating to cultural properties within the state;

L. shall pursue all activities in a manner consistent with state and federal laws and regulations;

M. may encourage and promote public appreciation of New Mexico's historical and cultural heritage by:

- (1) reviewing for accuracy the proposed publication of information on cultural properties; and
- (2) reviewing the accuracy and adequacy of proposed marking of cultural properties;

N. may utilize the assistance of individuals, local organizations, state agencies and others interested in the identification and preservation of cultural properties;

O. may issue, with the concurrence of the state archaeologist and the state historic preservation officer, permits for the examination or excavation of sites and the collection or removal of objects of antiquity or general scientific interest, where such sites or objects are located on state lands, to institutions which the committee may deem to be properly qualified to conduct such examination, excavation or collection, subject to such rules and regulations as the committee may prescribe; provided that the examinations, excavations and collections are undertaken by reputable museums, universities, colleges or other historical, scientific or educational institutions or societies approved by the committee, with a view toward disseminating knowledge about cultural properties; and provided that a summary report of such investigations, containing relevant maps, documents, drawings and photographs be submitted to the committee which shall in turn submit the report to the appropriate agency or make other appropriate disposition of the report; and provided further, that all specimens so collected shall be the property of New Mexico, and that prior arrangements be made for the disposition of specimens derived from such investigations in an appropriate institution of the state or for loan of such specimens to qualified institutions in or out of the state;

P. shall provide advice to the state historic preservation officer in the historic preservation division and to the director of the museum division of the office of cultural affairs on cultural properties; and

Q. shall make, in conjunction with the historic preservation division, an annual report on its activities to the governor and the legislature. The report may contain recommendations for the more effective preservation of New Mexico's historic and cultural heritage.



**History:** 1953 Comp., § 4-27-8, enacted by Laws 1969, ch. 223, § 5; 1977, ch. 246, § 35; 1978, ch. 92, § 1; 1980, ch. 151, § 34; 1983, ch. 296, § 17; 1986, ch. 10, § 2.

**Cross references.** — For credit for preservation of cultural property on individual state income tax return, see 7-2-18.2 NMSA 1978.

For credit for preservation of cultural property on corporate state income tax return, see 7-2A-8.6 NMSA 1978.

#### ANNOTATIONS

**No limit on size of listed property.** — The Cultural Properties Act (18-6-1 NMSA 1978 et seq.) does not set a limit as to how large a listed property can be. *Rayellen Res., Inc. v. N.M. Cultural Props. Review Comm.*, 2014-NMSC-006.

**Personal notice of the comment period is not required.** — Personal notice of the public comment period for the cultural properties review committee's review of the listing of a property as a registered cultural property under the Cultural Properties Act (18-6-1 NMSA 1978 et seq.) is not required because the action of the committee in listing the property is not an adjudication of individual property rights, but a regulatory rule-making action, to effectuate the committee's statutory powers to identify and preserve the state's cultural and historic heritage. *Rayellen Res., Inc. v. N.M. Cultural Props. Review Comm.*, 2014-NMSC-006.

**Designation of Mount Taylor as a registered cultural property was lawful.** — Where Indian tribes filed a petition with the cultural properties review committee requesting that approximately 400,000 acres of public land on Mount Taylor be listed as a registered cultural property under the Cultural Properties Act (18-6-1 NMSA 1978 et seq.); the land consisted of federal land, state land, and Indian trust and pueblo land; private land was excluded from the listing; the committee published a general notice of the public comment period in two local newspapers, sent press releases to various print and broadcast media, published the nomination on the historic preservation division website, and sent personal notices to persons who expressed an interest in Mount Taylor's nomination and to property owners identified by petitioners' research of tax records in three counties; the committee did not send personal notices to owners of mineral estates; eighty percent of the property was owned by federal agencies and the state, both of which had inspection programs; the property made a significant contribution to the broad patterns of New Mexico history in association with persons significant in New Mexico's past and was integral to tribal community practices; the property's physical features that historically attracted various cultures had not changed; and after a public hearing, the committee permanently

listed the property as a registered cultural property, the listing was lawful because the committee provided sufficient notice of the public comment period to satisfy due process guarantees and the listing conformed to statutory requirements regarding inspection, maintenance and integrity of place. *Rayellen Res., Inc. v. N.M. Cultural Props. Review Comm.*, 2014-NMSC-006.

**Land grant was not state land subject listing as a registered cultural property.** — The cultural properties review committee erred when it included the Cebolleta land grant common lands in the listing of approximately 400,000 acres of land on Mount Taylor as a registered cultural property under the Cultural Properties Act (18-6-1 NMSA 1978 et seq.), because the Cebolleta land grant common lands were jointly held property by the heirs of the land grant and were not state lands for purposes of the act. *Rayellen Res., Inc. v. N.M. Cultural Props. Review Comm.*, 2014-NMSC-006.

**Listing did not violate protections against establishment of religion.** — Where the cultural properties review committee approved the listing of property on Mount Taylor as a registered cultural property; petitioners claimed that the listing violated the constitutional protections against the establishment of religion, because the integrity criterion for the listing was satisfied by tribal communities' use of the property for performing pilgrimages and ceremonies; and the evidence established that the property was listed as a historical site to promote historical preservation, not to advance religion, the listing did not foster excessive governmental entanglement in religion, and the listing merely required interagency consultation on acts that might have an adverse effect on the historic site, the listing of the property did not violate the Establishment Clause. *Rayellen Res., Inc. v. N.M. Cultural Props. Review Comm.*, 2014-NMSC-006.

**Fort Selden state park.** — Where federal money (or other appropriations dependent on such money) is not involved, the legislature intended that the park and recreation commission (now the state park and recreation division of the natural resources department) exercise primary control over the development and operation of Fort Selden state park, with the cultural properties review committee and state planning office (now, with the administrative division of the educational finance and cultural affairs department) offering advisory and consulting assistance. However, where the funds to be utilized are part of a national park service grant or state funds tied to such a grant, the plan is subject to approval by the committee. 1971 Op. Att'y Gen. No. 71-105.

**Law reviews.** — For note, "Cultural Properties Act — Turley v. State and the New Mexico Cultural Properties Act: A Matter of Interpretation", see 13 N.M.L. Rev. 737 (1983).

## 18-6-6. Cultural affairs department; powers and duties relating to the cultural properties act.

A. The cultural affairs department is responsible for administering, developing and maintaining all registered cultural properties in its ownership or custody.

B. Unless other locations are deemed more appropriate by the committee, in consultation with the museum of New Mexico, because of the nature of the property involved, the cultural affairs department shall be the depository for all collections made under the provisions of the Cultural Properties Act [18-6-1 through 18-6-17 NMSA 1978] and shall make available material from such collections to museums in and out of the state on the request of the governing bodies of those museums when, in the opinion of the department, such use is appropriate and when arrangements are made for the safe custodianship and public exhibition of the material in accordance with department rules. The museum of New Mexico shall maintain a record of the location of all such collections.

C. The cultural affairs department may seek and accept gifts, donations and grants, subject to the provisions of Subsection B of Section 18-6-7 NMSA 1978, to be used to acquire, preserve or restore registered cultural properties.

D. The cultural affairs department may acquire by gift, purchase or, if no other means of acquisition are available, condemnation any cultural property or interest therein sufficient to preserve such property. Cultural properties so acquired shall be administered by the department or other appropriate state agencies in accordance with Subsections A and B of this section.

E. The cultural affairs department may enter into agreements with the committee to provide assistance in carrying out the duties of the committee.

**History:** 1953 Comp., § 4-27-9, enacted by Laws 1969, ch. 223, § 6; 1977, ch. 246, § 36; 1980, ch. 151, § 35; 1986, ch. 10, § 3; 2004, ch. 25, § 28.

**The 2004 amendment**, effective May 19, 2004, in Subsection A, changed "museum division" to "cultural affairs department".

### **18-6-7. Historic preservation division; planning; fiscal administration and cooperation for purposes of the cultural properties act.**

A. The state historic preservation officer of the historic preservation division of the cultural affairs department shall, with the concurrence of the committee, prepare a long-range plan for the preservation of cultural properties, including but not limited to the identification, acquisition, restoration and protection of historic and cultural properties and the maintenance and expansion of statewide historic and prehistoric site data bases.

B. The historic preservation division shall administer funds that are received, controlled and disbursed for the purposes of the Cultural Properties Act [18-6-1 through 18-6-17 NMSA 1978], unless such funds are specifically granted or appropriated to another agency.

C. Consistent with the Cultural Properties Act, the historic preservation division shall cooperate in all matters with the committee and other divisions of the cultural affairs department.

**History:** 1953 Comp., § 4-27-10, enacted by Laws 1969, ch. 223, § 7; 1977, ch. 246, § 37; 1978, ch. 92, § 2; 1980, ch. 151, § 36; 1983, ch. 296, § 18; 1986, ch. 10, § 4; 2004, ch. 25, § 29.

**The 2004 amendment**, effective May 19, 2004, in Subsection A, changed "office of cultural affairs" to "cultural affairs department"; and in Subsection B, changed "museum division" to "historic preservation division".

### **18-6-8. State historic preservation officer; appointment; qualifications; duties.**

A. The "historic preservation division" is created within the cultural affairs department.

B. The state historic preservation officer shall be the director of the division and shall be hired by the secretary of cultural affairs with the consent of the governor. The position's qualifications shall be consistent with but not limited to the following:

- (1) a graduate degree in American history, anthropology, architecture or historic preservation;
- (2) at least five years of professional experience in American history, anthropology, architecture or historic preservation or any combination of these; or
- (3) a substantial contribution through research and publication to the body of scholarly knowledge in the field of American history, anthropology, architecture or historic preservation or any combination of these.

C. The state historic preservation officer shall administer the Cultural Properties Act [18-10-1 through 18-10-5 NMSA 1978], including being administrative head of all Cultural Properties Act functions assigned to the historic preservation division by law or executive order. In addition, the state historic preservation officer shall coordinate all duties performed by, and cooperate with, the committee, the secretary of cultural affairs and any other entities, public or private, involved with cultural properties.

D. The state historic preservation officer, in conjunction with the secretary of cultural affairs:

- (1) shall provide staff to the committee;
- (2) shall maintain the state register of cultural properties;



(3) may fund historic site surveys and may fund restorations;  
 (4) shall administer historic preservation tax benefit programs;  
 (5) shall review state undertakings to determine their effect upon significant historic properties;

(6) shall adopt and promulgate rules regulating the use of the division's statewide historic and prehistoric site databases and archives, including a fee schedule to cover the reasonable cost of using the databases and archives; and

(7) may solicit and receive funds or property, including federal funds and public and private grants, for programs and activities administered by the state historic preservation officer.

E. Fees collected pursuant to Paragraph (6) of Subsection D of this section shall be used to maintain and administer the division's statewide historic and prehistoric site databases and archives.

**History:** 1953 Comp., § 4-27-10.1, enacted by Laws 1977, ch. 246, § 38; 1980, ch. 151, § 37; 1983, ch. 296, § 19; 2004, ch. 25, § 30; 2015, ch. 19, § 7; 2018, ch. 23, § 2.

**Cross references.** — For credit for preservation of cultural property on individual state income tax return, see 7-2-18.2 NMSA 1978.

For credit for preservation of cultural property on corporate state income tax return, see 7-2A-8.6 NMSA 1978.

**The 2018 amendment**, effective May 16, 2018, authorized the state historic preservation officer to solicit and receive funds or property, including federal funds and public and private grants, for programs and activities administered by the state historic preservation officer; and in Subsection D, added Paragraph D(7).

**The 2015 amendment**, effective July 1, 2015, provided for additional duties of the state historic preservation officer within the cultural affairs department; in Paragraph (4) of Subsection D, after the semicolon, deleted "and"; in Paragraph (5) of Subsection D, after the semicolon, added "and"; added Paragraph (6) of Subsection D; added Section E.

**The 2004 amendment**, effective May 19, 2004, in Subsection A, changed "cultural affairs officer" to "secretary of cultural affairs"; in Subsection B, provided for the state historic preservation officer to coordinate with the secretary of cultural affairs; and in Subsection D, changed "cultural affairs officer" to "secretary of cultural affairs".

### 18-6-8.1. Review of proposed state undertakings.

The historic preservation division of the office of cultural affairs shall periodically furnish copies of the official register, or relevant sections of the official register, to state agencies and departments and shall periodically advise state agencies and departments of the status of the division's program of cultural property identification and registration. The head of any state agency or department having direct or indirect jurisdiction over any land or structure modification which may affect a registered cultural property shall afford the state historic preservation officer a reasonable and timely opportunity to participate in planning such undertaking so as to preserve and protect, and to avoid or minimize adverse effects on, registered cultural properties.

**History:** 1978 Comp., § 18-6-9.1, enacted by Laws 1986, ch. 10, § 5; recompiled as 1978 Comp., § 18-6-8.1 by Laws 1993, ch. 176, § 12.

#### ANNOTATIONS

**Registered cultural property on private land.** — This section enables the state historic preservation officer

to participate in the environmental improvement division's deliberation whether to license a private discharge plan when the license would affect a registered cultural property on private land. Although the catchline of this section refers to "state undertakings," its text does not qualify undertakings as "state undertakings." 1987 Op. Att'y Gen. No. 87-64.

### 18-6-9. Cultural property; unauthorized excavation, injury or destruction; criminal damage to property.

A. Any person who knowingly excavates, injures or destroys cultural property located on state land without a permit is guilty of criminal damage to property.

B. Any person who solicits, employs or counsels another person to excavate, injure or destroy cultural property located on state land without a permit is guilty of criminal damage to property.

C. Whoever commits criminal damage to property pursuant to the provisions of this section and the value of the property excavated, injured or destroyed is:

(1) less than one thousand dollars (\$1,000) is guilty of a petty misdemeanor and shall be sentenced according to the provisions of Section 31-19-1 NMSA 1978; or

(2) one thousand dollars (\$1,000) or more is guilty of a fourth degree felony and shall be sentenced according to the provisions of Section 31-18-15 NMSA 1978.

**History:** 1978 Comp., § 18-6-9, enacted by Laws 1993, ch. 176, § 8.

**Repeals and reenactments.** — Laws 1993, ch. 176, § 8 repealed former 18-6-9 NMSA 1978, as amended by Laws 1977, ch. 246, § 39 and enacted a new section, effective June 18, 1993.

#### ANNOTATIONS

**Law reviews.** — For note, "Cultural Properties Act — Turley v. State and the New Mexico Cultural Properties Act: A Matter of Interpretation", see 13 N.M.L. Rev. 737 (1983).

### 18-6-9.1. Cultural property; unauthorized appropriation; larceny.

A. Any person who knowingly appropriates cultural property located on state land without a permit is guilty of larceny.

B. Any person who solicits, employs or counsels another person to appropriate cultural property located on state land without a permit is guilty of larceny.

C. Any person who receives, traffics in or sells cultural property appropriated from state land without a valid permit is guilty of larceny.

D. Whoever commits larceny pursuant to the provisions of this section and the value of the property appropriated is:

(1) less than one hundred dollars (\$100) is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978;

(2) over one hundred dollars (\$100) but less than two hundred fifty dollars (\$250) is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978;

(3) two hundred dollars (\$200) or more but less than two thousand five hundred (\$2,500) is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(4) two thousand five hundred dollars (\$2,500) or more but less than twenty thousand dollars (\$20,000) is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; or

(5) more than twenty thousand dollars (\$20,000) is guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

**History:** 1978 Comp., § 18-6-9.1, enacted by Laws 1993, ch. 176, § 9.

**Recompilations.** — Laws 1993, ch. 176, § 12, repealed former 18-6-9.1 NMSA 1978, as enacted by Laws

1986, ch. 10, § 5, relating to the review of proposed state undertakings, as 18-6-8.1 NMSA 1978, effective June 18, 1993.

### 18-6-9.2. Cultural property; unauthorized damage or appropriation; civil penalties.

Any person violating the provisions of the Cultural Properties Act [18-6-1 through 18-6-17 NMSA 1978] shall be liable for civil damages to the state agency, department, institution or political subdivision having jurisdiction over the cultural property in an amount equal to the cost or, in the discretion of the court, in an amount equal to twice the cost of restoration, stabilization and interpretation of the cultural property.

**History:** 1978 Comp., § 18-6-9.2, enacted by Laws 1993, ch. 176, § 10.

### 18-6-9.3. Cultural property; forfeiture of instruments.

Any instrument, vehicle, tool or equipment used or intended to be used to violate the provisions of the Cultural Properties Act [18-6-1 through 18-6-17 NMSA 1978] is subject to forfeiture, and the provisions of the Forfeiture Act [31-27-1 through 31-27-8 NMSA 1978] apply to the seizure, forfeiture and disposal of such property.



**History:** 1978 Comp., § 18-6-9.3, enacted by Laws 1993, ch. 176, § 11; 2002, ch. 4, § 10.

The 2002 amendment, effective July 1, 2002, deleted the Subsection A designation; deleted the exception at the end of former Subsection A and Subsections B through F, which contained standards and procedures for the

forfeiture of instruments, vehicles, tools or property used to violate the provisions of the Cultural Property Act; and added at the end of the section "and the provisions of the Forfeiture Act apply to the seizure, forfeiture and disposal of such property."

## 18-6-10. Cultural properties on private land.

A. It is the declared intent of the legislature that field archeology on privately owned lands should be discouraged except in accordance with the provisions and spirit of the Cultural Properties Act [18-6-1 through 18-6-17 NMSA 1978]; and persons having knowledge of the location of archeological sites are encouraged to communicate such information to the committee.

B. It shall be deemed an act of trespass and a misdemeanor for any person to remove, injure or destroy registered cultural properties situated on private lands or controlled by a private owner without the owner's prior permission. Where the owner of a registered cultural property has submitted his acceptance in writing to the committee's registration of that cultural property, the provisions of Section 8 [18-6-9 NMSA 1978] of the Cultural Properties Act shall apply to that registered cultural property.

C. Where a cultural property is on private land or is otherwise privately owned and the committee determines that such cultural property is worthy of preservation and inclusion on the official register, the committee may recommend the procedure best calculated to insure [ensure] preservation. Such procedures may include:

(1) providing technical assistance to the owner who is willing to restore, preserve and maintain the cultural property;

(2) acquiring the property or an easement or other right therein by gift or purchase;

(3) advising the county or municipality within which the cultural property is located on zoning the property as an historic area or district in accordance with the Historic District Act [Chapter 3, Article 22 NMSA 1978];

(4) advising the county or municipality within which the cultural property is located on the use of agreements, purchases or the right of eminent domain to obtain control of the cultural property in accordance with the Historic District Act; and

(5) acquiring the property for the state by use of the right of eminent domain.

**History:** 1953 Comp., § 4-27-12, enacted by Laws 1969, ch. 223, § 9.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For provisions on exercise of right of eminent domain, see 42A-1-1 NMSA 1978 et seq.

ordinances attempting to restrict traditional federal and state regulatory authority are preempted by this section which allows the state cultural properties review committee to acquire lands to ensure preservation of cultural property and, thus, such county ordinances are of no consequence. 1994 Op. Att'y Gen. No. 94-01.

### ANNOTATIONS

**County ordinance cannot limit cultural properties review committee's authority.** — County land use

## 18-6-11. Permit required for excavation of archaeological sites; penalty.

A. It is unlawful for a person or the person's agent or employee to excavate with the use of mechanical earthmoving equipment an archaeological site for the purpose of collecting or removing objects of antiquity if the archaeological site is located on private land in this state, unless the person has first obtained a permit issued pursuant to the provisions of this section for the excavation. As used in this section, "archaeological site" means a location where there exists material evidence of the past life and culture of human beings in this state but excludes the sites of burial of human beings.

B. Permits for excavation pursuant to Subsection A of this section may be issued by the committee upon approval by the state archaeologist and the state historic preservation officer if the applicant:

- (1) submits written authorization from the owner of the land;
- (2) furnishes satisfactory evidence of being qualified to perform the archaeological excavation by experience, training and knowledge;
- (3) submits a satisfactory plan of excavation for the archaeological site and states in the plan the method by which excavation will be undertaken; and
- (4) agrees in writing, upon the completion of the excavation, to submit a summary report to the committee of the excavation, which report shall contain relevant maps, documents, drawings and photographs, together with a description of the archaeological specimens removed as a result of the excavation. Failure to file the summary report shall be grounds for refusing issuance of a future permit to the person.

C. All archaeological specimens collected or removed from the archaeological site as a result of excavation pursuant to Subsections A and B of this section shall be the property of the person owning the land on which the site is located.

D. Nothing in this section shall be deemed to limit or prohibit the use of the land on which the archaeological site is located by the owner of the land or to require the owner to obtain a permit for personal excavation on the owner's own land; provided that no transfer of ownership is made with the intent of excavating archaeological sites as prohibited in this section; and provided further that this exemption does not apply to marked or unmarked burial grounds.

E. A person convicted of violating the provisions of this section is guilty of a misdemeanor and shall be punished by a fine not to exceed one thousand dollars (\$1,000) and, in accordance with the provisions of the Forfeiture Act [Chapter 31, Article 27 NMSA 1978], shall forfeit to the state all equipment used in committing the violation for which the person is convicted.

**History:** 1953 Comp., § 4-27-12.1, enacted by Laws 1977, ch. 75, § 1; 1989, ch. 267, § 2; 2015, ch. 152, § 14.

The 2015 amendment, effective July 1, 2015, provided that equipment used in committing a violation of the provisions of this section are subject to forfeiture in accordance with the provisions of the Forfeiture Act; in Subsection A, after "unlawful for", deleted "any" and added "a", after "person or", deleted "his" and added "the person's", after "antiquity", deleted "when" and added "if", after "this section", deleted "an"; in Subsection B, after "preservation officer", deleted "when" and added "if"; in Subsection D, after "excavation on", deleted "his" and added "the owner's"; and in Subsection E, deleted "Any" and added "A", and after "(\$1,000) and, in", deleted "addition thereto" and added "accordance with the provisions of the Forfeiture Act".

#### ANNOTATIONS

**"Archaeological site".** — The definition of "archaeological site," in Subsection A, is not void for vagueness. *State v. Turley*, 1980-NMCA-167, 96 N.M. 592, 633 P.2d 700,

*rev'd on other grounds*, 96 N.M. 579, 633 P.2d 687 (1981), *overruled on other grounds by United States Brewers Ass'n v. Director of N.M. Dep't of ABC*, 1983-NMSC-059, 100 N.M. 216, 668 P.2d 1093, appeal dismissed, 465 U.S. 1093, 104 S. Ct. 1581, 80 L. Ed. 2d 115 (1984).

**Landowner exemption from permit requirement covers landowner's employee or agent.** — In exempting the landowner from the permit requirement of Subsection A, Subsection D also allows the landowner to use an employee or agent to accomplish the task of excavation without a permit. *Turley v. State*, 1981-NMSC-081, 96 N.M. 579, 633 P.2d 687, *overruled on other grounds by United States Brewers Ass'n v. Director of N.M. Dep't of ABC*, 1983-NMSC-059, 100 N.M. 216, 668 P.2d 1093, appeal dismissed, 465 U.S. 1093, 104 S. Ct. 1581, 80 L. Ed. 2d 115 (1984).

**Law reviews.** — For annual survey of New Mexico law relating to property, see 13 N.M.L. Rev. 435 (1983).

For note, "Cultural Properties Act — *Turley v. State* and the New Mexico Cultural Properties Act: A Matter of Interpretation", see 13 N.M.L. Rev. 737 (1983).

### 18-6-11.1. Confidentiality of site location.

A. Any information in the custody of a public official concerning the location of archaeological resources, the preservation of which is in the interest of the state of New Mexico, shall remain confidential unless the custodian of such information determines that the dissemination of such information will further the purposes of the Cultural Properties Act [18-6-1 through 18-6-17 NMSA 1978], as set forth in Section 18-6-2 NMSA 1978 and will not create a risk of loss of archaeological resources.

B. As used in Subsection A of this section, "archaeological resources" means a location where there exists material evidence of the past life and culture of human beings in this state and includes the sites of burial and habitats of human beings.

**History:** 1978 Comp., § 18-6-11.1, enacted by Laws 1979, ch. 66, § 1.



### 18-6-11.2. Permit required for excavation of unmarked burials; penalty.

A. Each human burial in the state interred in any unmarked burial ground is accorded the protection of law and shall receive appropriate and respectful treatment and disposition.

B. A person who knowingly, willfully and intentionally excavates, removes, disturbs or destroys any human burial buried, entombed or sepulchered in any unmarked burial ground in the state, or any person who knowingly, willfully and intentionally procures or employs any other person to excavate, remove, disturb or destroy any human burial buried, entombed or sepulchered in any unmarked burial ground in the state, except by authority of a permit issued by the state medical investigator or by the committee with the concurrence of the state archaeologist and state historic preservation officer, is guilty of a fourth degree felony and shall be punished by a fine not to exceed five thousand dollars (\$5,000) or by imprisonment for a definite term of eighteen months or both. The offender shall upon conviction forfeit to the state all objects, artifacts and human burials excavated or removed from an unmarked burial ground in violation of this section, and any proceeds from the sale by the offender of any of the foregoing shall also be forfeited. The provisions of the Forfeiture Act [Chapter 31, Article 27 NMSA 1978] shall apply to a forfeiture provided for in this section. As used in this section:

(1) "unmarked burial ground" means a location where there exists a burial of any human being that is not visibly marked on the surface of the ground in any manner traditionally or customarily used for marking burials and includes any funerary object, material object or artifact associated with the burial; and

(2) "human burial" means a human body or human skeletal remains and includes any funerary object, material object or artifact buried, entombed or sepulchered with that human body or skeletal remains.

C. Any person who discovers a human burial in any unmarked burial ground shall cease any activity that may disturb that burial or any object or artifact associated with that burial and shall notify the local law enforcement agency having jurisdiction in the area. The local law enforcement agency shall notify the state medical investigator and the state historic preservation officer.

D. The state medical investigator may, consistent with the statutes governing medical investigations, have authority over or take possession of any human burial discovered in the state, in which case the provisions of Subsections E and F of this section shall not apply.

E. Permits for excavation of a human burial discovered in an unmarked burial ground shall be issued by the committee within sixty days of receipt of application when the applicant:

(1) submits written authorization for that excavation from the owner of the land on which the human burial is located or the applicant is the owner of the land;

(2) demonstrates appropriate efforts to determine the age of the human burial and to identify and consult with any living person who may be related to the human burial interred in the unmarked burial ground;

(3) complies with permit procedures and requirements established by regulations authorized in this section to ensure the complete removal of the human burial and the collection of all pertinent scientific information in accordance with proper archaeological methods; and

(4) provides for the lawful disposition or reinterment of the human burial either in the original or another appropriate location and of any objects or artifacts associated with that human burial, consistent with regulations issued by the state historic preservation officer, except that the committee shall not require, as a condition of issuance of a permit, reinterment or disposition, any action that unduly interferes with the owner's use of the land.

F. Permits for the excavation of any human burial discovered in the course of construction or other land modification may be issued by the committee with the concurrence of the state archaeologist and the state historic preservation officer on an annual basis to professional archaeological consultants or organizations.

G. Except when the committee requires as a condition of the permit that any object or artifact associated with a human burial be reinterred or disposed of with that burial, that object or artifact shall be the property of the person owning the land on which that burial is located.

H. Any object or artifact and any human burial excavated or removed from an unmarked burial ground in violation of this section shall be forfeited to the state and shall be lawfully disposed of

or reinterred in accordance with regulations issued by the state historic preservation officer; provided that no object or artifact so forfeited shall ever be sold by the state; and provided further that any object or artifact removed from the land without the owner's consent and in violation of this section shall be returned to the lawful owner consistent with Subsection G of this section.

I. The state historic preservation officer shall issue regulations with the concurrence of the state medical investigator for the implementation of this section.

**History:** 1978 Comp., § 18-6-11.2, enacted by Laws 1989, ch. 267, § 1; 2015, ch. 152, § 15.

The 2015 amendment, effective July 1, 2015, provided that the provisions of the Forfeiture Act apply to forfeitures provided for in this section; in Subsection B, after "foregoing shall also be forfeited.", added "The provisions

of the Forfeiture Act shall apply to a forfeiture provided for in this section."; and in Paragraph (1) of Subsection B, after "exists a burial", deleted "or burials", after "human being", deleted "which" and added "that", and after "with the burial", deleted "or burials".

## 18-6-12. Emergency classification pending investigation.

A cultural property which the committee thinks may be worthy of preservation may be included on the official register on a temporary basis for not more than one year, during which time the committee shall investigate the property and make a determination as to whether it may be permanently placed on the official register. If the cultural property is on private land, the temporary classification shall not be considered a taking of private property, but the owner may receive a fair rental value for the part of the land affected if the temporary classification unduly interferes with the owner's normal use of the land. The owner shall be immediately notified of the committee's determination. If at the expiration of one year from the time the temporary classification was imposed the owner has not been notified of any committee action, the temporary classification shall lapse, and it shall not be renewed for five years.

**History:** 1953 Comp., § 4-27-13, enacted by Laws 1969, ch. 223, § 10.

## 18-6-13. Repealed.

**Repeals.** — Laws 1984, ch. 34, § 4 repealed 18-6-13 NMSA 1978, as enacted by Laws 1969, ch. 223, § 11, relating to tax exemption of cultural properties from certain property taxes, effective February 16, 1984. For present

provisions relating to tax credits for preservation of cultural properties on state income tax returns, see 7-2-18.2 and 7-2A-8.6 NMSA 1978.

## 18-6-14. State historian.

The state historian at the state records center is designated as "state historian" for purposes of the Cultural Properties Act [18-6-1 through 18-6-17 NMSA 1978].

**History:** 1953 Comp., § 4-27-15, enacted by Laws 1969, ch. 223, § 12; 1981, ch. 48, § 1.

section, as it read prior to the 1981 amendment, designating the deputy for archives for the state records center as the state historian. 1980 Op. Att'y Gen. No. 80-25.

### ANNOTATIONS

Legislature implicitly recognized existence of position of deputy for archives when it enacted this

## 18-6-15. State archaeologist.

The state archaeologist in the cultural affairs department is designated as "state archaeologist" for the purposes of the Cultural Properties Act [18-6-1 through 18-6-17 NMSA 1978]. The state archaeologist shall be professionally recognized in the discipline of archaeology, shall have achieved recognition for accomplishments in his field in the American southwest and shall have a specialized knowledge of New Mexico.



**History:** 1953 Comp., § 4-27-16, enacted by Laws 1969, ch. 223, § 13; 1986, ch. 10, § 6; 2004, ch. 25, § 31.

**The 2004 amendment**, effective May 19, 2004, changed "office of cultural affairs" to "cultural affairs department".

### **18-6-16. Preparation and sale of cultural properties publications; revolving fund; report.**

The historic preservation division shall encourage and promote publications relating to cultural properties that have been prepared pursuant to the Cultural Properties Act [18-6-1 through 18-6-17 NMSA 1978]. The historic preservation division may prepare or contract for the preparation of such publications on the condition that it receives from the sale of the publications the amount expended plus interest on that amount compounded annually at the prime lending rate quoted in the Wall Street Journal on the effective date of the contract until the expended amount is reimbursed in full to the division. All receipts from such sales shall go into a special revolving fund, which is hereby established. The historic preservation division shall adopt rules establishing guidelines and fiscal controls over the use of the revolving fund.

**History:** 1953 Comp., § 4-27-17, enacted by Laws 1978, ch. 53, § 1; 1980, ch. 151, § 38; 1983, ch. 296, § 20; 1994, ch. 70, § 1; 2004, ch. 25, § 32.

**Repeals and reenactments.** — Laws 1978, ch. 53, § 1, repealed former 4-27-17, 1953 Comp., relating to preparation and sale of cultural properties publications, revolving fund and report, and enacted a new 4-27-17, 1953 Comp.

**The 2004 amendment**, effective May 19, 2004, deleted the reference to the office of cultural affairs.

**The 1994 amendment**, effective May 18, 1994, deleted "duties of the committee under the" following "pursuant

to the" in the first sentence, substituted "historic preservation division" for "committee" in the second sentence, substituted the language beginning "interest on that" for "ten percent" at the end of the second sentence, deleted "and shall annually report to the legislative finance committee on or before June 30 the fund's receipts, disbursements and unencumbered balance, together with a detailed statement of the expenditures" from the end of the last sentence, and made a minor stylistic change.

### **18-6-17. Designation of state historic sites; reservation of lands for historic site care and management.**

The governor is authorized, upon the recommendation of the committee and the board of regents of the museum of New Mexico, to declare by public proclamation that any cultural property situated on lands owned or controlled by the state shall be a state historic site and may reserve as a part thereof such parcels of land as may be necessary for the proper care and management of the cultural property to be protected. In the case of proposed state historic sites situated on state trust lands, the federal laws granting same shall be complied with. Any such historic site shall be administered by the state historic sites division of the cultural affairs department in accordance with the provisions of Section 18-6-6 NMSA 1978.

**History:** 1953 Comp., § 4-27-18, enacted by Laws 1973, ch. 16, § 1; 1977, ch. 246, § 41; 1980, ch. 151, § 39; 1986, ch. 10, § 7; 2013, ch. 67, § 5.

**The 2013 amendment**, effective June 14, 2013, renamed state monuments as historic sites; in the title of the section, after "state", deleted "monuments" and added "historic sites" and after "lands for", deleted "monument"

and added "historic site"; deleted "monument" and added "historic site" throughout the section; in the third sentence, after "administered by the", deleted "museum" and added "state historic sites"; and after "division of the", changed "office of cultural affairs" to "cultural affairs department".

### **18-6-18. Short title.**

This act [18-6-18 through 18-6-23 NMSA 1978] may be cited as the "Historic Preservation Loan Act".

**History:** Laws 1987, ch. 7, § 1.

## **18-6-19. Purpose.**

The purpose of the Historic Preservation Loan Act [18-6-18 through 18-6-23 NMSA 1978] is to provide owners of registered cultural properties in New Mexico with low-cost financial assistance in the restoration, rehabilitation and repair of properties listed in the state register of cultural properties or national register of historic places, which are a part of the state's heritage and which contribute substantially to the state's economic well being and to a sound and proper balance between preservation and development, through the creation of a self-sustaining revolving loan program to rehabilitate, repair and restore historic properties.

**History:** Laws 1987, ch. 7, § 2.

## **18-6-20. Definitions.**

As used in the Historic Preservation Loan Act [18-6-18 through 18-6-23 NMSA 1978]:

- A. "committee" means the cultural properties review committee;
- B. "division" means the historic preservation division of the cultural affairs department;
- C. "fund" means the historic preservation loan fund;
- D. "property owner" means the sole owner, joint owner, owner in partnership or corporate owner of a registered cultural property. As used in this subsection, the term "property owner" includes the owner of a leasehold interest in a registered cultural property, if the term of the lease is not less than nineteen years; and
- E. "registered cultural property" means a site, structure, building or object entered in the state register of cultural properties or the national register of historic places or both.

**History:** Laws 1987, ch. 7, § 3; 2004, ch. 25, § 33.

The 2004 amendment, effective May 19, 2004, in Subsection B, changed "office of cultural affairs" to "cultural affairs department".

## **18-6-21. Fund created; administration.**

A. There is created in the state treasury a revolving loan fund which shall be known as the "historic preservation loan fund". The division shall administer the fund and may make loans from the fund in accordance with the Historic Preservation Loan Act [18-6-18 through 18-6-23 NMSA 1978].

B. The division shall deposit in the fund all receipts from the repayment of loans made pursuant to the Historic Preservation Loan Act.

C. The division may deposit in the fund any private funds made available for the purposes of the Historic Preservation Loan Act and any federal funds made available for the purpose of making grants or loans to owners of registered historic properties. Such funds may be used by the division to make or to subsidize loans made pursuant to the Historic Preservation Loan Act.

**History:** Laws 1987, ch. 7, § 4.

## **18-6-22. Loan program; duties of division and committee.**

A. The division shall establish a program to make direct loans or loan subsidies and a program to contract with one or more lending institutions for deposits to be used for the purpose of making or subsidizing loans to owners of registered cultural properties for the restoration, rehabilitation or repair of those properties in accordance with the Historic Preservation Loan Act [18-6-18 through 18-6-23 NMSA 1978].

B. The division shall adopt rules and regulations to govern the application procedure and requirements for making or subsidizing loans under the Historic Preservation Loan Act.

C. The division shall adopt rules and regulations to govern the deposits with lending institutions for making or subsidizing loans under the Historic Preservation Loan Act.



D. The division and committee in cooperation shall adopt a system for the priority ranking of historic preservation projects, both eligible and ineligible for federal funding assistance, for which loan or loan subsidy applications have been received by the division. The system shall be based on factors including geographic distribution of recipient projects, severity of deterioration of the registered property, the degree of architectural and construction detail in the loan application demonstrating the feasibility of the proposed restoration, rehabilitation or repair of the registered cultural property and availability of other funding for the project. All loans or loan subsidies from the fund shall be granted pursuant to this system and the system shall be reviewed annually by the division and committee.

E. The committee and division shall monitor the fund and shall prepare an annual report to the governor and the legislature detailing the operations of the fund.

F. The division has the authority necessary and appropriate for the exercise of the powers and duties conferred by the Historic Preservation Loan Act.

**History:** Laws 1987, ch. 7, § 5.

### 18-6-23. Loans; criteria.

A. Loans or loan subsidies from the fund shall be made only to property owners who:

- (1) agree to repay the loan and to maintain the registered cultural property as restored, rehabilitated or repaired for a specified period but in no case less than seven years;
- (2) agree to maintain complete and proper financial records regarding the registered cultural property and to make these available to the division on request;
- (3) agree to complete the proposed rehabilitation, repair or restoration work on the registered cultural property within two years from the date of project loan approval by the division; and
- (4) provide sufficient collateral security interest in the registered cultural property to the state of New Mexico in accordance with rules and regulations established by the committee and division.

B. A loan shall be made for a period not to exceed five years with interest on the unpaid balance at a rate not greater than the yield at the time of loan approval on United States treasury bills with a maturity of 365 days plus three and one-half percent. A loan shall be repaid by the property owner in equal installments not less often than annually with the first installment due within one year of the date the loan is issued.

C. Loans shall be made only for eligible costs. Eligible costs include architectural, engineering and planning costs, inspection of work in progress, contracted restoration, rehabilitation and repair costs and costs necessary to meet code requirements. Eligible costs shall not include costs of land acquisition, legal costs or fiscal agents' fees.

**History:** Laws 1987, ch. 7, § 6.

**Severability clauses.** — Laws 1987, ch. 7, § 7 provided for the severability of the act if any part or application thereof is held invalid.

### 18-6-24. Short title.

This act [18-6-24 through 18-6-27 NMSA 1978] may be cited as the "Reburial Grounds Act".

**History:** Laws 2007, ch. 299, § 1 and Laws 2007, ch. 300, § 1.

**Compiler's notes.** — Laws 2007, ch. 299, § 1 and Laws 2007, ch. 300, § 1 enacted identical sections, effective

June 15, 2007. The section was set out as enacted by Laws 2007, ch. 300, § 1. See 12-1-8 NMSA 1978.

### 18-6-25. Definitions.

As used in the Reburial Grounds Act [18-6-24 through 18-6-27 NMSA 1978]:

- A. "department" means the cultural affairs department;

B. "descendant group" means persons demonstrably related to the remains by consanguinity, family affiliation, clan or direct historical association and includes a Native American nation, band, tribe or pueblo in New Mexico;

C. "funerary object" means an object or artifact associated with a human burial;

D. "reburial grounds" means state or federal land set aside pursuant to the Reburial Grounds Act that secures and preserves unmarked graves for remains not claimed by a descendant group;

E. "remains" means a human body, skeletal remains or mummified remains discovered during construction and other projects or exposed through erosion, excavation or accident or other means on state, federal and private lands and includes a funerary object or artifact associated with the remains; and

F. "state land" means property owned, controlled or operated by a department, agency, institution or political subdivision of the state.

**History:** Laws 2007, ch. 299, § 2 and Laws 2007, ch. 300, § 2.

June 15, 2007. The section was set out as enacted by Laws 2007, ch. 300, § 2. See 12-1-8 NMSA 1978.

**Compiler's notes.** — Laws 2007, ch. 299, § 2 and Laws 2007, ch. 300, § 2 enacted identical sections, effective

## 18-6-26. Remains designated for reburial.

Except as otherwise designated by the department, remains shall be reburied in the reburial grounds unless a descendant group that demonstrates a relationship to the remains requests otherwise.

**History:** Laws 2007, ch. 299, § 3 and Laws 2007, ch. 300, § 3.

June 15, 2007. The section was set out as enacted by Laws 2007, ch. 300, § 3. See 12-1-8 NMSA 1978.

**Compiler's notes.** — Laws 2007, ch. 299, § 3 and Laws 2007, ch. 300, § 3 enacted identical sections, effective

## 18-6-27. Designation of reburial grounds site.

The department shall facilitate the designation of state or federal land for reburial of unmarked remains not claimed by a descendant group and shall:

A. by September 1, 2007, organize a working group that includes representatives of the department, the Indian affairs department and the tribal-state workgroup on repatriation and sacred places to:

(1) recommend rules for the acquisition of remains and the maintenance and preservation of the reburial grounds;

(2) distinguish between remains that can be reburied and remains that cannot; and

(3) establish procedures and priorities for reburying remains held in state collections;

B. by December 30, 2008, promulgate rules for:

(1) platting remains placed in the reburial grounds and ensuring that the information is confidential pursuant to Section 18-6-11.1 NMSA 1978;

(2) accepting and acquiring remains and coordinating activities with the state historic preservation officer;

(3) preserving the natural environment of the reburial grounds;

(4) distinguishing between remains that can be reburied and those that cannot;

(5) working with descendant groups that request access to the reburial grounds for ceremonies; and

(6) providing for security and confidentiality of the site; and

C. by July 1, 2009:

(1) accept the first remains for reburial, including remains currently at the museum of New Mexico, the museum of Indian arts and culture and the department;

(2) begin platting the reburial grounds so that reburied remains are not disturbed by later burials and so that the plat is confidential pursuant to Section 18-6-11.1 NMSA 1978; and

(3) provide security for the reburial grounds.



**History:** Laws 2007, ch. 299, § 4 and Laws 2007, ch. 300, § 4.

**Cross references.** — For the department referred to in this section, see the cultural affairs department, 18-6-6 NMSA 1978.

**Compiler's notes.** — Laws 2007, ch. 299, § 4 and Laws 2007, ch. 300, § 4 enacted identical sections, effective June 15, 2007. The section was set out as enacted by Laws 2007, ch. 300, § 4. See 12-1-8 NMSA 1978.

## ARTICLE 6A

### Cultural Properties Protection

Sec.

18-6A-1. Short title.

18-6A-2. Definitions.

18-6A-3. Fund; created; purpose.

Sec.

18-6A-4. Administration; regulatory authority.

18-6A-5. Professional surveys.

18-6A-6. Joint powers agreements.

#### 18-6A-1. Short title.

Chapter 18, Article 6A NMSA 1978 may be cited as the "Cultural Properties Protection Act".

**History:** Laws 1993, ch. 176, § 1; 2004, ch. 25, § 34.

**The 2004 amendment**, effective May 19, 2004, provided that the Cultural Properties Protection Act be cited as "Chapter 18, Article 6A".

#### 18-6A-2. Definitions.

As used in the Cultural Properties Protection Act:

- A. "committee" means the cultural properties review committee;
- B. "cultural property" means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance;
- C. "division" means the historic preservation division of the cultural affairs department;
- D. "fund" means the cultural properties restoration fund;
- E. "interpretation" means the inventory, registration, mapping and analysis of cultural properties and public educational programs designed to prevent the loss of cultural properties;
- F. "officer" means the state historic preservation officer;
- G. "preservation" means sustaining the existing form, integrity and material of a cultural property or the existing form and vegetative cover of a cultural property and may include protective maintenance or stabilization where necessary in the case of archaeological sites;
- H. "professional survey" means an archaeological or architectural survey;
- I. "protection" means safeguarding the physical condition or environment of a cultural property from deterioration or damage caused by weather or other natural, animal or human intrusions;
- J. "restoration" means recovering the general historic appearance of a cultural property or the form and details of an object or structure by removing incompatible natural or human-caused accretions and replacing missing elements as appropriate;
- K. "stabilization" means reestablishing the structural stability or weather-resistant condition of a cultural property or arresting deterioration that may lead to structural failure;
- L. "state agency" means a department, agency, institution or political subdivision of the state; and
- M. "state land" means property owned, controlled or operated by a state agency.

**History:** Laws 1993, ch. 176, § 2; 2004, ch. 25, § 35.

**The 2004 amendment**, effective May 19, 2004, in Subsection C, changed "office of cultural affairs" to "cultural affairs department".

#### 18-6A-3. Fund; created; purpose.

A. The "cultural properties restoration fund" is created in the state treasury. The fund may receive money appropriated by the legislature or gifts, grants, bequests or payments for services rendered by the division from any public or private source. All money appropriated to the fund

or accruing to the fund as a result of gifts, grants, bequests, payments for services rendered, investment of the fund or from any other source shall not be transferred to another fund but shall remain in the fund to be encumbered and disbursed according to the provisions of the Cultural Properties Protection Act. Money in the fund shall not revert to the general fund or to any other fund from which money was appropriated.

B. Money in the fund shall be used solely for the purpose of providing grants for interpretation, restoration, preservation, stabilization and protection of cultural property that is state property.

C. Disbursements from the fund shall be made only upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the officer.

**History:** Laws 1993, ch. 176, § 3.

#### **18-6A-4. Administration; regulatory authority.**

A. The officer shall administer the provisions of the Cultural Properties Protection Act and shall adopt rules, regulations and criteria for reviewing and awarding grants as necessary to carry out the provisions of that act.

B. Rules and regulations shall include:

(1) the method to be used to determine the eligibility of a state agency to receive grants from the fund;

(2) a procedure for application, approval and rejection of grant proposals;

(3) a requirement that an interpretation, restoration, preservation, stabilization or protection project be undertaken in accordance with specifications approved by the officer; and

(4) a requirement that a cultural property assisted by a grant be preserved and protected for a specified period of time, but in no case less than ten years.

C. Criteria for reviewing and awarding grants shall include the:

(1) degree of physical damage or deterioration of the cultural property;

(2) special status of the cultural property, including whether the property is listed on a national, state or local register of historic places; and

(3) suitability of the cultural property for interpretation.

D. At least annually, the officer, in consultation with the committee and with the approval of the officials having jurisdiction over cultural properties being considered, shall select:

(1) cultural properties to be restored, preserved, stabilized and protected; and

(2) programs for interpretation.

E. The officer may contract with state agencies, architectural and engineering firms, private nonprofit organizations or individuals for interpretation, restoration, preservation, stabilization and protection.

**History:** Laws 1993, ch. 176, § 4.

#### **18-6A-5. Professional surveys.**

The officer shall, in cooperation with the heads of state agencies, establish a system of professional surveys of cultural properties on state lands. State agencies shall cooperate with the officer and exercise due caution to ensure that cultural properties are not inadvertently damaged or destroyed.

**History:** Laws 1993, ch. 176, § 5.

#### **18-6A-6. Joint powers agreements.**

As authorized by the Joint Powers Agreements Act [11-1-1 NMSA 1978], any state agency may enter into a joint powers agreement with the division to effect the purposes of the Cultural Properties Protection Act.

**History:** Laws 1993, ch. 176, § 6.



## ARTICLE 7

### Museum of Space History

Sec.	Sec.
18-7-1. Museum of space history division; creation.	18-7-3.1. Museum admission policy.
18-7-2. New Mexico museum of space history commission.	18-7-4. Museum of space history director; appointment; qualifications.
18-7-3. New Mexico museum of space history commission; powers and duties.	18-7-5. Museum of space history director duties.

#### 18-7-1. Museum of space history division; creation.

The "museum of space history division" is created within the cultural affairs department. The principal facility of the division is the "museum of space history" located in Alamogordo. The site shall be held in the name of the state.

**History:** 1953 Comp., § 73-46-1, enacted by Laws 1978, ch. 72, § 1; 1980, ch. 151, § 40; 1987, ch. 313, § 1; 2001, ch. 275, § 2; 2001, ch. 278, § 2; 2004, ch. 25, § 36.

**Repeals and reenactments.** — Laws 1978, Chapter 72 repealed 73-46-1 to 73-46-3, 1953 Comp. (former 18-7-1 to 18-7-4 NMSA 1978), relating to the international space hall of fame, effective March 31, 1978, and enacted new §§ 73-46-1 to 73-46-3, 1953 Comp.

**Cross references.** — For special recreation and museum privileges for veterans and their immediate families on Veteran's Day, see 28-13A-1 NMSA 1978.

**The 2004 amendment,** effective May 19, 2004, changed "office of cultural affairs" to "cultural affairs department" and designated Alamogordo as the location of the museum of space history.

**The 2001 amendment,** effective June 15, 2001, substituted "museum of space history division" for "space center division" in the section heading and within the section.

#### 18-7-2. New Mexico museum of space history commission.

There is created the "New Mexico museum of space history commission" consisting of eleven members appointed by the governor. Membership shall be composed of geographically diverse residents of the state that are proficient in the scientific study of space, museums or other relevant subject areas. Three members shall be appointed to the commission for a term ending December 31, 1974, four members shall be appointed to the commission for a term ending December 31, 1975 and four members shall be appointed to the commission for a term ending December 31, 1976. Thereafter, members of the commission shall be appointed for terms of three years or less in such manner that the staggered expiration date is maintained. Necessary officers shall be elected by the commission. The commission members shall be reimbursed for their necessary and actual mileage and per diem expenses as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978].

**History:** 1953 Comp., § 73-46-2, enacted by Laws 1978, ch. 72, § 2; 1987, ch. 313, § 2; 2001, ch. 275, § 3; 2001, ch. 278, § 3; 2019, ch. 78, § 1.

**Repeals and reenactments.** — Laws 1978, Chapter 72 repealed 73-46-1 to 73-46-3, 1953 Comp. (former 18-7-1 to 18-7-4 NMSA 1978), relating to the international space hall of fame, effective March 31, 1978, and enacted new §§ 73-46-1 to 73-46-3, 1953 Comp.

**The 2019 amendment,** effective June 14, 2019, revised the eligibility requirements for members of the New Mexico museum of space history commission; deleted "Four members of the commission shall be appointed at large and one member shall be appointed from each of the

planning and development districts." and added "Membership shall be composed of geographically diverse residents of the state that are proficient in the scientific study of space, museums or other relevant subject areas."

**The 2001 amendment,** effective June 15, 2001, substituted "New Mexico museum of space history commission" for "space center commission" in the catchline and within the section.

Laws 2001, ch. 275, § 3, effective June 15, 2001, enacted identical amendments to this section. The section was set out as amended by Laws 2001, ch. 278, § 3. See 12-1-8 NMSA 1978.

#### 18-7-3. New Mexico museum of space history commission; powers and duties.

The New Mexico museum of space history commission shall:

- A. establish museum of space history policy and determine the mission and direct the development of the museum subject to the approval of the secretary of cultural affairs;
- B. hold title to all property for museum use;
- C. exercise trusteeship over the collections of the museum;
- D. acquire objects relating to the history of rocketry, space flight, astronomy and related fields of interest to the public and real property for museum use or benefit by purchase, donation and bequest;
- E. solicit funds for the purpose of developing, restoring and equipping the museum and its property and for the purchase of objects and works of art for its collections and for the development of exhibits and other public programs;
- F. adopt rules as appropriate governing:
  - (1) the loan of objects and exhibits to qualified institutions and agencies for the purpose of exhibition;
  - (2) gifts, donations or loans of exhibit or collection materials for the museum;
  - (3) the licensure of the museum's intellectual property; and
  - (4) other matters necessary to carry out the provisions of Chapter 18, Article 7 NMSA 1978;
- G. enter into leases with public or private organizations or agencies for the use of museum premises or facilities for periods of time that exceed forty-five days;
- H. cooperate with other agencies and political subdivisions of state, tribal and federal governments and private organizations and individuals to the extent necessary to establish and maintain the museum and its programs;
- I. subject to other provisions of law and excepting temporary statewide initiatives of the secretary of cultural affairs, impose admission fees to the museum facilities and programs; and
- J. review annually the performance of the director and report its findings to the secretary of cultural affairs.

**History:** 1953 Comp., § 73-46-3, enacted by Laws 1978, ch. 72, § 3; 1980, ch. 151, § 41; 1987, ch. 313, § 3; 1989, ch. 75, § 1; 1991, ch. 242, § 5; 2001, ch. 275, § 4; 2001, ch. 278, § 4; 2004, ch. 25, § 37; 1978 Comp., § 18-7-3, repealed and reenacted by Laws 2015, ch. 19, § 8.

**Repeals and reenactments.** — Laws 1978, Chapter 72 repealed 73-46-1 to 73-46-3, 1953 Comp. (former 18-7-1 to 18-7-4 NMSA 1978), relating to the international space hall of fame, effective March 31, 1978, and enacted a new 73-46-3, 1953 Comp.

Laws 2015, ch. 19, § 8 repealed and reenacted 18-7-3 NMSA 1978, effective July 1, 2015.

**The 2004 amendment,** effective May 19, 2004, deleted the reference to the office of cultural affairs, deleted the duty of the commission to establish general operations policies for the museum and made other minor revisions.

**The 2001 amendment,** effective June 15, 2001, substituted "museum of space history" for "space center" throughout the section.

**The 1991 amendment,** effective June 14, 1991, added Subsection M and made a related stylistic change.

### 18-7-3.1. Museum admission policy.

The commission shall establish a policy to permit New Mexico residents age sixty years and above to enter all publicly accessible exhibit and program areas, except special exhibits and programs where commissions or royalties are paid by contract, free of charge every Wednesday that is not a holiday that the museum is open.

**History:** 1978 Comp., § 18-7-3.1, enacted by Laws 1991, ch. 242, § 6.

### 18-7-4. Museum of space history director; appointment; qualifications.

A. Subject to the authority of the secretary of cultural affairs, the administrative and executive officer of the museum of space history division and the museum of space history is the "director" of the division.

B. The director shall meet the following minimum qualifications:

- (1) hold a bachelor's or higher degree in a discipline related to the functions of the division; and



(2) have significant experience in the management and operation of an organization similar to the division.

C. The director of the museum of space history division shall be appointed by the secretary of cultural affairs with the approval of the governor from a list of qualified candidates provided by the museum of space history commission.

**History:** 1953 Comp., § 73-46-4, enacted by Laws 1978, ch. 72, § 4; 1980, ch. 151, § 42; 1987, ch. 313, § 4; 2001, ch. 275, § 5; 2001, ch. 278, § 5; 2004, ch. 25, § 38; 2015, ch. 19, § 9.

The 2015 amendment, effective July 1, 2015, provided for qualifications for the director of the museum of space history; in the catchline, added "Museum of space history", and after "director", deleted "employment" and added "appointment; qualifications"; added Subsections A and B and redesignated the previously undesignated first paragraph of the section as Subsection C; in Subsection

C, after "shall be", deleted "hired" and added "appointed", and after "cultural affairs", added "with the approval of the governor from a list of qualified candidates provided by the museum of space history commission."

The 2004 amendment, effective May 19, 2004, provided for the hiring and removal of the director of the museum by the secretary of cultural affairs instead of the museum of space history commission.

The 2001 amendment, effective June 15, 2001, substituted "museum of space history" for "space center" throughout the section.

## 18-7-5. Museum of space history director duties.

Consistent with the policies of the secretary of cultural affairs and the New Mexico museum of space history commission, the director of the museum of space history:

### A. may:

(1) solicit and receive funds or property, including federal funds and public and private grants, for the development of the museum, its collections and its programs;

(2) as authorized by the secretary, enter into contracts related to the programs and operations of the museum, including services related to the location, acquisition, preservation, restoration, salvage or development of culturally related sites, structures or objects in the state;

(3) as authorized by the commission, lend collections or materials to qualified persons for purposes of exhibition and study and borrow collections or materials from other persons for like purposes;

(4) conduct facilities rentals for forty-five days or less and such retail sales as appropriate for the operation of the museum; and

(5) publish journals, books, reports and other materials as appropriate to the operation of the museum; and

### B. shall:

(1) administer and operate the museum in accordance with applicable statutes and rules;

(2) develop exhibits and programs of an educational nature for the benefit of the public and in particular the students of the state;

(3) recommend acquisitions to the commission, by donation or other means, of collections and related materials appropriate to the mission of the museum;

(4) direct research, preservation and conservation as is appropriate to render the collections beneficial to the public;

(5) cooperate with educational institutions and other agencies and political subdivisions of state, tribal and federal governments to establish, maintain and extend the programs of the museum;

(6) employ and discharge personnel necessary for the operation of the museum in accordance with the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978];

(7) propose budgets for operations and capital improvements;

(8) collect admission fees as determined by the commission; and

(9) perform such other appropriate duties as may be delegated by the commission, the secretary of cultural affairs or the governor or as may be provided by law.

**History:** Laws 2015, ch. 19, § 10.

**Effective dates.** — Laws 2015, ch. 19, § 20 made Laws 2015, ch. 19, § 10, effective July 1, 2015.

## ARTICLE 8

### Prehistoric and Historic Sites Preservation

Sec.

18-8-1. Short title.

18-8-2. Purpose.

18-8-3. Definitions.

18-8-4. Administration; cost sharing formula; limitations.

18-8-5. Management.

Sec.

18-8-6. No power of eminent domain.

18-8-7. Preservation of significant prehistoric or historic sites.

18-8-8. Regulation.

#### 18-8-1. Short title.

This act [18-8-1 through 18-8-8 NMSA 1978] may be cited as the "New Mexico Prehistoric and Historic Sites Preservation Act".

**History:** Laws 1989, ch. 13, § 1.

A Case Study of the Paseo Del Norte Extension," *see* 47 Nat. Resources J. 969 (2007).

#### ANNOTATIONS

**Law reviews.** — For student article, "The Efficacy of State Law in Protecting Native American Sacred Places:

#### 18-8-2. Purpose.

The purpose of the New Mexico Prehistoric and Historic Sites Preservation Act is the acquisition, stabilization, restoration or protection of significant prehistoric and historic sites by the state of New Mexico and corporations.

**History:** Laws 1989, ch. 13, § 2.

#### 18-8-3. Definitions.

As used in the New Mexico Prehistoric and Historic Sites Preservation Act:

A. "corporation" means a nonprofit corporation, formally recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, whose declared purposes include the investigation, preservation or conservation of significant prehistoric or historic sites;

B. "division" means the historic preservation division of the cultural affairs department; and

C. "significant prehistoric or historic sites" means properties listed in the state register of cultural properties or national register of historic places.

**History:** Laws 1989, ch. 13, § 3; 2004, ch. 25, § 39.

**Cross references.** — For Section 501(c)(3) of the federal Internal Revenue Code of 1986, *see* 26 U.S.C. § 501(c)(3).

**The 2004 amendment,** effective May 19, 2004, changed "office of cultural affairs" to "cultural affairs department".

#### 18-8-4. Administration; cost sharing formula; limitations.

A. The New Mexico Prehistoric and Historic Sites Preservation Act shall be administered by the state historic preservation officer in consultation with the cultural properties review committee.

B. The division and the cultural properties review committee shall cooperatively develop criteria for the acquisition, stabilization, restoration or protection of significant historic or prehistoric sites. Such criteria shall be reviewed by them at a public meeting held annually in accordance with the Open Meetings Act [Chapter 10, Article 15 NMSA 1978].

C. The division shall annually solicit proposals from state agencies, subdivisions of state government and corporations for the acquisition, stabilization, restoration or protection of significant prehistoric and historic sites.



D. Subject to the availability of funds, the state may pay up to ninety percent of the cost of acquisition, stabilization, restoration or protection of a significant prehistoric or historic site. Title to that site shall vest in the state or a political subdivision of the state and a corporation that participates in acquiring a minimum of at least a ten percent undivided interest in the site or defrays not less than ten percent of the cost of acquisition, stabilization, restoration or protection of the site.

E. In the event of joint acquisition by the state or a political subdivision of the state and a corporation, the state or the subdivision and the corporation shall hold undivided interests in the property, in proportion to the state's and the corporation's share, and the property shall be held in the name of the state and the corporation.

F. Criteria for the acquisition and protection of significant prehistoric and historic sites include:

- (1) the degree to which the property is threatened by deterioration or destruction;
- (2) the rarity or uniqueness of the property or property type; and
- (3) the value of the property for public interpretation and visitation.

**History:** Laws 1989, ch. 13, § 4.

#### ANNOTATIONS

**Standing in private action.** — Plaintiff organizations had standing to bring a private cause of action against city, seeking injunctive relief against further planning,

funding, contracting and construction of a segment of a city boulevard that bordered a national monument, where they contended the project violated the New Mexico Prehistoric and National Historic Sites Preservation Act. *Nat'l Trust for Historic Preservation v. City of Albuquerque*, 1994-NMCA-057, 117 N.M. 590, 874 P.2d 798.

### 18-8-5. Management.

A. The corporation shall be required to prepare a long-term management plan for any site acquired, stabilized, restored or protected as provided for in Subsection D of Section 4 [18-8-4 NMSA 1978] of the New Mexico Prehistoric and Historic Sites Preservation Act. The management plan shall be subject to the approval of the division. That plan shall provide for disposition of the corporation's interest in the property, in the event that the corporation ceases to exist, either to another corporation or to the state. The division and the corporation shall enter into a contract providing for management, interpretation and preservation of any property acquired, stabilized, restored or protected under the provisions of the New Mexico Prehistoric and Historic Sites Preservation Act.

B. A contract for the management, interpretation or preservation of a site may be enforced by injunction or other appropriate proceeding in any court of competent jurisdiction.

**History:** Laws 1989, ch. 13, § 5.

### 18-8-6. No power of eminent domain.

No property or right of access may be acquired under the New Mexico Prehistoric and Historic Sites Preservation Act through exercise of the state's power of eminent domain or other condemnation process.

**History:** Laws 1989, ch. 13, § 6.

### 18-8-7. Preservation of significant prehistoric or historic sites.

No public funds of the state or any of its agencies or political subdivisions shall be spent on any program or project that requires the use of any portion of or any land from a significant prehistoric or historic site unless there is no feasible and prudent alternative to such use, and unless the program or project includes all possible planning to preserve and protect and to minimize harm to the significant prehistoric or historic site resulting from such use. The provisions of this section may be enforced by an action for injunction or other appropriate relief in a court of competent jurisdiction [jurisdiction].

**History:** Laws 1989, ch. 13, § 7.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Inapplicability of retroactive effect.** — The provisions of this section have no retroactive effect as to those portions of the project for which planning was complete and the city had previously received authorization and approval to construct prior to June 16, 1989. *City of Albuquerque v. State ex rel. Village of Los Ranchos de Albuquerque*, 1991-NMCA-015, 111 N.M. 608, 808 P.2d 58, cert. denied, 113 N.M. 524, 828 P.2d 957 (1992).

**Authority of state historic preservation officer.** — The state historic preservation officer's authority to issue regulations for the implementation of the Prehistoric and Historic Sites Preservation Act does not encompass the power to shift the burden of persuasion in a court proceeding from it or its allies to an opposing party; the

state historic preservation officer cannot by regulation contradict the act. *Nat'l Trust for Historic Preservation v. City of Albuquerque*, 1994-NMCA-057, 117 N.M. 590, 874 P.2d 798.

**Standing in private action.** — Plaintiff organizations had standing to bring a private cause of action against city, seeking injunctive relief against further planning, funding, contracting and construction of a segment of a city boulevard which bordered a national monument, where they contended the project violated the New Mexico Prehistoric and National Historic Sites Preservation Act. *Nat'l Trust for Historic Preservation v. City of Albuquerque*, 1994-NMCA-057, 117 N.M. 590, 874 P.2d 798.

**Remedy for violation.** — If a public agency is expending funds in violation of this section, the remedy is to bring an action in court. *Nat'l Trust for Historic Preservation v. City of Albuquerque*, 1994-NMCA-057, 117 N.M. 590, 874 P.2d 798.

## 18-8-8. Regulation.

The state historic preservation officer shall issue regulations for the implementation of the New Mexico Prehistoric and Historic Sites Preservation Act.

**History:** Laws 1989, ch. 13, § 8.

## ARTICLE 9

### Library Privacy

Sec.

18-9-1. Short title.

18-9-2. Purpose.

18-9-3. Definitions.

Sec.

18-9-4. Release of patron records prohibited.

18-9-5. Exceptions.

18-9-6. Violations; civil liability.

### 18-9-1. Short title.

This act [18-9-1 through 18-9-6 NMSA 1978] may be cited as the "Library Privacy Act".

**History:** Laws 1989, ch. 151, § 1.

### 18-9-2. Purpose.

The purpose of the Library Privacy Act is to preserve the intellectual freedom guaranteed by Sections 4 and 17 of Article 2 of the constitution of New Mexico by providing privacy for users of the public libraries of the state with respect to the library materials that they wish to use.

**History:** Laws 1989, ch. 151, § 2.

### 18-9-3. Definitions.

As used in the Library Privacy Act:

A. "library" includes any library receiving public funds, any library that is a state agency and any library established by the state, an instrumentality of the state, a local government, district or authority, whether or not that library is regularly open to the public; and

B. "patron record" means any document, record or other method of storing information retained by a library that identifies, or when combined with other available information identifies, a person as a patron of the library or that indicates use or request of materials from the library.



"Patron record" includes patron registration information and circulation information that identifies specific patrons.

**History:** Laws 1989, ch. 151, § 3.

#### **18-9-4. Release of patron records prohibited.**

Patron records shall not be disclosed or released to any person not a member of the library staff in the performance of his duties, except upon written consent of the person identified in the record, or except upon court order issued to the library. The library shall have the right to be represented by counsel at any hearing on disclosure or release of its patron records.

**History:** Laws 1989, ch. 151, § 4.

#### **18-9-5. Exceptions.**

The prohibition on the release or disclosure of patron records in Section 4 [18-9-4 NMSA 1978] of the Library Privacy Act shall not apply to overdue notices or to the release or disclosure by school libraries to the legal guardian of the patron records of unemancipated minors or legally incapacitated persons.

**History:** Laws 1989, ch. 151, § 5.

#### **18-9-6. Violations; civil liability.**

Any person who violates Section 4 [18-9-4 NMSA 1978] of the Library Privacy Act shall be subject to civil liability to the person identified in the released records for damages and costs of the action as determined by the court.

**History:** Laws 1989, ch. 151, § 6.

## **ARTICLE 10**

### **Abandoned Cultural Properties**

Sec.	Sec.
18-10-1. Short title.	18-10-4. Notice of abandonment.
18-10-2. Definitions.	18-10-5. Disclosure of act; notification of address change.
18-10-3. Abandonment of property.	

#### **18-10-1. Short title.**

Sections 1 through 5 [18-10-1 through 18-10-5 NMSA 1978] of this act may be cited as the "Abandoned Cultural Properties Act".

**History:** Laws 1989, ch. 211, § 1.

#### **18-10-2. Definitions.**

As used in the Abandoned Cultural Properties Act:

A. "lender" means a person whose name appears on the records of the museum or, in the event of the death of the person, the successor in interest to the property as the person entitled to property held in the museum;

B. "loan" means all deposits of property with a museum which are not accompanied by a transfer of title to the property;

C. "museum" means an institution located in New Mexico and operated by a nonprofit corporation or public agency, primarily educational, scientific or aesthetic in purpose, which owns, borrows, cares for, studies, archives or exhibits property; and

D. "property" means all tangible objects, animate or inanimate, under a museum's care which have scientific, historic, artistic or cultural value.

History: Laws 1989, ch. 211, § 2.

### 18-10-3. Abandonment of property.

A. Property on loan to a museum shall be deemed abandoned:

(1) if, since the expiration date of the loan, seven years have passed with no written notice of termination of the loan from the lender to the museum; or

(2) if the loan has no expiration date, at least seven years have passed since the loan was made and the lender has failed to respond to written notice from the museum.

B. A museum shall acquire title to property deemed to be abandoned by providing the lender with a notice of abandonment. If no valid claim has been made for the property within sixty-five days from the date of notice of abandonment, title to the property shall vest in the museum free of all claims of the lender and all persons claiming on behalf of the lender.

C. Notwithstanding the provisions of Sections 13-6-1 and 13-6-2 NMSA 1978, property acquired by a museum through abandonment procedures established in the Abandoned Cultural Properties Act may be kept by the museum, may be sold, with the proceeds going to the museum, or may be destroyed. The museum shall notify the state auditor or, in the case of private museums, the governing authority of the museum regarding the disposition of all abandoned property.

History: Laws 1989, ch. 211, § 3.

### 18-10-4. Notice of abandonment.

A. A notice of abandonment shall contain, if known, the lender's name, the lender's address, the date of the loan, a brief description of the loaned property and the name, address and telephone number of the appropriate office or official to be contacted at the museum for information regarding the loan.

B. A notice of abandonment shall be mailed by certified mail, return receipt requested, by the museum to the lender at the lender's last known address as shown in museum records. If the museum does not have an address for the lender, or if proof of receipt of notice is not received within thirty days from the mailing of a notice of abandonment, a notice of abandonment shall be published at least once a week for two successive weeks in a newspaper of general circulation in both the county in which the museum is located and the county of the lender's last known address. The museum shall exercise diligence in attempting to contact the lender.

History: Laws 1989, ch. 211, § 4.

### 18-10-5. Disclosure of act; notification of address change.

A. Effective July 1, 1989, any museum accepting a loan of property shall notify the lender, if known, in writing at the time of the loan of the provisions of the Abandoned Cultural Properties Act.

B. Within one year of the passage of this act, any museum holding property on loan shall notify the lender, if known, in writing, of the provisions of this act.



C. It is the responsibility of the lender to notify the museum in writing of any changes of address or of a change in the ownership of the property. It is the responsibility of the museum to notify the lender, in writing, of any change of address of the museum.

**History:** Laws 1989, ch. 211, § 5.

## ARTICLE 11

### Farm and Ranch Heritage Museum

Sec.

18-11-1. Short title.

18-11-2. Declaration and purpose of act.

18-11-3. Definitions.

18-11-4. Division created; operation; location; property.

18-11-5. Board created; appointment; terms; officers.

Sec.

18-11-6. Board; compensation.

18-11-7. Board; powers and duties.

18-11-8. Director; appointment; qualifications.

18-11-9. Director; powers and duties.

18-11-10. Museum admission policy.

#### 18-11-1. Short title.

Chapter 18, Article 11 NMSA 1978 may be cited as the "Farm and Ranch Heritage Museum Act".

**History:** Laws 1991, ch. 48, § 1; 2004, ch. 25, § 40.

**The 2004 amendment**, effective May 19, 2004, designated Chapter 18, Article 11 as the Farm and Ranch Heritage Museum Act.

#### 18-11-2. Declaration and purpose of act.

The legislature declares that the farming and ranching industry of the state has produced a unique common heritage of which all persons should receive knowledge and benefit. The purpose of the Farm and Ranch Heritage Museum Act is to create a farm and ranch heritage museum, which shall collect, preserve, study and display materials representative of the farming and ranching of the state and region and develop and maintain exhibits and programs of an educational nature for the benefit of the citizens of New Mexico and visitors to the state.

**History:** Laws 1991, ch. 48, § 2; 2004, ch. 25, § 41.

**The 2004 amendment**, effective May 19, 2004, deleted "division of the office of cultural affairs" from the name of the museum.

#### 18-11-3. Definitions.

As used in the Farm and Ranch Heritage Museum Act:

A. "board" means the board of the farm and ranch heritage museum;

B. "director" means the director of the division;

C. "division" means the farm and ranch heritage museum division of the cultural affairs department;

D. "farm and ranch" means that which pertains to the field of agriculture and the various industries that affect agriculture, including but not limited to agronomy, livestock management, veterinary medicine, agricultural nutrition and other related agricultural businesses and sciences; and

E. "museum" means the principal facility of the division, including all real and personal property of the division.

**History:** Laws 1991, ch. 48, § 3; 2004, ch. 25, § 42.

**The 2004 amendment**, effective May 19, 2004, in Subsection A, changed the name of the board; and in

Subsection C, changed "office of cultural affairs" to "cultural affairs department".

#### 18-11-4. Division created; operation; location; property.

A. The "farm and ranch heritage museum division" is created within the cultural affairs department.

B. The "farm and ranch heritage museum" shall be located on the campus of New Mexico state university in Dona Ana county.

C. All property, real or personal, now held or subsequently acquired for the operation of the museum shall be under the control and authority of the cultural affairs department.

D. Funds or other property received by gift, endowment or legacy shall remain under the control of the cultural affairs department and shall, upon acceptance, be employed for the purpose specified.

**History:** Laws 1991, ch. 48, § 4; 2004, ch. 25, § 43.

**The 2004 amendment**, effective May 19, 2004, in Subsections A, C and D, changed "office of cultural affairs"

to "cultural affairs department" and made other minor changes.

#### 18-11-5. Board created; appointment; terms; officers.

A. The "board of the farm and ranch heritage museum" is created.

B. The board shall consist of one nonvoting member and eleven voting members who are residents of New Mexico, as follows:

(1) nine members shall be appointed by the governor with the advice and consent of the senate. Five of those nine members shall be farmers or ranchers and four members shall be from the general public. The five farmer and rancher members of the original board shall be appointed from a list of eight names submitted by the board of directors of the New Mexico farm and ranch heritage institute foundation, incorporated, from a list of persons recommended by farm and ranch organizations. When a vacancy occurs in any of the five farmer and rancher positions, two names shall be submitted to the governor by the board for each vacancy from a list of persons recommended by farm and ranch organizations. No more than five of the nine appointed members shall be from the same political party. In making these appointments, due consideration shall be given to the distribution of places of residence and to individual interests and backgrounds in farming and ranching. Initially, two members shall be appointed for terms of two years, three members shall be appointed for terms of three years and three members shall be appointed for terms of four years. The member appointed pursuant to this 2015 amendment shall serve an initial term of two years. Thereafter, members of the board shall be appointed for terms of four years or less so that the staggered expiration dates are maintained;

(2) the following shall have permanent seats on the board:

(a) the director of the New Mexico department of agriculture or the director's designee; and

(b) the dean of the college of agriculture and home economics of New Mexico state university or the dean's designee; and

(3) the director shall be a nonvoting member of the board.

C. A member of the board shall not be removed during the member's term except for misconduct, incompetence, neglect of duty or malfeasance in office. No removal shall be made without prior approval of the senate.

D. The chair of the board and other officers, as deemed necessary by the board, shall be elected by the board annually at its first scheduled meeting after July 1.

**History:** Laws 1991, ch. 48, § 5; 2004, ch. 25, § 44; 2015, ch. 19, § 11.

**The 2015 amendment**, effective July 1, 2015, provided for an additional general public member on the board of the farm and ranch heritage museum and removed the secretary of cultural affairs or the secretary's designee as a permanent member of the board of the farm and ranch heritage museum; in Subsection B, Paragraph (1), deleted

"eight" preceding "members" and added "nine", after "Five of those", deleted "eight" and added "nine", after "ranchers and", deleted "three" and added "four", after "No more than", deleted "four" and added "five", after "five of the", deleted "eight" and added "nine", and after "terms of four years.", added "The member appointed pursuant to this 2015 amendment shall serve an initial term of two years."; in Subsection B, Paragraph (2)(b), after "designee",



deleted "and"; deleted Subsection B, Paragraph (2)(c); in Subsection C, after "during", deleted "his" and added "the member's"; and in Subsection D, after "The", deleted "chairman" and added "chair".

**The 2004 amendment**, effective May 19, 2004, in Subsection A, changed the name of the board; and in Subsection B, Subparagraph (2)(c), changed "cultural affairs officer" to "secretary of cultural affairs".

## 18-11-6. Board; compensation.

The appointed members of the board shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

**History:** Laws 1991, ch. 48, § 6.

## 18-11-7. Board; powers and duties.

The board shall:

- A. establish museum policy and determine the mission and direct the development of the museum subject to the approval of the secretary of cultural affairs;
- B. exercise trusteeship over the collections of the museum;
- C. accept and hold title to all property for museum use;
- D. acquire objects relating to farming and ranching of interest to the public and real property for museum use or benefit by purchase, donation or bequest;
- E. adopt rules as appropriate governing:
  - (1) the loan of objects and exhibits to qualified institutions and agencies for the purpose of exhibition;
  - (2) gifts, donations or loans of exhibits or collection materials for the museum;
  - (3) the licensure of the museum's intellectual property; and
  - (4) other matters necessary to carry out the provisions of the Farm and Ranch Heritage Museum Act;
- F. enter into leases with public or private agencies or organizations for the use of museum premises or facilities for periods of time that exceed forty-five days;
- G. solicit funds or property for the purpose of developing, restoring and equipping the museum, its collections and its programs and for the purchase of objects for its collections and for the development of exhibits and other public programs;
- H. cooperate with other agencies and political subdivisions of state, tribal and federal governments and private organizations and individuals to the extent necessary to establish and maintain the museum and its programs;
- I. subject to other provisions of law and excepting temporary statewide initiatives of the secretary of cultural affairs, impose admission fees to the museum facilities and programs; and
- J. review annually the performance of the director and report its findings to the secretary of cultural affairs.

**History:** Laws 1991, ch. 48, § 7; 2004, ch. 25, § 45; 2015, ch. 19, § 12.

**The 2015 amendment**, effective July 1, 2015, provided for additional duties for the board of the farm and ranch heritage museum; deleted former Subsection B, and redesignated former Subsections C and D as Subsections B and C, respectively; deleted former Subsection E relating to approving contracts with private or public entities; added Subsections D, E and F; in former Subsection F, deleted "authorize the director to", redesignated former Subsection F as Subsection G, and after "solicit", deleted "and

receive", after "property", deleted "of any nature for the development of" and added "for the purpose of developing, restoring and equipping", and after "programs", added "for the purchase of objects for its collections and for the development of exhibits and other public programs"; added Subsections H and I; and redesignated former Subsection G as Subsection J.

**The 2004 amendment**, effective May 19, 2004, in Subsections A and G, changed "state cultural affairs officer" to "secretary of cultural affairs".

### 18-11-8. Director; appointment; qualifications.

A. Subject to the authority of the state cultural affairs officer, the executive officer of the division and museum shall be the "director" of the division and museum.

B. The director shall be appointed by the state cultural affairs officer with the approval of the governor from a list of candidates provided by the board.

C. The director shall be a person with previous administrative experience in a museum or institution of related character and shall have a degree, or the equivalent thereof, in one or more fields of agriculture from an institution of higher learning.

**History:** Laws 1991, ch. 48, § 8.

### 18-11-9. Director; powers and duties.

Consistent with the policies agreed to by the board and the secretary of cultural affairs, the director:

A. may:

(1) solicit and receive funds or property, including federal funds and public and private grants, for the development of the museum, its collections and its programs;

(2) as authorized by the secretary, enter into contracts related to the programs and operations of the museum, including services related to the location, acquisition, preservation, restoration, salvage or development of culturally related sites, structures or objects in the state;

(3) as authorized by the board, lend collections or materials to qualified persons for purposes of exhibition and study and borrow collections or materials from other persons for like purposes;

(4) conduct facilities rentals for forty-five days or less and such retail sales as appropriate for the operation of the museum; and

(5) publish journals, books, reports and other materials as appropriate to the operation of the museum; and

B. shall:

(1) administer and operate the museum in accordance with applicable statutes and rules;

(2) develop exhibits and programs of an educational nature for the benefit of the public and in particular the students of the state;

(3) recommend acquisitions to the board, by donation or other means, of collections and related materials appropriate to the mission of the museum;

(4) direct research, preservation and conservation as is appropriate to render the collections beneficial to the public;

(5) cooperate with educational institutions and other agencies and political subdivisions of state, tribal and federal governments to establish, maintain and extend the programs of the museum;

(6) employ and discharge personnel necessary for the operation of the museum in accordance with the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978];

(7) propose budgets for operations and capital improvements;

(8) collect admission fees as determined by the board; and

(9) perform such other appropriate duties as may be delegated by the board, the secretary of cultural affairs or the governor or as may be provided by law.

**History:** Laws 1991, ch. 48, § 9; 2004, ch. 25, § 46; 1978 Comp., § 18-11-9, repealed and reenacted by Laws 2015, ch. 19, § 13.

**Repeals and reenactments.** — Laws 2015, ch. 19, § 13 repealed former 18-11-9 NMSA 1978, and enacted a new section, effective July 1, 2015.

**The 2004 amendment,** effective May 19, 2004, in the introductory sentence, changed "state cultural affairs officer" to "secretary of cultural affairs" and made other minor changes.



## 18-11-10. Museum admission policy.

The board shall establish a policy to allow New Mexico residents age sixty years and over to enter all publicly accessible exhibit and program areas, except special exhibits and programs for which commissions or royalties are paid by contract, free of charge every Wednesday that is not a holiday that the museum is open.

**History:** Laws 2015, ch. 19, § 14.

**Effective dates.** — Laws 2015, ch. 19, § 20 made Laws 2015, ch. 19, § 14 effective July 1, 2015.

## ARTICLE 12

### Hispanic Cultural Center

Sec.

18-12-1. Short title.

18-12-2. Definitions.

18-12-3. Hispanic cultural division; creation; property.

18-12-4. Board of directors; created; appointment; terms; officers.

Sec.

18-12-5. Board; powers and duties.

18-12-6. Executive director; appointment; qualifications.

18-12-7. Director; powers and duties.

18-12-8. Board; compensation.

18-12-9. Museum admission policy.

## 18-12-1. Short title.

Chapter 18, Article 12 NMSA 1978 may be cited as the "National Hispanic Cultural Center Act".

**History:** Laws 1993, ch. 42, § 1; 1999, ch. 56, § 1; 2003, ch. 403, § 3.

**The 2003 amendment**, effective June 20, 2003, deleted "of New Mexico" following "Hispanic Cultural Center" near the end of the section.

**The 1999 amendment**, effective June 18, 1999, updated statutory references and substituted "National Hispanic Cultural Center of New Mexico Act" for "New Mexico Hispanic Cultural Center Act".

## 18-12-2. Definitions.

As used in the National Hispanic Cultural Center Act:

- A. "board" means the board of directors of the center;
- B. "center" means the national Hispanic cultural center;
- C. "division" means the Hispanic cultural division of the cultural affairs department; and
- D. "director" means the director of the division."

**History:** Laws 1993, ch. 42, § 2; 1999, ch. 56, § 2; 2003, ch. 403, § 4; 2004, ch. 25, § 47.

**The 2004 amendment**, effective May 19, 2004, in Subsection C, changed "office of cultural affairs" to "cultural affairs department".

**The 2003 amendment**, effective June 20, 2003, deleted "of New Mexico" following "Hispanic Cultural Center" near the end of the first paragraph; and deleted "of New Mexico" following "Hispanic cultural center" at the end of Subsection B.

**The 1999 amendment**, effective June 18, 1999, substituted "National Hispanic Cultural Center of New Mexico Act" for "New Mexico Hispanic Cultural Center Act" in the introductory language and in Subsection B; deleted "New Mexico Hispanic cultural" following "directors of the" in Subsection A; deleted "or its successor agency" following "cultural affairs" in Subsection C; and deleted "Hispanic cultural" following "director of the" in Subsection D.

## 18-12-3. Hispanic cultural division; creation; property.

A. The "Hispanic cultural division" is created within the cultural affairs department. The principal facility of this division shall be known as the "national Hispanic cultural center".

B. All property, real or personal, now held or subsequently acquired for the operation of the center shall be under the control and authority of the board.

C. Funds or other property received by gift, endowment or legacy shall remain under the control of the board and shall, upon acceptance, be employed for the purpose specified.

**History:** Laws 1993, ch. 42, § 3; 1999, ch. 56, § 3; 2003, ch. 403, § 5; 2004, ch. 25, § 48.

**The 2004 amendment**, effective May 19, 2004, in Subsection A, changed "office of cultural affairs" to "cultural affairs department".

**The 2003 amendment**, effective June 20, 2003, deleted "of New Mexico" following "Hispanic cultural center" at the end of Subsection A.

**The 1999 amendment**, effective June 18, 1999, in Subsection A deleted "or its successor agency" at the end of the first sentence and substituted "national Hispanic cultural center of New Mexico" for "New Mexico Hispanic cultural center" in the second sentence; and deleted "New Mexico Hispanic cultural" preceding "center" in Subsection B.

#### 18-12-4. Board of directors; created; appointment; terms; officers.

A. The "board of directors of the national Hispanic cultural center" is created. The board shall consist of fifteen residents of New Mexico. Thirteen public members shall be appointed by the governor with the advice and consent of the senate. Two of the appointees shall be employees of state institutions of higher education or appropriate state agencies. In making the appointments, the governor shall give due consideration to:

- (1) the ethnic, economic and geographic diversity of the state;
- (2) individuals who have demonstrated an awareness of and support for traditional and contemporary Hispanic culture, arts and humanities, including a strong knowledge of New Mexico Hispanic history; and
- (3) individuals who are knowledgeable in the areas of Hispanic performing, visual and oral arts, genealogy, family issues, education, business and administration.

B. The public members shall be appointed for staggered four-year terms.

C. Two private members shall be appointed by the board of a nonprofit organization that has an operating agreement with the center that complies with the provisions of Section 6-5A-1 NMSA 1978. The private members shall be appointed for one-year terms expiring on June 30 of each year.

D. A majority of the board members currently serving shall constitute a quorum at any meeting or hearing.

E. A public member failing to attend three consecutive meetings after receiving proper notice shall be recommended for removal by the governor. The governor may also remove a public member of the board for neglect of any duty required by law, for incompetency, for unprofessional conduct or for violating any provisions of the National Hispanic Cultural Center Act. If a vacancy occurs on the board, the original appointing authority shall appoint another member to complete the unexpired term.

F. The executive director shall be an ex-officio nonvoting member of the board.

G. The governor shall designate the president of the board, who shall serve in that capacity at the pleasure of the governor. The board may elect other officers from among its membership.

**History:** Laws 1993, ch. 42, § 4; 1999, ch. 56, § 4; 2003, ch. 403, § 6; 2015, ch. 19, § 15.

**The 2015 amendment**, effective July 1, 2015, amended the appointment provisions and the terms of the board of directors of the national Hispanic cultural center; in the introductory paragraph of Subsection A, after "New Mexico.", added "Thirteen public members shall be"; at the beginning of Subsection B, deleted "Of the initial appointees, five members shall be appointed for four-year terms, five members shall be appointed for three-year terms and five members shall be appointed for two-year terms. All subsequent", and added "The public", and after "appointed for", added "staggered"; added Subsection C and redesignated the succeeding subsections accordingly; at the beginning of Subsection E, changed "Any" to "A public", after "may

also remove", deleted "any" and added "a public", and after "on the board, the", deleted "governor" and added "original appointing authority"; and in Subsection G, after "governor", added "The board may elect other officers from among its membership".

**The 2003 amendment**, effective June 20, 2003, deleted "of New Mexico" following "Hispanic cultural center" near the end of the first sentence of Subsection A; and deleted "of New Mexico" following "Hispanic Cultural Center" near the end of the second sentence of Subsection D.

**The 1999 amendment**, effective June 18, 1999, substituted "national Hispanic cultural center of New Mexico" for "New Mexico Hispanic cultural center" in the first sentence of Subsection A and the second sentence of Subsection D.

#### 18-12-5. Board; powers and duties.

A. The board shall:

- (1) exercise trusteeship over the collections of the center;
- (2) accept and hold title to all property for the center's use;



- (3) review annually the performance of the director and report its findings to the secretary of cultural affairs;
- (4) acquire objects relating to Hispanic culture and history of interest to the public and real property for the center's use or benefit by purchase, donation and bequest;
- (5) solicit funds or property for the development of the center, its collections and its programs;
- (6) adopt rules as appropriate governing:
  - (a) the loan of objects and exhibits to qualified institutions and agencies for the purpose of exhibition;
  - (b) gifts, donations or loans of exhibit or collection materials to the center;
  - (c) the licensure of the center's intellectual property; and
  - (d) other matters necessary to carry out the provisions of the National Hispanic Cultural Center Act;
- (7) enter into leases with public or private organizations or agencies for the use of center premises or facilities for periods of time that exceed forty-five days;
- (8) cooperate with other agencies and political subdivisions of municipal, state, tribal and federal governments and private organizations and individuals to the extent necessary to establish and maintain the center and its programs;
- (9) subject to other provisions of law and excepting temporary statewide initiatives of the secretary of cultural affairs, impose admission fees to the center's facilities and programs; and
- (10) establish policy, determine the mission and direct the development of the center.

B. The board may, beginning July 1, 2015, enter into or remain a party to an operating agreement with a nonprofit organization only if the operating agreement allows the governing board of the nonprofit organization to appoint two of its voting board members to serve on the center's board and only if the governing board of the nonprofit organization has at least five members.

C. If a person is concurrently a member of the center's board and a member of the governing board of the nonprofit organization that has an operating agreement with the board that complies with Section 6-5A-1 NMSA 1978, that person shall not vote on matters relating to the operating agreement.

**History:** Laws 1993, ch. 42, § 5; 2004, ch. 25, § 49; 2015, ch. 19, § 16.

The 2015 amendment, effective July 1, 2015, provided for additional duties and responsibilities for the board of directors of the national Hispanic cultural center; redesignated the previously undesignated introductory phrase "The board shall" as Subsection A and redesignated former Subsections A, B and C as Paragraphs (1), (2) and (3) of Subsection A, respectively; deleted former Subsection D relating to the power to enter into agreements with private or public entities and added Paragraph (4) of Subsection

A; in former Subsection E, deleted "authorize the director to", and redesignated the subsection as Paragraph (5) of Subsection A, and at the beginning, after "solicit", deleted "and receive", and after "property", deleted "of any nature"; deleted former Subsection F relating to the adoption of rules; added Paragraphs (6), (7), (8) and (9) of Subsection A; redesignated former Subsection G as Paragraph (10) of Subsection A; and added Subsections B and C.

The 2004 amendment, effective May 19, 2004, in Subsection C, changed "cultural affairs officer" to "secretary of cultural affairs".

## 18-12-6. Executive director; appointment; qualifications.

A. The executive director of the Hispanic cultural division shall be appointed by the state cultural affairs officer or his successor, with the approval of the governor, from a list of qualified finalists provided by the board of directors.

B. Subject to the authority of the state cultural affairs officer or his successor, the executive director of the division shall be the administrative and executive officer of the division. The executive director shall be exempt from the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978].

**History:** Laws 1993, ch. 42, § 6.

## 18-12-7. Director; powers and duties.

Consistent with the policies of the secretary of cultural affairs and the board, the director:

**A. may:**

- (1) solicit and receive funds or property, including federal funds and public and private grants, for the development of the center, its collections and its programs;
- (2) as authorized by the secretary, enter into contracts related to the programs and operations of the center, including services related to the location, acquisition, preservation, restoration, salvage or development of culturally related sites, structures or objects in the state;
- (3) as authorized by the board, lend collections or materials to qualified persons for purposes of exhibition and study and borrow collections or materials from other persons for like purposes;
- (4) conduct facilities rentals for forty-five days or less and such retail sales as appropriate for the operation of the center; and
- (5) publish journals, books, reports and other materials as appropriate to the operation of the center; and

**B. shall:**

- (1) administer and operate the center in accordance with applicable statutes and rules;
- (2) develop exhibits and programs of an educational nature for the benefit of the public and in particular the students of the state;
- (3) recommend acquisitions to the board, by donation or other means, of collections and related materials appropriate to the mission of the center;
- (4) direct research, preservation and conservation as is appropriate to render the collections beneficial to the public;
- (5) cooperate with educational institutions and other agencies and political subdivisions of state, tribal and federal governments to establish, maintain and extend the programs of the center;
- (6) employ and discharge personnel necessary for the operation of the center in accordance with the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978];
- (7) propose budgets for operations and capital improvements;
- (8) collect admission fees as determined by the board; and
- (9) perform such other appropriate duties as may be delegated by the board, the secretary of cultural affairs or the governor or as may be provided by law.

**History:** Laws 1993, ch. 42, § 7; 2004, ch. 25, § 50; 1978 Comp., § 18-12-7, repealed and reenacted by Laws 2015, ch. 19, § 17.

**Repeals and reenactments.** — Laws 2015, ch. 19, § 17 repealed former 18-12-7 NMSA 1978, and enacted a new section, effective July 1, 2015.

**The 2004 amendment,** effective May 19, 2004, in Subsection K, changed "cultural affairs officer" to "secretary of cultural affairs" and made other minor changes.

## 18-12-8. Board; compensation.

The members of the board shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

**History:** Laws 1993, ch. 42, § 8.

## 18-12-9. Museum admission policy.

The board, the secretary of cultural affairs and the director shall establish and implement a policy to permit New Mexico residents age sixty years and above to enter all publicly accessible visual arts exhibit areas, except special exhibits where commission or royalties are paid by contract, free of charge every Wednesday that is not a holiday that the museum is open.

**History:** Laws 2015, ch. 19, § 18.

**Effective dates.** — Laws 2015, ch. 19, § 20 made Laws 2015, ch. 19, § 18 effective July 1, 2015.



## ARTICLE 13

### Historic Landscapes

Sec. 18-13-1. Short title.  
 18-13-2. Definitions.  
 18-13-3. Historic landscape trust created.  
 18-13-4. Board of trustees.

Sec.  
 18-13-5. Articles of incorporation and bylaws.  
 18-13-6. Executive director.  
 18-13-7. Funding.

#### 18-13-1. Short title.

This act [18-13-1 through 18-13-7 NMSA 1978] may be cited as the "Historic Landscape Act".

**History:** Laws 2003, ch. 234, § 1.

**Cross references.** — For cultural properties preservation easements, see Chapter 47, Article 12A NMSA 1978.

**Effective dates.** — Laws 2003, ch. 234, § 9 made Laws 2003, ch. 234, § 1 effective July 1, 2003.

#### 18-13-2. Definitions.

As used in the Historic Landscape Act:

- A. "board" means the board of trustees of the historic landscape trust;
- B. "historic landscape" means a historic manmade or cultural landscape:
  - (1) that is limited in scope;
  - (2) generally comprising a plaza, square, park, garden, terrace, streetscape, estate, grounds of a building or other open space designed formally or informally; and
  - (3) that has contributed to the cultural history of its time; and
- C. "trust" means the historic landscape trust created by the Historic Landscape Act.

**History:** Laws 2003, ch. 234, § 2.

**Effective dates.** — Laws 2003, ch. 234, § 9 made Laws 2003, ch. 234, § 2 effective July 1, 2003.

#### 18-13-3. Historic landscape trust created.

The "historic landscape trust" is created. It is a public nonprofit corporation and shall be organized pursuant to the Nonprofit Corporation Act.

**History:** Laws 2003, ch. 234, § 3.

**Effective dates.** — Laws 2003, ch. 234, § 9 made Laws 2003, ch. 234, § 3 effective July 1, 2003.

#### 18-13-4. Board of trustees.

- A. The trust shall be governed by the board. The members of the initial board shall be:
  - (1) two individuals who are New Mexico licensed landscape architects;
  - (2) an attorney licensed to practice law in the state;
  - (3) a New Mexico certified public accountant;
  - (4) three New Mexico residents who have demonstrated their interest in and knowledge about historic landscapes;
  - (5) two New Mexico residents who are active members of garden clubs;
  - (6) the state cultural affairs officer or his designee; and
  - (7) the director of tourism or his designee.
- B. The terms of the initial board members are for two years. Thereafter, the board shall be selected in accordance with the articles of incorporation and bylaws of the trust.
- C. Vacancies on the initial board shall be filled by appointment of the governor. Thereafter, vacancies shall be filled in accordance with the articles of incorporation and bylaws of the trust.

**History:** Laws 2003, ch. 234, § 4.

**Effective dates.** — Laws 2003, ch. 234, § 9 made Laws 2003, ch. 234, § 4 effective July 1, 2003.

**Temporary provisions.** — Laws 2003, ch. 234, § 8, effective July 1, 2003, provided:

The initial board of trustees of the historic landscape trust shall report to the first session of the forty-seventh legislature on the date it convenes. The report shall include:

A. copies of the articles of incorporation and bylaws of the trust;

B. a ten-year plan for implementing a historic landscape system in the state;

(1) that shall rely entirely upon acquisition of historic landscapes by purchase or gift;

(2) that shall not include a historic landscape in the system without the consent of all persons owning property rights in the historic landscape; and

(3) that shall not place limitations or restrictions on a person's use or freedom of alienation of a historic landscape by designation or otherwise without the free consent of the person; and

C. strategies and recommendations for funding the trust in fiscal year 2006 and subsequent fiscal years.

## 18-13-5. Articles of incorporation and bylaws.

The initial board shall prepare and file articles of incorporation and bylaws. The articles shall state as the purposes of the trust:

A. the preservation of significant historic landscapes in the state;

B. the identification of sites in the state deserving of inclusion in the historic landscape system; and

C. the development of a historic landscape system that provides opportunities for persons to appreciate and better understand the history and development of the state.

**History:** Laws 2003, ch. 234, § 5.

**Effective dates.** — Laws 2003, ch. 234, § 9 made Laws 2003, ch. 234, § 5 effective July 1, 2003.

## 18-13-6. Executive director.

The bylaws of the trust shall provide for the employment of an executive director and shall specify his duties.

**History:** Laws 2003, ch. 234, § 6.

**Effective dates.** — Laws 2003, ch. 234, § 9 made Laws 2003, ch. 234, § 6 effective July 1, 2003.

## 18-13-7. Funding.

The initial board shall seek private and public funding for the trust and is authorized to accept gifts and grants of both private and public funds. The "historic landscape trust fund" is created in the state treasury. All funds accepted by the initial board shall be deposited in the fund. The fund is appropriated to the initial board and may be expended as authorized by vouchers drawn by the chair of the initial board on warrants drawn by the department of finance and administration. Expenditures are authorized in fiscal years 2004 and 2005 only for organization expenses of the trust and per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] for the appointed members of the initial board.

**History:** Laws 2003, ch. 234, § 7.

**Effective dates.** — Laws 2003, ch. 234, § 9 made Laws 2003, ch. 234, § 7 effective July 1, 2003.

# ARTICLE 14

## Film Museum

Sec.

18-14-1. Short title.

18-14-2. Definitions.

18-14-3. Museum; location; property.

Sec.

18-14-4. Board; appointment; terms; officers.

18-14-5. Board; compensation.

18-14-6. Board; powers and duties.



### 18-14-1. Short title.

Chapter 18, Article 14 NMSA 1978 may be cited as the "New Mexico Film Museum Act".

**History:** Laws 2003, ch. 250, § 1; 2006, ch. 47, § 1.

**The 2006 amendment**, effective July 1, 2006, provided that sections enacted as Chapter 18, Article 14 of the NMSA are part of the New Mexico Film Museum Act.

### 18-14-2. Definitions.

As used in the New Mexico Film Museum Act:

- A. "board" means the board of trustees of the museum; and
- B. "museum" means the New Mexico film museum.

**History:** Laws 2003, ch. 250, § 2.

**Effective dates.** — Laws 2003, ch. 250, § 7 made Laws 2003, ch. 250, § 2 effective July 1, 2003.

### 18-14-3. Museum; location; property.

A. The "New Mexico film museum" is created within the cultural affairs department. The museum shall be located in Santa Fe.

B. All real or personal property held or subsequently acquired for the operation of the museum shall be under the control and authority of the board.

C. Funds or other property received as a gift, endowment or legacy shall remain under the control of the board and shall, upon acceptance, be used for the operation of the museum.

**History:** Laws 2003, ch. 250, § 3; 2006, ch. 47, § 2.

**The 2006 amendment**, effective July 1, 2006, transferred the New Mexico film museum from the tourism department to the cultural affairs department in Subsection A.

**Temporary provision.** — Laws 2006, ch. 47, § 4, effective July 1, 2006, provided that on the effective date

of Laws 2006, ch. 47, all functions, appropriations, money, personnel, records, files, furniture, equipment and other property of the New Mexico film museum of the tourism department shall be transferred to the cultural affairs department and that all contractual obligations of the New Mexico film museum of the tourism department shall be binding on the cultural affairs department.

### 18-14-4. Board; appointment; terms; officers.

A. The board of trustees of the museum is created.

B. The board shall consist of eleven members who are residents of New Mexico, appointed by the governor with the advice and consent of the senate. In making the appointments, the governor shall give due consideration to the geographic distribution of the members' places of residence. The members shall be persons who have expertise or have demonstrated a continuing interest in the fields of film, filmmaking or museums; provided that one of the members shall be the director of the New Mexico film division of the economic development department or the director's designee.

C. The board members shall be appointed for terms of four years or less so that all terms are coterminous with the current term of the governor who appointed them. The board members shall serve at the pleasure of the governor.

D. The secretary of cultural affairs or the secretary's designee shall be an ex-officio nonvoting member of the board.

E. The president of the board shall be designated by the governor and shall serve in that capacity at the pleasure of the governor. Other officers shall be elected annually by the board at its first scheduled meeting after July 1 of each year.

**History:** Laws 2003, ch. 250, § 4; 2006, ch. 47, § 3.

**The 2006 amendment**, effective July 1, 2006, provided in Subsection B that the members of the board shall be persons who have expertise or have demonstrated interest in film, filmmaking or museums; deleted the former Paragraph (1) of Subsection B, which provided that one member shall be the director of the museum division of the office of cultural

affairs; deleted Paragraphs (3) through (6) of Subsection B which provided for members of the board to consist of film actors, screenwriters, film technicians and representatives of Indian nations, tribes and pueblos in New Mexico; and in Subsection D, deleted the secretary of tourism as an ex-officio member and provided that the secretary of cultural affairs shall be an ex-officio member of the board.

### 18-14-5. Board; compensation.

The members of the board shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

**History:** Laws 2003, ch. 250, § 5.

**Effective dates.** — Laws 2003, ch. 250, § 7 made Laws 2003, ch. 250, § 5 effective July 1, 2003.

### 18-14-6. Board; powers and duties.

The board shall:

- A. exercise trusteeship over the collections of the museum;
- B. accept and hold title to property for museum use;
- C. enter into agreements or contracts with private or public organizations, agencies or individuals for the purpose of obtaining real or personal property for museum use;
- D. solicit and receive funds or property of any nature for the development of the museum, its collections and its programs;
- E. establish a New Mexico film museum foundation, incorporated, for the purpose of raising funds for the development of the museum, its collections and its programs; and
- F. adopt rules as may be necessary to carry out the provisions of the New Mexico Film Museum Act.

**History:** Laws 2003, ch. 250, § 6.

**Effective dates.** — Laws 2003, ch. 250, § 7 made Laws 2003, ch. 250, § 6 effective July 1, 2003.

## ARTICLE 15

### Rural Library Development Act

Sec.

18-15-1. Repealed.

18-15-2. Repealed.

Sec.

18-15-3. Repealed.

18-15-4. Repealed.

### 18-15-1. Repealed.

**Repeals.** — Laws 2019, ch. 165, § 7 repealed 18-15-1 NMSA 1978, as enacted by Laws 2007, ch. 83, § 1, relating to short title, effective July 1, 2019. For provisions

of former section, see the 2018 NMSA 1978 on *NMOneSource.com*.

### 18-15-2. Repealed.

**Repeals.** — Laws 2019, ch. 165, § 7 repealed 18-15-2 NMSA 1978, as enacted by Laws 2007, ch. 83, § 2, relating to definitions, effective July 1, 2019. For provisions

of former section, see the 2018 NMSA 1978 on *NMOneSource.com*.

### 18-15-3. Repealed.

**Repeals.** — Laws 2019, ch. 165, § 7 repealed 18-15-3 NMSA 1978, as enacted by Laws 2007, ch. 83, § 3, relating to rural library development program, effective July 1,

2019. For provisions of former section, see the 2018 NMSA 1978 on *NMOneSource.com*.

### 18-15-4. Repealed.

**Repeals.** — Laws 2019, ch. 165, § 7 repealed 18-15-4 NMSA 1978, as enacted by Laws 2007, ch. 83, § 4, relating to rural library development fund; created, purpose,

effective July 1, 2019. For provisions of former section, see the 2018 NMSA 1978 on *NMOneSource.com*.



## ARTICLE 16

### Music Commission

Sec. 18-16-1. Short title.

18-16-2. Definitions.

Sec. 18-16-3. Music commission; created; members; terms; compensation.

18-16-4. Music commission; duties.

#### 18-16-1. Short title.

This act [18-16-1 through 18-16-4 NMSA 1978] may be cited as the "Music Commission Act".

**History:** Laws 2009, ch. 13, § 1.

**Effective dates.** — Laws 2009, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

#### 18-16-2. Definitions.

As used in the Music Commission Act:

- A. "commission" means the music commission;
- B. "department" means the cultural affairs department; and
- C. "division" means the arts division of the department.

**History:** Laws 2009, ch. 13, § 2.

**Effective dates.** — Laws 2009, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

#### 18-16-3. Music commission; created; members; terms; compensation.

A. The "music commission" is created. The commission is administratively attached to the division.

B. The commission is composed of fifteen members appointed by the governor. Members shall be residents of New Mexico, broadly representative of the various fields of music, and widely known for their professional competence and experience.

C. Five members of the commission shall serve initial terms of one year, five members shall serve initial terms of two years and five members shall serve initial terms of three years as determined by the governor; thereafter, terms shall be for three years. A vacancy on the commission shall be filled by appointment by the governor for the unexpired portion of the term of the member creating the vacancy.

D. The governor shall appoint the chairperson of the commission, and the commission may appoint other officers as it deems necessary to carry out the purposes of the Music Commission Act. The commission shall hold at least four meetings each calendar year.

E. Members of the commission shall not receive any compensation, perquisite or allowance.

**History:** Laws 2009, ch. 13, § 3.

**Effective dates.** — Laws 2009, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

#### 18-16-4. Music commission; duties.

The commission shall:

- A. advise the division, the department, other state agencies and the governor concerning the protection, promotion and preservation of music and the music industry in New Mexico;
- B. advise the division on music-related policies;
- C. advise and assist public agencies in elevating the role of music in New Mexico;

- D. foster appreciation of the value of music;
- E. make New Mexico a music destination for both visitors and music professionals;
- F. encourage the educational, creative and professional musical activities of the residents of New Mexico and attract outstanding musicians to New Mexico through appropriate programs of publicity, education and coordination and through direct activities, such as sponsorship of music;
- G. protect, promote and preserve the musical traditions of New Mexico; and
- H. accept on behalf of the state donations of money, property and other things of value as, in the division's discretion, are suitable and will best further the aims of the Music Commission Act.

**History:** Laws 2009, ch. 13, § 4.

**Effective dates.** — Laws 2009, ch. 13 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## ARTICLE 17

### Veterans Museum

Sec.

18-17-1. Short title.

18-17-2. Definitions.

18-17-3. Veterans museum division created; location; property.

18-17-4. Board of trustees created; appointments; terms; officers.

Sec.

18-17-5. Board; powers; duties.

18-17-6. Director; appointment; qualifications.

18-17-7. Director; powers; duties.

18-17-8. Museum admission policy.

#### 18-17-1. Short title.

Sections 1 through 8 [18-17-1 through 18-17-8 NMSA 1978] of this act may be cited as the "Veterans Museum Act".

**History:** Laws 2009, ch. 33 § 1.

**Effective dates.** — Laws 2009, ch. 33, § 10 made Laws 2009, ch. 33 § 1 effective July 1, 2009.

#### 18-17-2. Definitions.

As used in the Veterans Museum Act:

- A. "board" means the board of trustees of the museum;
- B. "director" means the director of the division;
- C. "division" means the veterans museum division of the cultural affairs department;
- D. "museum" means the New Mexico veterans museum; and
- E. "secretary" means the secretary of cultural affairs.

**History:** Laws 2009, ch. 33, § 2.

**Effective dates.** — Laws 2009, ch. 33, § 10 made Laws 2009, ch. 33 § 3 effective July 1, 2009.

#### 18-17-3. Veterans museum division created; location; property.

A. The "veterans museum division" is created in the cultural affairs department. The principal facility of the division is the "New Mexico veterans museum" located in Las Cruces. The site shall be held in the name of the state.

B. All property, real or personal, now held or subsequently acquired for the operation of the museum shall be under the control and authority of the board.

C. Funds or other property received by gift, endowment or legacy shall remain under the control of the board and shall, upon acceptance, be employed for the purpose specified.

**History:** Laws 2009, ch. 33, § 3.

**Effective dates.** — Laws 2009, ch. 33, § 10 made Laws 2009, ch. 33 § 3 effective July 1, 2009.



#### 18-17-4. Board of trustees created; appointments; terms; officers.

A. The "board of trustees of the New Mexico veterans museum" is created. The board shall consist of eleven voting members who are residents of New Mexico. One of the voting members shall be the secretary of veterans' services or that secretary's designated representative. Ten voting members shall be appointed by the governor with the advice and consent of the senate. In making the appointments, the governor shall appoint at least three members from each congressional district and give due consideration to the ethnic and geographic diversity of the state. No more than five of the ten appointed members shall be from the same political party. At least five of the members shall be armed forces veterans, one each from:

- (1) the New Mexico national guard;
- (2) the United States army;
- (3) the United States navy;
- (4) the United States air force; and
- (5) the United States marine corps.

B. Of the initial appointees, four members shall be appointed for four-year terms, four members shall be appointed for three-year terms and two members shall be appointed for two-year terms. All subsequent appointed members shall be appointed for four-year terms.

C. A majority of the board members currently serving shall constitute a quorum at any meeting or hearing.

D. Any appointed member failing to attend three consecutive meetings after receiving proper notice shall be recommended for removal by the governor. The governor may also remove any appointed member of the board for neglect of any duty required by law, for incompetency, for unprofessional conduct or for violating any provisions of the Veterans Museum Act. If a vacancy occurs on the board, the governor shall appoint another member to complete the unexpired term.

E. The secretary of cultural affairs shall be an ex-officio nonvoting member of the board.

F. The governor shall designate the president of the board, who shall serve in that capacity at the pleasure of the governor.

G. Appointed members of the board are entitled to per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] but shall receive no other compensation, perquisite or allowance.

**History:** Laws 2009, ch. 33, § 4.

**Effective dates.** — Laws 2009, ch. 33, § 10 made Laws 2009, ch. 33 § 4 effective July 1, 2009.

#### 18-17-5. Board; powers; duties.

The board shall:

- A. exercise trusteeship over the collections of the museum;
- B. accept and hold title to all property for the museum's use;
- C. review annually the performance of the director and report its findings to the secretary;
- D. enter into agreements or contracts with private or public organizations, agencies or individuals for the purpose of obtaining real or personal property for the museum's use;
- E. authorize the director to solicit and receive funds or property of any nature for the development of the museum, its collections and its programs;
- F. adopt such rules as may be necessary to carry out the provisions of the Veterans Museum Act; and
- G. establish policy, determine the mission and direct the development of the museum.

**History:** Laws 2009, ch. 33, § 5.

**Effective dates.** — Laws 2009, ch. 33, § 10 made Laws 2009, ch. 33 § 5 effective July 1, 2009.

**18-17-6. Director; appointment; qualifications.**

A. Subject to the authority of the secretary, the administrative and executive officer of the division and the museum is the "director" of the division.

B. The secretary shall appoint the director with the approval of the governor from a list of qualified finalists provided by the board of trustees.

C. The position of director shall require previous experience in museum administration.

**History:** Laws 2009, ch. 33, § 6.

**Effective dates.** — Laws 2009, ch. 33, § 10 made Laws 2009, ch. 33 § 6 effective July 1, 2009.

**18-17-7. Director; powers; duties.**

Subject to the policies agreed to by the board, the director:

A. shall be responsible for the operation of the museum in accordance with all appropriate statutes and rules;

B. shall develop exhibits and programs displaying New Mexico veterans history for the benefit of the public and with particular concern for the interests of the schools of the state;

C. shall acquire by donation or other means of acquisition any collections and related materials appropriate to a veterans museum and shall direct research as is appropriate to render the collections of benefit to the public;

D. shall employ such professional staff and other employees as are necessary to the operation of the museum in accordance with the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978];

E. may solicit and receive funds or property of any nature for the development of the museum;

F. may enter into contracts with public or private organizations, agencies or individuals for the performance of services related to the location, preservation, development, study or salvage of historical New Mexico veterans materials;

G. shall provide an office in the museum for use by the veterans' services department to provide services to New Mexico veterans;

H. shall cooperate with institutions of higher education and other agencies and political subdivisions of municipal, state and federal governments to establish, maintain and extend the programs of the museum;

I. may, as authorized by the board, lend collection materials to qualified institutions and agencies for purposes of exhibition and study and borrow collection materials from other institutions and agencies for the same purpose;

J. subject to the provisions of Section 8 [18-17-8 NMSA 1978] of the Veterans Museum Act, shall impose and collect admission fees and conduct retail sales as are normal for the operation of the museum;

K. may publish journals, books, reports and other materials as are appropriate to the operation of the museum; and

L. shall perform other appropriate duties as may be delegated by the governor, the secretary or the board or as may be provided by law.

**History:** Laws 2009, ch. 33, § 7.

**Effective dates.** — Laws 2009, ch. 33, § 10 made Laws 2009, ch. 33 § 7 effective July 1, 2009.

**18-17-8. Museum admission policy.**

The board, the secretary of cultural affairs and the director shall establish and implement a policy to permit New Mexico residents age sixty years and older to enter all publicly accessible exhibit and program areas of the museum, except special exhibits and programs where commissions or royalties are paid by contract, free of charge every Wednesday that is not a holiday that the museum is open.

**History:** Laws 2009, ch. 33, § 8.

**Effective dates.** — Laws 2009, ch. 33, § 10 made Laws 2009, ch. 33 § 8 effective July 1, 2009.



## ARTICLE 18

### Rural Library Development

Sec.

18-18-1. Rural libraries endowment fund; distributions.

18-18-2. Rural libraries grant program; specialized services.

Sec.

18-18-3. Rural libraries program fund created.

18-18-4. Definitions.

#### 18-18-1. Rural libraries endowment fund; distributions.

A. The "rural libraries endowment fund" is created in the state treasury to support the preservation, development and establishment of rural libraries throughout the state by providing funding for rural libraries' operational and capital needs and funding for the delivery of specialized services to rural libraries.

B. The rural libraries endowment fund consists of appropriations and donations to the fund and all income from investment of the fund. The state investment officer shall invest money in the fund as money in the fund described in Article 12, Section 7 of the constitution of New Mexico is invested.

C. Distributions of money from the rural libraries endowment fund shall be:

(1) in the following gross amounts:

(a) for fiscal year 2022 and each of the following five fiscal years, the difference, if positive, between all fund investment income yielded through the immediately preceding calendar year and all fund distributions, up to five percent of the year-end market value of the fund for the immediately preceding calendar year; and

(b) for fiscal year 2028 and each subsequent fiscal year, the average of fund investment income yielded in the immediately preceding five calendar years, up to five percent of the year-end market value of the fund for the immediately preceding calendar year; and

(2) in the following proportions:

(a) ninety-five percent of the gross distribution to the rural libraries program fund for grants through the rural libraries grant program; and

(b) five percent of the gross distribution to the cultural affairs department for the state's delivery of specialized services to rural libraries.

**History:** Laws 2019, ch. 165, § 1.

**Effective dates.** — Laws 2019, ch. 165, § 8 made Laws 2019, ch. 165, § 1 effective July 1, 2019.

#### 18-18-2. Rural libraries grant program; specialized services.

A. The "rural libraries grant program" is created. Through that program, the state librarian shall annually disburse, in the form of grants directly benefiting developing rural libraries and established rural libraries and grants for the establishment of developing rural libraries in cities, towns and villages without libraries, money from the rural libraries program fund. The state librarian shall endeavor each year to disburse the full amount available for rural libraries grants. The portion, if any, of that amount not disbursed shall be made available for the next award of grants.

B. Once a developing rural library or an established rural library qualifies to receive grants pursuant to this section, that library shall remain qualified to receive such grants even if the population in the municipality or Indian nation, tribe or pueblo exceeds three thousand.

C. The state librarian shall use money allocated for specialized services to rural libraries from the rural libraries endowment fund distribution to provide specialized services to rural libraries.

**History:** Laws 2019, ch. 165 § 2; 2021, ch. 77, § 1.

**The 2021 amendment,** effective June 18, 2021, established that once a rural library qualifies to receive grants, that library shall remain qualified to receive such grants

even if the population in the municipality or Indian nation, tribe or pueblo exceeds three thousand; added new Subsection B and redesignated former Subsection B as Subsection C.

### 18-18-3. Rural libraries program fund created.

The "rural libraries program fund" is created in the state treasury. The fund consists of distributions from the rural libraries endowment fund that are designated for the rural libraries grant program and appropriations, gifts, interest and other money attributed to the fund. Money in the fund shall not revert at the end of a fiscal year. Money in the fund may be appropriated by the legislature to carry out the provisions of Sections 1 through 4 [18-18-1 through 18-18-4 NMSA 1978] of this 2019 act. Expenditures from the fund shall be made upon warrant of the secretary of finance and administration pursuant to vouchers signed by the state librarian or the state librarian's authorized representative.

**History:** Laws 2019, ch. 165, § 3.

**Effective dates.** — Laws 2019, ch. 165, § 8 made Laws 2019, ch. 165, § 3 effective July 1, 2019.

**Temporary provisions.** — Laws 2019, ch. 165, § 6 provided that on July 1, 2019, the balance in the rural library development fund is transferred to the rural libraries endowment fund.

### 18-18-4. Definitions.

As used in Sections 18-18-1 through 18-18-4 NMSA 1978, and to the extent allowed by law:

A. "developing rural library" means a rural library whose library staff, whether salaried or volunteer, is dedicated to delivering library services to the public for at least fifteen hours per week and on at least two days each week;

B. "established rural library" means a rural library:

- (1) with permanent, salaried staff; and
- (2) that offers library services to the public for at least twenty-five hours per week;

C. "rural library" means a library that is established:

(1) through an ordinance or legal resolution adopted by a political subdivision of the state and is located in:

(a) an unincorporated area of the state; or

(b) a municipality with a population on or after July 1, 2019 of three thousand or less;

(2) by a legal resolution of a tribal government in New Mexico with a tribal population on or after July 1, 2019 of three thousand or less; or

(3) as a corporation with tax-exempt status pursuant to Section 501(c)(3) of the United States Internal Revenue Code of 1986 and is located in:

(a) an unincorporated area of the state; or

(b) a municipality with a population on or after July 1, 2019 of three thousand or less;

and

D. "specialized services" means professional development opportunities, program support, information technology support and other capacity-building services, as defined by the state librarian.

**History:** Laws 2019, ch. 165 § 4; 2021, ch. 77, § 2.

**Cross references.** — For Section 501(c) of the United States Internal Revenue Code of 1986, see 26 U.S.C. § 501(c).

**The 2021 amendment**, effective June 18, 2021, revised the definition of "rural library", and added statutory references; after "Sections", deleted "1 through 4 of this 2019 act" and added "18-18-1 through 18-18-4 NMSA 1978"; and in Subsection C, Paragraph C(1), after "located in", deleted "a municipality with a population at the time of the library's establishment of three thousand or less

or is located in an unincorporated area of the state", and added Subparagraphs C(1)(a) and C(1)(b), in Paragraph C(2), after "New Mexico", deleted "and is located in a census designated place with a population at the time of the library's establishment of three thousand or less; or" and added "with a tribal population on or after July 1, 2019 of three thousand or less", and in Paragraph C(3), after "located in", deleted "a municipality with a population at the time of the library's establishment of three thousand or less or is located in an unincorporated area of the state", and added Subparagraphs C(3)(a) and C(3)(b).



## CHAPTER 19

### Public Lands

#### Art.

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- 1A. Natural Resource Revenue Recovery, Repealed
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## ARTICLE 1

### Commissioner of Public Lands; Disposition of Revenue

#### Sec.

- 19-1-1. Creation of state land office; commissioner of public lands designated executive officer; powers.
- 19-1-1.1. State land trusts advisory board; members; appointment; terms.
- 19-1-1.2. State land trusts advisory board; removal of members; vacancies.
- 19-1-1.3. State land trusts advisory board; organization; meetings.
- 19-1-1.4. State land trusts advisory board; duties.
- 19-1-2. Duties of land commissioner.
- 19-1-2.1. Confidential information; penalty.
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- 19-1-6. Assistant commissioner; chief clerk; clerical force.
- 19-1-7. Appointment of employees as clerks to sign documents for commissioner; filing with the secretary of state.
- 19-1-8. Filing of official appointment; revocation; bond.
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- 19-1-10. Duties and bonds of subordinates; expenses payable from maintenance fund.

#### Sec.

- 19-1-11. State lands maintenance fund; created; state lands income; disposition; state trust lands restoration and remediation fund created.
- 19-1-12. State land office; expenses; how paid.
- 19-1-13. Maintenance fund balance; apportionment.
- 19-1-14. Separate accounts; payment of deficiencies; exception.
- 19-1-15. Repealed.
- 19-1-16. Deposit of money derived from state lands.
- 19-1-17. Permanent, income and current funds; creating deposits.
- 19-1-18. Sources of special funds.
- 19-1-19. Public buildings at capital, permanent fund; investment.
- 19-1-20. Transfers and distributions of funds for schools and institutions.
- 19-1-21. Copies of records; fees; use as evidence.
- 19-1-22. Contracts for potash land exploration.
- 19-1-23. Rules and regulations for land office; posting changes.
- 19-1-24. Publication of rules and regulations; distribution of copies.

## 19-1-1. [Creation of state land office; commissioner of public lands designated executive officer; powers.]

A state land office is hereby created, the executive officer of which shall be the commissioner of public lands, hereinafter called the commissioner, who shall have jurisdiction over all lands owned in this chapter by the state, except as may be otherwise specifically provided by law, and shall have the management, care, custody, control and disposition thereof in accordance with the provisions of this chapter and the law or laws under which such lands have been or may be acquired.

**History:** Laws 1912, ch. 82, § 1; Code 1915, § 5178; C.S. 1929, § 132-101; 1941 Comp., § 8-101; 1953 Comp., § 7-1-1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The words "who shall have jurisdiction over all lands owned in this chapter by the state" appear in the 1915 Code but not in the 1912 statute, which read: "who shall have jurisdiction over all lands now owned or hereafter acquired by the state." The words "this chapter" evidently refers to chapter 102 of the 1915 Code, §§ 5178 to 5290, compiled herein as 19-1-1 to 19-1-6, 19-1-9 to 19-1-16, 19-1-21, 19-2-1, 19-5-3 to 19-5-10, 19-6-1 to 19-6-7, 19-7-1, 19-7-7, 19-7-8, 19-7-11, 19-7-13, 19-7-19 to 19-7-22, 19-7-25, 19-7-27 to 19-7-30, 19-7-34, 19-7-36, 19-7-50, 19-7-51, 19-7-52, 19-7-53, 19-7-57, 19-7-58, 19-7-64 to 19-7-67, 19-8-1 to 19-8-3, 19-8-10, 19-8-12, 19-8-13, 19-9-1 to 19-9-8 and 19-11-10 NMSA 1978.

**Cross references.** — For duty to obtain data and information on state lands, and classify same, see 19-5-1 NMSA 1978.

For constitutional duties of commissioner of public lands, see N.M. Const., art. XIII, § 2.

### ANNOTATIONS

#### Rulemaking authority of commissioner limited.

— The commissioner has no authority to promulgate rules or regulations inconsistent with legislative enactments governing mineral leases on public lands. *Harvey E. Yates Co. v. Powell*, 98 F.3d 1222 (10th Cir. 1996).

The commissioner exceeded his authority and usurped a legislative function in promulgating the definition of "proceeds" in a rule so that it would require state lessees to pay royalties even when gas was not extracted from the leased premises. *Harvey E. Yates Co. v. Powell*, 98 F.3d 1222 (10th Cir. 1996).

**Extent of commissioner's jurisdiction.** — The New Mexico legislature intended the jurisdiction of the commissioner of public lands to extend only so far as those lands acquired by the state pursuant to acts of congress. 1980 Op. Att'y Gen. No. 80-10.

**Law reviews.** — For article, "The West and Its Public Lands; Aid or Obstacle to Progress?" see 4 Nat. Resources J. 1 (1964).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63A Am. Jur. 2d Public Lands §§ 1 to 3, 12 to 38.

73A C.J.S. Public Lands § 180.

### 19-1-1.1. State land trusts advisory board; members; appointment; terms.

A. The "state land trusts advisory board" is created. The state land trusts advisory board shall consist of seven members appointed by the commissioner of public lands with the advice and consent of the senate. Terms of the initial board shall be structured so that three terms shall expire on December 31, 1990, three terms shall expire on December 31, 1992 and one term shall expire on December 31, 1994; thereafter, commissioners shall be appointed for terms of six years.

B. Members of the board shall, as reasonably as possible, represent a geographical balance from across the state and shall be selected as follows:

- (1) two members shall represent the beneficiaries of the state land trusts;
- (2) one member shall represent the extractive industries;
- (3) one member shall represent the agricultural industries;
- (4) one member shall represent conservation interests; and
- (5) two members shall represent the public at large.

C. No more than four members of the board shall belong to the same political party.

D. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978]. These expenses shall be paid from the budget of the commissioner of public lands.

**History:** Laws 1989, ch. 186, § 1.



### **19-1-1.2. State land trusts advisory board; removal of members; vacancies.**

A. Members of the state land trusts advisory board shall not be removed except for incompetence, neglect of duty or malfeasance in office. Provided, however, no removal shall be made without notice of hearing and an opportunity to be heard having first been given to the member. The supreme court is given exclusive jurisdiction over proceedings to remove members of the state land trusts advisory board under rules it may promulgate, and its decision in connection with these matters shall be final.

B. Any vacancy occurring on the state land trusts advisory board shall be filled by appointment of the commissioner of public lands with the advice and consent of the senate for the remainder of the unexpired term.

History: Laws 1989, ch. 186, § 2.

### **19-1-1.3. State land trusts advisory board; organization; meetings.**

At its initial meeting and biannually thereafter, the board shall elect a chairman, vice chairman and other officers as it deems necessary. The board shall meet at the call of the chairman or a majority of the members. All meetings of the state land trusts advisory board shall be in compliance with the Open Meetings Act [10-15-1 to 10-15-4 NMSA 1978].

History: Laws 1989, ch. 186, § 3.

### **19-1-1.4. State land trusts advisory board; duties.**

A. The consensus and advice of the state land trusts advisory board are intended to provide a continuity for resource management and to help the commissioner of public lands with understanding and maintaining the highest standards for maximizing the income from the trust assets, and to protect and maintain the assets and resources of the trust as required by the constitution of New Mexico, the Enabling Act for New Mexico and state statute. To that end, the board shall review the policies and practices of the commissioner of public lands and shall advise the commissioner on how such policies and practices affect and achieve those goals.

B. No action of the state land trusts advisory board shall be binding on the commissioner of public lands, who alone has the constitutional and fiduciary responsibility as trustee for the trusts.

C. The commissioner of public lands shall hold at least one meeting per year jointly with the state land trusts advisory board and the administrative head or designee of the beneficiary institutions. At annual beneficiary meetings the commissioner shall inform and discuss with the representatives of the beneficiaries and the board the plans, goals, objectives, budget, revenue projections, asset management issues and all other pertinent information regarding the state land trusts.

History: Laws 1989, ch. 186, § 4.

### **19-1-2. Duties of land commissioner.**

The commissioner shall have a seal with an appropriate device thereon; and such seal affixed to any contract, deed, lease or other instrument executed by the commissioner shall be prima facie evidence of the due execution thereof. Said commissioner shall receive and pass upon all applications for leasing or purchasing state lands and timber; and shall execute and authenticate for the state all deeds, leases, contracts or other instruments affecting such lands. All such leases, deeds, contracts and grants heretofore or hereafter executed shall be entitled to record without acknowledgment, and record thereof in the county in which the land described therein is situated shall be constructive notice to all persons of the contents thereof. Said commissioner shall have power to

provide all necessary books, blanks, records, property, equipment and appurtenances of every kind whatsoever for the proper management of said state land office and the lands under his control; to deed by quitclaim or otherwise to the United States any or all claims that the state may have in and to lands within any private land grant or reservation made or confirmed in pursuance of authority of congress, or to such of its lands as may be needed by the United States or for reclamation of water power sites for the purpose of selecting indemnity lands therefor; also to such of its lands as may be desired by the United States for agricultural experiment purposes; to collect all moneys due to the state for the lease, purchase or use of state lands; to receive all moneys due to the state derived from any state lands and credit said moneys so received to the separate funds created for the respective purposes named in grants by congress, or otherwise, and he shall pay over to the state treasurer, on or before the tenth day of the next succeeding month, all such moneys received during each month to be credited to the several funds respectively entitled thereto. He shall keep a full and complete record of all his official acts and shall submit to the governor each year a report bearing date the first day of December, and at any other time on request, which shall contain a statement of the business and expenses of said state land office and the amount of moneys received and turned over by him to the state treasurer for each fund, together with such recommendations as he may deem proper for the better management and control of state lands. He shall cause to be printed biennially, for the use and information of the legislature, the annual reports thus made to the governor for the two (2) years preceding each regular session thereof, and he shall charge the cost of such printing to the state lands maintenance fund hereinafter in this chapter created. He shall employ a person qualified and experienced as a geologist or petroleum engineer who in turn is hereby authorized to appoint, with the approval of the commissioner, such inspectors, clerks and additional assistants as he may deem necessary to collect and compile information, under the direction and supervision of the commissioner, relative to oil and gas leasing development and production within the state which may affect state lands and prepare maps and reports necessary and expedient for the proper supervision and leasing of lands belonging to the state for oil and gas purposes. The salary of said geologist or petroleum engineer and inspectors, clerks and additional assistants as provided shall be fixed by the commissioner and said salaries and expenses to be paid out of the state land office maintenance fund. He shall make rules and regulations for the control, management, disposition, lease and sale of state lands and perform such other duties as may be prescribed by law.

**History:** Laws 1912, ch. 82, § 2; Code 1915, § 5179; C.S. 1929, § 132-102; 1941 Comp., § 8-102; Laws 1953, ch. 75, § 1; 1953 Comp., § 7-1-2.

**Compiler's notes.** — The words "this chapter" evidently refers to chapter 102 of the 1915 Code, §§ 5178 to 5290, compiled herein as 19-1-1 to 19-1-6, 19-1-9 to 19-1-16, 19-1-21, 19-2-1, 19-5-3 to 19-5-10, 19-6-1 to 19-6-7, 19-7-1, 19-7-7, 19-7-8, 19-7-11, 19-7-13, 19-7-19 to 19-7-22, 19-7-25, 19-7-27 to 19-7-30, 19-7-34, 19-7-36, 19-7-50, 19-7-51, 19-7-52, 19-7-53, 19-7-57, 19-7-58, 19-7-64 to 19-7-67, 19-8-1 to 19-8-3, 19-8-10, 19-8-12, 19-8-13, 19-9-1 to 19-9-8 and 19-11-10 NMSA 1978.

**Cross references.** — For classification of state lands, see 19-5-1 NMSA 1978.

For fire protection for state lands, see 19-5-3 NMSA 1978.

For care and protection of timberlands, see 19-11-1 NMSA 1978.

**Temporary provisions.** — Laws 2019, ch. 171, § 1, effective April 2, 2019, provided:

A. The legislature finds that:

(1) the transfer of land and buildings of the Mesilla Valley Bosque state park by the commissioner of public lands by quitclaim deed to the state game commission in June 2018 was without required legislative approval;

(2) the land and buildings of the Mesilla Valley Bosque state park are not in excess of the reasonable needs of the state parks division of the energy, minerals and natural resources department for use as a state park; and

(3) the provisions of Sections 13-6-3 and 17-4-3 NMSA 1978 shall not apply to the transfer of property required by Subsection B of this section.

B. The state game commission shall return to the energy, minerals and natural resources department by quitclaim deed for use by the state parks division of the department as a state park all land, buildings and interests in the following thirteen and thirty-nine hundredths acres, more or less, situated in Dona Ana county, New Mexico, and described as follows:

A tract of land situated within the Mesilla Civil Colony Grant in Sections 2 & 3, T.24S., R.1E., and Section 34, T.23S., R.1E., N.M.P.M. of the U.S.R.S. Surveys being U.S.R.S. Tracts Map 12-12, 12-13, 12-14, 12-15, 12-16A, 12-16C, 12-16D, 12-16E & 12-34, and being more particularly described as follows, to wit:

Beginning at a 1/2" iron rod set on the East line of the Picacho Drain for a corner of the tract herein described; whence meander corner No. 20 on the Mesilla Civil Colony Grant bears N.46 deg. 43'29"W., 4155.14 feet;

Thence from the point of beginning and leaving said Picacho Drain, N.58 deg. 30'00"E., 597.65 feet to a 1/2" iron rod set for a corner of this tract;

Thence S.31 deg. 30'00"E., 424.07 feet to a 1/2" iron rod set on the West line of a 60 foot wide road for a corner of this tract and point of curvature;

Thence along the West line of said 60 foot wide road the following courses and distances, around the arc of a curve to the left, having a radius of 1055.81 feet, through



a central angle of 42 deg. 21'00" and whose long cord bears N.20 deg. 00'18"E., 762.75 feet to a 1/2" iron rod set;

Thence N.01 deg. 08'54"W., 1184.93 feet to a 1/2" iron rod set a point of curvature;

Thence around the arc of a curve to the left, having a radius of 1819.90 feet, through a central angle of 41 deg. 03'48" and whose long cord bears N.21 deg. 39'44"W., 1276.57 feet to a 1/2" iron rod set;

Thence N.42 deg. 11'36"W., 1248.73 feet to a 1/2" iron rod set for a corner of this tract;

Thence N.19 deg. 05'52"W., 152.96 feet to a 1/2" iron rod set on the West line of the Rio Grande for the most Northerly corner of this tract;

Thence along the West line of the Rio Grande the following courses and distances, S.42 deg. 11'36"E., 1389.48 feet to an I.B.C. Pipe found and point of curvature;

Thence around the arc of a curve to the right, having a radius of 1879.90 feet, an arc length of 1347.26 feet, through a central angle of 41 deg. 03'43" and whose long chord bears S.21 deg. 39'42"E., 1318.61 feet to an I.B.C. Pipe found;

Thence S.01 deg. 08'54"E., 1184.91 feet to an I.B.C. Pipe found and point of curvature;

Thence around the arc of a curve to the right, having a radius of 1115.81 feet, an arc length 1237.36 feet, through a central angle of 63 deg. 32'14" and whose long chord bears S.30 deg. 35'57"W., 1174.93 feet to an I.B.C. Pipe found;

Thence S.62 deg. 21'12"W., 161.86 feet to a 1/2" iron rod set at the Southwest intersection of the Rio Grande and Picacho Drain for Southwest corner of this tract;

Thence along East line of the Picacho Drain the following courses and distances, N.41 deg. 30'00"W., 161.24 feet to a 1/2" iron rod found and point of curvature;

Thence around the arc of a curve to the right, having a radius of 1095.90 feet, an arc length of 202.02 feet, through a central angle of 10 deg. 33'44" and whose long chord bears N.36 deg. 46'52"W., 201.74 feet to a 1/2" iron rod set;

Thence N.31 deg. 30'00"W., 158.85 feet to the point of beginning, containing 13.392 acres of land, more or less.

C. The real property transferred pursuant to Subsection B of this section shall be used to reestablish Mesilla Valley Bosque state park as that park existed prior to the transfer of the property by quitclaim deed of the commissioner of public lands on June 18, 2018.

#### ANNOTATIONS

**Reservation of minerals.** — The commissioner of public lands had power to reserve the minerals in the land to the fund or institution to which the land belongs, when making sale thereof. *State ex rel. Otto v. Field*, 1925-NMSC-019, 31 N.M. 120, 241 P. 1027.

**Mandamus will not lie to compel commissioner to issue deed** conveying public lands free from reservation

of the minerals therein, which reservation was contained in the contract of sale, because it is, in effect, an action against the state. *State ex rel. Evans v. Field*, 1921-NMSC-082, 27 N.M. 384, 201 P. 1059, explained in *Gamble v. Velarde*, 1932-NMSC-048, 36 N.M. 262, 13 P.2d 559, distinguished in *Swayze v. Bartlett*, 1954-NMSC-019, 58 N.M. 504, 273 P.2d 367.

**Effect of reservation.** — The right to remove sand and gravel did not pass under a grant issued by the commissioner of public lands authorizing the highway commission to use certain lands as a source of surfacing materials which contained a general clause reserving minerals. 1961-62 Op. Att'y Gen. No. 61-12.

**No power to sell highway commission lands.** — Neither by the constitution nor by statute has the commissioner of public lands been given power to sell lands held by the highway commission and acquired for its purposes. 1953-54 Op. Att'y Gen. No. 53-5831.

**Effect of timberlands lease.** — A lease of timberlands made by the territorial commissioner, with the right to cut certain timber, passed title to the timber subject to defeasance as to timber remaining at the end of the term, and a renewal of such lease was properly made before its expiration, but after the territory had become a state, without advertisement for bids. The timber remaining uncut at the expiration of the lease reverts to the grantor, but where the land itself was sold to the lessee, no title remained in the grantor. 1923-24 Op. Att'y Gen. 23-3728.

**No authority over departments' buildings.** — There is no statute specifically giving the commissioner of lands authority to lease surface rights and buildings owned by state departments. 1953-54 Op. Att'y Gen. No. 53-5831.

**Without commissioner's consent, use of school section for cemetery is unauthorized.** 1919-20 Op. Att'y Gen. No. 20-2603.

**Transfer to United States.** — Statute authorizes state land commissioner to make conveyance to United States of lands within the exterior boundaries of Alamo National Forest. 1915-16 Op. Att'y Gen. No. 15-1641.

**Administration of funds.** — The commissioner of public lands is the sole person entrusted with the administration of the funds of which he is trustee, as provided in the Enabling Act, the New Mexico constitution and the laws of the state of New Mexico, subject to the expenditure being a reasonable one, and the legislature is not empowered, nor is the governor authorized, to restrict the commissioner in the expenditure of these funds. 1953-54 Op. Att'y Gen. No. 5781, overruled by Op. Att'y Gen. Nos. 59-195 and 59-151.

**Commissioner of public lands may employ forest guards** in order to protect and care for public lands. 1915-16 Op. Att'y Gen. No. 15-1414.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 73A C.J.S. Public Lands § 180.

### 19-1-2.1. Confidential information; penalty.

The provisions of any confidential contract, reserve data or other confidential information required to be submitted under any lease or rule or regulation of the commissioner of public lands, and which is clearly marked as confidential by the person from whom submission is required, shall be held confidential by the commissioner, his employees and his agents. Any person who willfully violates the provisions of this section shall be guilty of a misdemeanor. Nothing in this section shall be construed to prevent statistical information from being derived from the information available to the commissioner or its use in public hearings before the commissioner or in appeals from decisions of the commissioner for which such information is essential. This section shall not be construed to protect any information, even if otherwise considered confidential under this section, if such information is also available from public, non-confidential sources. Notwithstanding

the provisions of any act requiring meetings of public bodies to be open, the commissioner may close that part of any meeting where confidential information covered by this section is discussed.

**History:** Laws 1985, ch. 240, § 1.

**Cross references.** — For sentencing for misdemeanors, see 31-19-1 NMSA 1978.

### 19-1-3. Delinquent payments; interest.

When entering into contracts for the sale, lease or other disposition of public lands under his jurisdiction, the commissioner of public lands is authorized to contract for payment of interest on any payment of rental, royalty, principal interest or other indebtedness which becomes delinquent. Interest on delinquent payments shall not exceed the rate of one percent a month nor be less than one-half percent a month, for any fraction of a month. Interest shall accrue from the date the payment becomes due.

**History:** 1953 Comp., § 7-1-2.1, enacted by Laws 1971, ch. 96, § 1.

**Cross references.** — For forfeiture of coal land leases for noncompliance with terms, see 19-9-13 NMSA 1978.

For cancellation of oil and gas land leases for nonpayment of rentals, see 19-10-20 NMSA 1978.

For cancellation of geothermal resources leases for nonpayment of rentals or royalties, see 19-13-23 NMSA 1978.

### 19-1-4. [Oath and bond.]

Before entering upon the duties of his office the commissioner shall qualify by taking and subscribing an oath as prescribed by the constitution and by executing a bond to the state in the penal sum of fifty thousand dollars (\$50,000), conditioned for the faithful performance of the duties of his office, and which bond, together with said oath, shall be filed in the office of the secretary of state. If such bond be executed by a surety company, the expense thereof shall be paid out of the state lands maintenance fund.

**History:** Laws 1912, ch. 82, § 3; Code 1915, § 5180; C.S. 1929, § 132-103; 1941 Comp., § 8-103; 1953 Comp., § 7-1-3.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For the state lands maintenance fund, see 19-1-11 NMSA 1978.

For the oath to support constitution and laws and carry out duties of office, see N.M. Const., art. XX, § 1.

For the bonds required for public officers and employees, and filing of same, see 10-2-1 NMSA 1978 et seq.

For the Surety Bond Act, see 10-2-13 NMSA 1978 et seq.

### 19-1-5. [Land commission under Enabling Act; members; officers; locating agents.]

The commissioner of public lands shall be the third member along with the governor and attorney general of the commission created by Section 11 of the act of congress designated as the Enabling Act, approved June 20, 1910. The governor shall be chairman and said commissioner shall be secretary of said commission. The commission is authorized to employ one or more locating agents who shall be paid out of the maintenance fund provided by this chapter.

**History:** Laws 1912, ch. 82, § 77; Code 1915, § 5255; C.S. 1929, § 132-189; 1941 Comp., § 8-105; 1953 Comp., § 7-1-4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The words "this chapter" evidently refers to chapter 102 of the 1915 Code, §§ 5178 to 5290, compiled herein as 19-1-1 to 19-1-6, 19-1-9 to

19-1-16, 19-1-21, 19-2-1, 19-5-3 to 19-5-10, 19-6-1 to 19-6-7, 19-7-1, 19-7-7, 19-7-8, 19-7-11, 19-7-13, 19-7-19 to 19-7-22, 19-7-25, 19-7-27 to 19-7-30, 19-7-34, 19-7-36, 19-7-50, 19-7-51, 19-7-52, 19-7-53, 19-7-57, 19-7-58, 19-7-64 to 19-7-67, 19-8-1 to 19-8-3, 19-8-10, 19-8-12, 19-8-13, 19-9-1 to 19-9-8 and 19-11-10 NMSA 1978.

**Cross references.** — For the state lands maintenance fund, see 19-1-11 NMSA 1978.

### 19-1-6. [Assistant commissioner; chief clerk; clerical force.]

The commissioner of public lands is hereby authorized to appoint an assistant commissioner of public lands at a salary of not to exceed two thousand five hundred (\$2,500) dollars per



annum. Such assistant commissioner, after filing his oath of office and such bond as the commissioner may require, shall, in the absence of the commissioner of public lands from the state capital, or in the event of a vacancy in the office of commissioner of public lands, have authority to exercise all of the duties and powers by law incumbent upon or vested in the commissioner of public lands.

The commissioner of public lands is hereby authorized to employ a chief clerk, and such additional clerical force as may be required for the proper administration of the affairs of his office. The salaries of the assistant commissioner and of the chief clerk and general clerical force shall be payable monthly, by warrant drawn [drawn] on the state land maintenance fund, but the annual salary expense of the employees herein provided for shall not exceed five per centum of the income derived from state lands, exclusive of Santa Fe and Grant county bond fund lands; provided, that this act [this section] shall not be held to repeal or affect the provisions of Section 5260 [19-1-9 NMSA 1978] of the Codification of 1915.

**History:** Laws 1912, ch. 82, § 4; Code 1915, § 5181; Laws 1915, ch. 73, § 1; 1919, ch. 48, § 1; C.S. 1929, § 132-104; 1941 Comp., § 8-106; 1953 Comp., § 7-1-5.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Assistant commissioner may not lawfully exercise any discretionary powers** vested in the commissioner by the constitution, and to that extent the act is unconstitutional. 1919-20 Op. Att'y Gen. No. 19-2433.

### 19-1-7. Appointment of employees as clerks to sign documents for commissioner; filing with the secretary of state.

The commissioner of public lands is authorized from time to time to appoint one or more employees of the state land office as clerks to sign the commissioner's name, under his direction and for him, to any and all patents to state lands, and any and all leases, assignments, division orders, letters, contracts, certification of copies and any other documents or instruments respecting state lands as the commissioner of public lands may enumerate in the appointing orders, and any such instruments or documents so signed shall have the same legal effect as those signed by the commissioner of public lands in person.

**History:** 1941 Comp., § 8-106a, enacted by Laws 1945, ch. 55, § 1; 1953 Comp., § 7-1-6; 1981, ch. 98, § 1.

### 19-1-8. Filing of official appointment; revocation; bond.

Such designated clerk or clerks shall be officially appointed by a written appointing order signed by the commissioner of public lands, bearing his official seal, which appointing order shall contain a specimen of the signature to be used by each clerk, in addition to the usual personal signature of each clerk. Any appointment may be revoked at any time by a similar order signed and filed as provided in this section. Each appointment and any revocation of appointment shall be filed in the state land office and in the office of the secretary of state and thereupon shall become effective without the necessity of being filed in any other place. Each clerk shall be under properly conditioned fidelity bond pursuant to the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978].

**History:** 1941 Comp., § 8-106b, enacted by Laws 1945, ch. 55, § 2; 1953 Comp., § 7-1-7; 1981, ch. 98, § 2.

**Cross references.** — For bonds for public officers and employees, see 10-2-1 NMSA 1978 et seq.

### 19-1-9. [Additional assistance to defend contest suits.]

The commissioner of public lands is authorized to employ such additional persons, including surveyors and attorneys, as he may deem necessary to defend contest suits brought by the United States government to determine title to school or other state lands, and to subpoena such witnesses as are deemed necessary in behalf of the state in defense of such suits, the per diem and mileage of such witnesses to be paid in accordance with the statutes made and provided therefor.

The salaries and actual expenses of such additional persons, and mileage and per diem of such witnesses as are provided for in this section shall be paid from the state lands maintenance fund.

**History:** Laws 1913, ch. 26, § 1; Code 1915, § 5260; C.S. 1929, § 132-201; 1941 Comp., § 8-107; 1953 Comp., § 7-1-8.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For state lands maintenance fund, *see* 19-1-11 NMSA 1978.

For per diem and mileage payments to witnesses, *see* 38-6-4 NMSA 1978.

## 19-1-10. [Duties and bonds of subordinates; expenses payable from maintenance fund.]

The commissioner shall prescribe the duties of his subordinates. Any subordinate may be required to give bond in such sum as the commissioner may prescribe, conditioned for the faithful performance of his duties. If any such bond be executed by a surety company, the expense thereof shall be paid out of the state lands maintenance fund.

All expenses incurred by the commissioner or his subordinates in inspecting, appraising or investigating state lands shall be paid out of said fund. All expenses incurred by the commission composed of the governor, surveyor general or other officers exercising the function of the surveyor general and attorney general in directing, locating, inspecting, appraising and investigating state lands shall be paid out of said fund.

**History:** Laws 1912, ch. 82, § 5; Code 1915, § 5182; C.S. 1929, § 132-105; 1941 Comp., § 8-108; 1953 Comp., § 7-1-9.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For state lands maintenance fund, *see* 19-1-11 NMSA 1978.

For bonds for public officers and employees, *see* 10-2-1 NMSA 1978 et seq.

For Surety Bond Act, *see* 10-2-13 NMSA 1978 et seq.

the state lands maintenance fund. 1912-13 Op. Att'y Gen. No. 12-907.

**Inspection expenditures.** — Both this section and Sections 19-5-1, 19-5-2 NMSA 1978 may be considered as being in effect and under the authority of the latter, in the procurement of detailed information and data \$10,000 may be expended; however, under this section whatever is necessary "for the purpose of inspecting, appraising or investigating state lands" in dealing therewith shall also be paid out of the maintenance fund provided by Section 19-1-11 NMSA 1978 over and above the \$10,000 provided by 19-5-1 NMSA 1978. 1939-40 Op. Att'y Gen. No. 39-3202.

### ANNOTATIONS

**Purchase of automobile is legitimate expense** of the state land department and may be paid for out of

## 19-1-11. State lands maintenance fund; created; state lands income; disposition; state trust lands restoration and remediation fund created.

A. Ninety-nine percent of the income derived from any state lands granted or confirmed by the Enabling Act or otherwise under the management, care, custody and control of the commissioner of public lands shall constitute a fund to be known as the "state lands maintenance fund"; provided that the state lands maintenance fund shall not include any money required to be transferred to any permanent fund created in Chapter 19 NMSA 1978.

B. The "state trust lands restoration and remediation fund" is created in the state treasury. One percent of the income derived from any state trust lands granted or confirmed by the Enabling Act or otherwise under the management, care, custody and control of the commissioner of public lands shall be deposited in the state trust lands restoration and remediation fund; provided that the state trust lands restoration and remediation fund shall not include any money required to be transferred to any permanent fund created in Chapter 19 NMSA 1978. The state trust lands restoration and remediation fund also consists of income from investment of the fund and money otherwise accruing to the fund. Money in the state trust lands restoration and remediation fund that exceeds five million dollars (\$5,000,000) shall be distributed to the trust beneficiaries in the same manner that surpluses in the state lands maintenance fund are distributed. Money in the fund shall not revert to any other fund at the end of a fiscal year. The state land office shall administer the fund. Subject to legislative appropriation, expenditures may be made from the state trust lands restoration and remediation



fund upon vouchers signed by the commissioner or the commissioner's authorized representative and issued by the secretary of finance and administration to administer contractual surface damage and watershed restoration and remediation projects on state trust lands.

C. For any expenditure made from the state trust lands restoration and remediation fund, the commissioner shall attempt to recover the costs of remediation projects from any person who may otherwise bear liability for that remediation project under the Voluntary Remediation Act [Chapter 74, Article 4G NMSA 1978], the New Mexico Mining Act [Chapter 69, Article 36 NMSA 1978], the Surface Mining Act [Chapter 69, Article 25A NMSA 1978], the Oil and Gas Act [Chapter 70, Article 2 NMSA 1978], the Water Quality Act [Chapter 74, Article 6 NMSA 1978], the Solid Waste Act [74-9-1 NMSA 1978] or the Hazardous Waste Act [Chapter 74, Article 4 NMSA 1978].

**History:** Laws 1912, ch. 82, § 6; Code 1915, § 5183; C.S. 1929, § 132-106; 1941 Comp., § 8-109; 1953 Comp., § 7-1-10; Laws 1989, ch. 15, § 1; 2017, ch. 24, § 1.

The 2017 amendment, effective June 16, 2017, created the state trust lands restoration and remediation fund, and directed that one percent of the income derived from any state trust lands granted or confirmed by the Enabling Act or under the management of the commissioner of public land be deposited in the state trust lands restoration and remediation fund; in the catchline, added "state trust lands restoration and remediation fund created"; added the subsection designation "A"; in Subsection A, deleted "The" and added "Ninety-nine percent of the"; and added Subsections B and C.

The 1989 amendment, effective March 9, 1989, rewrote this section to the extent that a detailed comparison is impracticable.

#### ANNOTATIONS

**Enabling Act not violated.** — In state statute creating state land office, provisions constituting 20 percent of income from state lands as a trust fund, known as the state lands maintenance fund, and authorizing payment of salaries and expenses of state land office from such fund, was not violative of trust created by Enabling Act. *United States v. Swope*, 16 F.2d 215 (8th Cir. 1926) (decided prior to 1989 amendment).

**Publicity expenses.** — The expenses limited or authorized by Laws 1915, ch. 60, § 1 (now repealed), for giving publicity to resources and advantages of the state, should be paid out of the state lands maintenance fund created by this section. 1915-16 Op. Att'y Gen. 58 (rendered under prior law).

**Law reviews.** — For article, "Sustainable Resources Management and State School Lands: The Quest For Guiding Principles," see 34 Nat. Resources J. 271 (1994).

### 19-1-12. State land office; expenses; how paid.

All salaries and expenses of the state land office as authorized by annual appropriation of the legislature shall be paid from the state lands maintenance fund upon vouchers in duplicate, approved by the commissioner, numbered consecutively, setting forth the accounts covered and duly itemized. One copy of the voucher shall be retained in the state land office and the other copy shall be filed with the department of finance and administration. Warrants for the payment of the voucher shall be drawn by the secretary of finance and administration upon the state lands maintenance fund.

**History:** Laws 1912, ch. 82, § 7; Code 1915, § 5184; C.S. 1929, § 132-107; 1941 Comp., § 8-110; 1953 Comp., § 7-1-11; Laws 1977, ch. 247, § 84; 1989, ch. 15, § 2.

The 1989 amendment, effective March 9, 1989, inserted "as authorized by annual appropriation of the legislature" in the first sentence, and made minor stylistic changes throughout the section.

#### ANNOTATIONS

**Abandoned wells.** — The commissioner of public lands should plug abandoned oil and gas wells to protect lands under his control and pay costs out of state lands maintenance fund if they cannot be recovered from owner or operator. 1931-32 Op. Att'y Gen. No. 31-20.

### 19-1-13. Maintenance fund balance; apportionment.

Any balance remaining in the state lands maintenance fund on June 30 of each year shall be apportioned by the state treasurer among the several funds from which derived. In addition, the state treasurer shall make distributions in such amounts as the commissioner may determine to be surplus.

**History:** Laws 1912, ch. 82, § 8; Code 1915, § 5185; Laws 1929, ch. 64, § 1; C.S. 1929, § 132-108; 1941 Comp., § 8-111; 1953 Comp., § 7-1-12; Laws 1971, ch. 91, § 1; 1989, ch. 15, § 3.

The 1989 amendment, effective March 9, 1989, substituted "shall" for "may" in the second sentence, and made minor stylistic changes throughout the section.

### 19-1-14. [Separate accounts; payment of deficiencies; exception.]

The commissioner shall keep separate accounts of filing fees which Section eleven [11] of the Enabling Act requires to be paid to the register and receiver for each final location or selection of one hundred and sixty acres; also of the costs of all advertisements required by law or departmental regulations to be made in connection therewith; also, wherever practicable, of all necessary costs and expenses which may be incurred in the management, protection and sale or lease of all state lands; and shall charge all such expenditures and costs to the particular fund for the benefit of which the respective selections or locations are made.

Whenever there is not sufficient money in any such fund for the purposes above mentioned, the deficiency shall be paid out of any funds of the state, except interest on the public debt, and shall be repaid out of the proceeds subsequently derived from such lands; provided, this section shall not apply to lands granted for the payment of the bonds of Santa Fe and Grant counties, and the interest thereon, the expenses incident to the selection or location, management, protection and sale of which shall be defrayed in the manner prescribed by law; and provided further, that no portion of the expenses last mentioned shall be paid out of any monies derived from any other lands granted or belonging to the state.

**History:** Laws 1912, ch. 82, § 9; Code 1915, § 5186; C.S. 1929, § 132-109; 1941 Comp., § 8-112; 1953 Comp., § 7-1-13.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-1-15. Repealed.

**Repeals.** — Laws 1989, ch. 11, § 2 repealed 19-1-15 NMSA 1978, as amended by Laws 1977, ch. 247, § 85,

relating to erroneous payments on account of leases or sales, effective June 16, 1989.

### 19-1-16. [Deposit of money derived from state lands.]

All monies derived from state lands, including permanent funds pending investment, shall be deposited by the state treasurer in accordance with law regulating deposits of state funds.

**History:** Laws 1912, ch. 82, § 11; Code 1915, § 5186; C.S. 1929, § 132-111; 1941 Comp., § 8-114; 1953 Comp., § 7-1-15.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-1-17. Permanent, income and current funds; creating deposits.

A. The following funds are created.

B. To the credit of these funds, in the respective proportions to which they are by law entitled, all money derived from state lands shall be deposited by the commissioner with the state treasurer, as nearly as possible, on the first day of each calendar month. The commissioner shall keep an accurate record of all such deposits. The funds are:

- (1) common school current fund;
- (2) common school permanent fund;
- (3) university income fund;
- (4) university permanent fund;
- (5) university saline income fund;
- (6) New Mexico state university income fund;
- (7) New Mexico state university permanent fund;
- (8) western New Mexico university income fund;
- (9) western New Mexico university permanent fund;
- (10) New Mexico highlands university income fund;
- (11) New Mexico highlands university permanent fund;
- (12) northern New Mexico state school income fund;
- (13) northern New Mexico state school permanent fund;



- (14) eastern New Mexico university income fund;
- (15) eastern New Mexico university permanent fund;
- (16) New Mexico institute of mining and technology income fund;
- (17) New Mexico institute of mining and technology permanent fund;
- (18) New Mexico military institute income fund;
- (19) New Mexico military institute permanent fund;
- (20) New Mexico boys' school income fund;
- (21) New Mexico boys' school permanent fund;
- (22) miners' hospital income fund;
- (23) miners' hospital permanent fund;
- (24) New Mexico behavioral health institute at Las Vegas income fund;
- (25) New Mexico behavioral health institute at Las Vegas permanent fund;
- (26) penitentiary income fund;
- (27) penitentiary permanent fund;
- (28) state charitable, penal and reformatory institutions income fund;
- (29) state charitable, penal and reformatory institutions permanent fund; to be equally distributed among the institutions as defined in Article 14, Section 1 of the constitution of New Mexico;
- (30) New Mexico school for the blind and visually impaired income fund;
- (31) New Mexico school for the blind and visually impaired permanent fund;
- (32) New Mexico school for the deaf income fund;
- (33) New Mexico school for the deaf permanent fund;
- (34) permanent reservoirs for irrigation purposes income fund;
- (35) permanent reservoirs for irrigation purposes permanent fund;
- (36) improvement of Rio Grande income fund;
- (37) improvement of Rio Grande permanent fund;
- (38) public buildings at capital income fund;
- (39) public buildings at capital permanent fund;
- (40) Santa Fe and Grant county railroad bond fund, to be applied as provided by Article 9, Section 4 of the constitution of New Mexico; and
- (41) state lands maintenance fund.

**History:** Laws 1917, ch. 115, § 1; C.S. 1929, § 132-190; 1941 Comp., § 8-115; 1953 Comp., § 7-1-16; 2005, ch. 313, § 2.

**The 2005 amendment**, effective June 17, 2005, re-named the permanent income and current funds listed in Subsections B(1) through (40).

#### ANNOTATIONS

**Funds permanent.** — Proceeds of sale of lands granted to the state of New Mexico by the Enabling Act, for certain specified purposes, and the natural products of such lands, with certain named exceptions, were intended by congress to constitute permanent funds, the interest only being available for current use. *State v. Llewellyn*, 1917-NMSC-031, 23 N.M. 43, 167 P. 414, cert. denied, 245 U.S. 666, 38 S. Ct. 63, 62 L. Ed. 538 (1917), distinguished in *Regents of Univ. of N.M. v. Graham*, 1928-NMSC-004, 33 N.M. 214, 264 P. 953.

**Grant for reservoirs for irrigation.** — The Ferguson Act of June 21, 1898, 30 Stat. 484, which granted to the territory of New Mexico 500,000 acres of land "for the establishment of permanent water reservoirs for irrigating purposes," provides that the moneys derived from the trust lands are to be placed to the credit of separate funds created for the respective purposes named in the act and used only as the legislative assembly of the territory may direct, and only for the use of the institutions or purposes for which the respective grants of land are made. *State ex rel. Interstate Stream Comm'n v. Reynolds*, 1963-NMSC-023, 71 N.M. 389, 378 P.2d 622.

**Establishment of irrigation funds.** — This section and Section 19-1-18 NMSA 1978 established the permanent reservoirs for irrigation purposes, permanent fund, and permanent reservoirs for irrigation purposes, income fund; subsequently, by Section 72-14-23 NMSA 1978, there was established the New Mexico irrigation works construction fund, to consist of the income creditable to the income fund above noted and such other moneys as may be appropriated thereto by the state legislature. *State ex rel. Interstate Stream Comm'n v. Reynolds*, 1963-NMSC-023, 71 N.M. 389, 378 P.2d 622.

**And use thereof.** — Appropriations for constructing, improving, repairing and protecting from floods the dams, reservoirs, ditches, flumes and appurtenances of certain irrigation systems made to the New Mexico state engineer from the New Mexico irrigation works construction fund, which fund consisted solely of moneys from the permanent reservoirs for irrigation purposes income fund accruing from the trust lands set aside by congress under the Ferguson Act of June 21, 1898, 30 Stat. 484, are within the fundamental purpose and reasonable meaning of the trust grant "for the establishment of permanent water reservoirs for irrigation purposes." *State ex rel. Interstate Stream Comm'n v. Reynolds*, 1963-NMSC-023, 71 N.M. 389, 378 P.2d 622.

**Reimbursement of losses.** — The state treasurer may reimburse from their income accounts, common school permanent fund's losses from uncollectible investments by issuing regular state vouchers for such purpose. 1937-38 Op. Att'y Gen. No. 38-1975.



**Investment of funds.** — Under former 7-1-18, 1953 Comp., requiring investment of certain permanent funds in safe, interest-bearing securities, with the written approval of the governor, secretary of state and attorney general, the state treasurer could invest permanent funds of the state penitentiary in purchasing certificates of indebtedness issued under Laws 1925, ch. 13, § 75, for expense of calling troops at general election. 1935-36 Op. Att'y Gen. No. 36-1474.

**Bonds of the state.** — Under former 7-1-18 and 7-1-19, 1953 Comp., requiring investment of certain permanent funds in safe, interest-bearing securities (to be bonds of New Mexico or its localities) revenue bonds of educational institutions were not bonds of the state under court decisions and the state treasurer could not for that reason legally invest permanent funds derived from public lands in such securities. 1945-46 Op. Att'y Gen. No. 46-4949.

**Legislature may appropriate revenues from miners' hospital trust.** — The state legislature may appropriate revenues from the trust established for the miners' hospital. 1989 Op. Att'y Gen. No. 89-30.

**Budget increases from trust may not exceed amount appropriated.** — The department of finance and administration may not approve budget increases from miners' hospital trust fund revenues in excess of the amount appropriated in the General Appropriation Act of 1988. 1989 Op. Att'y Gen. No. 89-30.

**Budget increases.** — The state budget division may deny a budget increase approved by the miners' hospital board of trustees, when the budget increase is intended to provide for the care of resident miners with occupation-related illnesses, if the increase would exceed the amount appropriated by the legislature and is not otherwise authorized by statute. 1989 Op. Att'y Gen. No. 89-30.

**Restrictions on trust appropriations were limited to bill's fiscal period.** — Restrictions on the appropriation of the miner's hospital trust fund revenues contained in the 1988 appropriations bill were consistent with the rule that legislative conditions on appropriations be limited to the fiscal period covered by the bill. 1989 Op. Att'y Gen. No. 89-30.

## 19-1-18. Sources of special funds.

The permanent funds created by Sections 19-1-17 through 19-1-20 NMSA 1978 shall consist of the proceeds of sales of lands belonging to and that may have been or may hereafter be granted to the state, not otherwise appropriated by the terms and conditions of the grant, interest on the permanent funds, income from investment of the permanent funds and such other money as may be specifically provided by law. The income and current funds created by Sections 19-1-17 through 19-1-20 NMSA 1978 shall consist of rentals, sale of products from lands and anything else other than money directly derived from sale of all state lands so granted, such other money as may be specifically provided by law and miscellaneous income not provided for by Sections 19-1-17 through 19-1-20 NMSA 1978.

**History:** Laws 1917, ch. 115, § 2; C.S. 1929, § 132-191; 1941 Comp., § 8-116; 1953 Comp., § 7-1-17; Laws 1996, ch. 4, § 1.

**Compiler's notes.** — Laws 1994, ch. 137, § 1 proposed to amend this section by adding a section heading, substituting "Sections 19-1-17 through 19-1-20 NMSA 1978" for "this act" and "money" for "moneys" throughout the section, substituting "lands belonging to and that" for "lands belonging thereto that" near the beginning of the section, inserting "interest on the permanent funds, income from investment of the permanent funds" near the middle of the section, and deleting "interest on permanent funds" following "from lands" and "the income derived from the investment of the permanent funds herein created" following "so granted" near the end of the section. Laws 1994, ch. 137, § 3 provided that the amendment to this section is effective on the later of the date the secretary of state certifies that Article 12 of the New Mexico Constitution has been amended as proposed by Laws 1994, H.J.R. No. 8, or the date the congress of the United States enacts amendments to the Enabling Act for New Mexico permitting the changes to the constitution. The constitutional amendment was submitted to the people at the general election held on November 8, 1994, but was defeated by a vote of 187,216 for and 192,492 against.

**The 1996 amendment,** effective upon certification by the secretary of state that the proposed amendments to

art. 8, § 10 and art. 12, §§ 2, 4, and 7 of the New Mexico Constitution have passed and been ratified by the United States congress, rewrote the section. Those constitutional amendments, proposed by S.J.R. No. 2 (Laws 1996), were adopted at the general election held November 5, 1996, by a vote of 307,442 for and 153,021 against.

### ANNOTATIONS

**Establishment of irrigation funds.** — By Section 19-1-17 NMSA 1978 and this section, there were established the permanent reservoirs for irrigation purposes, permanent fund, and permanent reservoirs for irrigation purposes, income fund; subsequently, by Section 72-14-23 NMSA 1978, there was established the New Mexico irrigation works construction fund, to consist of the income creditable to the income fund above noted and such other moneys as may be appropriated thereto by the state legislature. *State ex rel. Interstate Stream Comm'n v. Reynolds*, 1963-NMSC-023, 71 N.M. 389, 378 P.2d 622.

**Oil royalties as source of funds.** — Oil royalties from lands granted to New Mexico by act of congress, June 21, 1898, 30 Stat. 484, known as the Ferguson Act and confirmed by the Enabling Act, form a part of the permanent funds of the university of New Mexico, and income derived therefrom can be used only for current income for that institution. *Regents of Univ. of N.M. v. Graham*, 1928-NMSC-004, 33 N.M. 214, 264 P. 953.



## 19-1-19. Public buildings at capital, permanent fund; investment.

The state investment officer shall, in the same manner provided under Section 6-8-6 NMSA 1978 for other permanent funds, assume the investment responsibility for the "public buildings at capital, permanent fund" created by Section 19-1-17 NMSA 1978.

**History:** 1953 Comp., § 7-1-18.1, enacted by Laws 1966, ch. 4, § 1; Laws 1977, ch. 247, § 86.

**Compiler's notes.** — Laws 1977, ch. 247, § 97, compiled as 6-8-4 NMSA 1978, makes the director of the

investment division of the department of finance and administration the state investment officer.

## 19-1-20. Transfers and distributions of funds for schools and institutions.

A. All income and current funds created by Section 19-1-17 NMSA 1978 for the common schools and various state institutions shall be transferred by the secretary of finance and administration, from time to time, to the credit of the schools and institutions to be used as provided by law for the support and maintenance of the schools and institutions.

B. The secretary of finance and administration shall make distributions from the land grant permanent funds enumerated in Section 19-1-17 NMSA 1978 in the amount authorized by and calculated pursuant to the provisions of Article 12, Section 7 of the constitution of New Mexico.

C. One-twelfth of the total amount authorized to be distributed in a fiscal year pursuant to Article 12, Section 7 of the constitution of New Mexico shall be distributed each month to the beneficiaries enumerated in Section 19-1-17 NMSA 1978. Each beneficiary shall receive that portion of the monthly distribution to which it is entitled pursuant to law.

**History:** Laws 1917, ch. 115, § 8; C.S. 1929, § 132-197; 1941 Comp., § 8-122; 1953 Comp., § 7-1-23; Laws 1977, ch. 247, § 87; 1996, ch. 4, § 2.

**Compiler's notes.** — Former § 7-1-18, 1953 Comp., relating to the investment of certain permanent funds, and former 7-1-21, 1953 Comp., authorizing the purchase of bonds at a premium but providing that the amount of the premium and all permanent losses be reimbursed from the respective income funds to the permanent funds involved, were repealed by Laws 1977, ch. 52, § 1. The schools and institutions enumerated in former 7-1-18, 1953 Comp., are the agricultural college (New Mexico state university), normal school, Silver City (western New Mexico university), normal school, Las Vegas (New Mexico highlands university), Spanish-American school, El Rito (northern New Mexico state school), normal school, eastern (eastern New Mexico university), school of mines (New Mexico institute of mining and technology), military institute (New Mexico military institute), reform school (New Mexico boys school), miners' hospital, insane asylum (New Mexico state hospital), penitentiary, state charitable, penal and reformatory institutions, blind asylum (New Mexico school for the visually handicapped) and deaf and dumb asylum (New Mexico school for the deaf).

Laws 1994, ch. 137, § 2 proposed to amend this section by substituting "Transfers and distributions" for "Transfer" in the section heading, designating the existing provisions as Subsection A and rewriting Subsection A, and adding Subsections B and C relating to distributions from the fund. Laws 1994, ch. 137, § 3 provided that

the amendment to this section is effective on the later of the date the secretary of state certifies that Article 12 of the New Mexico Constitution is amended as proposed by Laws 1994, H.J.R. No. 8, or the date the congress of the United States enacts amendments to the Enabling Act for New Mexico permitting the changes to the constitution. The constitutional amendment was submitted to the people at the general election held on November 8, 1994, but was defeated by a vote of 187,216 for and 192,492 against.

**The 1996 amendment,** effective upon certification by the secretary of state that the proposed amendments to art. 8, § 10 and art. 12, §§ 2, 4, and 7 of the New Mexico Constitution have passed and been ratified by the United States congress, designated the existing section as Subsection A and rewrote that subsection, and added Subsections B and C. Those constitutional amendments, proposed by S.J.R. No. 2 (Laws 1996), were adopted at the general election held November 5, 1996, by a vote of 307,442 for and 153,021 against.

### ANNOTATIONS

**Income funds appropriated.** — The income funds from lands granted for the use of the institution are sufficiently appropriated under this section and may be used for current expenses of the institution in an amount and according to a budget approved by the state board of finance, within the available funds from rentals from the state lands of the institution. 1955-56 Op. Att'y Gen. No. 55-6093.

## 19-1-21. Copies of records; fees; use as evidence.

When requested to do so, the commissioner shall furnish copies of any records, plats, including but not limited to maps, tracings, graphs, recordings, tapes, machine printouts and other documents or instruments constituting records of the state land office, upon payment at a rate,

not less than the actual cost, to be set by the commissioner by regulation. The commissioner shall charge one dollar fifty cents (\$1.50) for certificate and seal which certifies any copy. Monies so collected shall be credited to the state land maintenance fund. Any such certified copy shall be admitted as evidence in any court in the state with the same force and effect as the original.

**History:** Laws 1912, ch. 82, § 76; Code 1915, § 5254; C.S. 1929, § 132-188; 1941 Comp., § 8-123; 1953 Comp., § 7-1-24; Laws 1957, ch. 145, § 1; 1971, ch. 104, § 1.

§ 1733, making such records admissible in evidence, 50 A.L.R.2d 1197.

**Proof:** Federal Civil Procedure Rule 44 and Federal Criminal Procedure Rule 27, relating to proof of official records, 70 A.L.R.2d 1227, 41 A.L.R. Fed. 871.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Evidence: what are official records within purview of 28 USC

### 19-1-22. [Contracts for potash land exploration.]

The state land commissioner is hereby expressly authorized and directed to enter into such formal agreement and contract with the secretary of the interior and the secretary of the commerce jointly as such officers are authorized to enter into with said land commissioner under the terms and provisions of the act of the Sixty-ninth Congress, No. 759, H.R. 15827, entitled: "an act to amend Section 2 of an act entitled 'an act authorizing investigations by the secretary of the interior and the secretary of commerce jointly to determine the location, extent and mode of occurrence of potash deposits in the United States, and to conduct laboratory tests'."

**History:** Laws 1931, ch. 3, § 2; 1941 Comp., § 8-124; 1953 Comp., § 7-1-25.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The act of the sixty-ninth congress, referred to in this section, appeared as 30 U.S.C. § 4b.

### 19-1-23. [Rules and regulations for land office; posting changes.]

It shall be the duty of the commissioner of public lands to prescribe reasonable rules and regulations governing the conduct of all business of the office, and to post or publish the same for the information of the public, which rules and regulations shall not be in conflict with this or any other law now in force. Such rules and regulations shall not be changed by the commissioner except such change be posted in a conspicuous place in his office for a period of at least ten days.

**History:** Laws 1921, ch. 174, § 4; C.S. 1929, § 111-304; 1941 Comp., § 8-125; 1953 Comp., § 7-1-26.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For State Rules Act, see Chapter 14, Article 4 NMSA 1978.

#### ANNOTATIONS

**Application.** — This section has general application and is to be followed in all cases unless a statute covers the particular situation, as with respect to rules and regulations pertaining to oil and gas leases in which case Laws 1929, ch. 125, § 13 (19-10-21 NMSA 1978) governs. 1945-46 Op. Att'y Gen. No. 45-4655.

### 19-1-24. [Publication of rules and regulations; distribution of copies.]

Within sixty (60) days after the effective date of this act, it shall be the duty of the commissioner of public lands to print all rules and regulations made by him and his predecessors in office in pursuance of law, which are in full force and effect at the time, and thereafter shall print each additional such rule or regulation when made, all in such form that the same may be conveniently preserved, and shall at all times keep on hand an adequate supply of copies thereof, and shall distribute the same to such persons as may apply therefor. The expense of such printing and distribution shall be paid as an expense of the state land office. No such rule or regulation shall be of any force or effect after the expiration of sixty (60) days from the effective date of this act, unless the same be so printed.



**History:** Laws 1937, ch. 42, § 3; 1941 Comp., § 8-126; 1953 Comp., § 7-1-27.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For State Rules Act, see Chapter 14, Article 4 NMSA 1978.

## ARTICLE 1A

### Natural Resource Revenue Recovery

Sec.

19-1A-1. Repealed.

19-1A-2. Repealed.

Sec.

19-1A-3. Repealed.

#### 19-1A-1. Repealed.

**Repeals.** — Laws 2006, ch. 21, § 2 repealed 19-1A-1 NMSA 1978, as enacted by Laws 2003, ch. 42, § 1, relating to legislative findings, effective July 1, 2010. For

provisions of former section, see the 2009 NMSA 1978 on *NMOneSource.com*.

#### 19-1A-2. Repealed.

**Repeals.** — Laws 2006, ch. 21, § 2 repealed 19-1A-2 NMSA 1978, as enacted by Laws 2003, ch. 42, § 2, relating to the natural resource revenue recovery task force,

effective July 1, 2010. For provisions of former section, see the 2009 NMSA 1978 on *NMOneSource.com*.

#### 19-1A-3. Repealed.

**Repeals.** — Laws 2006, ch. 21, § 2 repealed 19-1A-3 NMSA 1978, as enacted by Laws 2003, ch. 42, § 3, relating to the termination date of the natural resource revenue

recovery task force, effective July 1, 2010. For provisions of former section, see the 2009 NMSA 1978 on *NMOneSource.com*.

## ARTICLE 2

### United States Lands

Sec.

19-2-1. Lands erroneously set apart to state; quitclaim to United States; selection of lands in lieu thereof.

19-2-2. Jurisdiction; transfer procedure.

19-2-3. Taxation; civil process; concurrent jurisdiction.

19-2-4. Application of act.

19-2-5. New Mexico taxes apply in federal areas.

19-2-6. Fort Bayard military reservation; jurisdiction ceded; limitation.

19-2-7. Santa Fe national cemetery; jurisdiction ceded; limitation.

Sec.

19-2-8. Fort Wingate military reservation and Fort Bliss target range; jurisdiction ceded; limitation.

19-2-9. Veterans' administration facility at Fort Bayard; jurisdiction ceded; limitation.

19-2-10. Quarai and Abo state monuments; jurisdiction ceded; approval; limitations.

19-2-11. Holloman air force base; jurisdiction ceded; limitations.

19-2-12. Exchange of lands with United States.

#### 19-2-1. [Lands erroneously set apart to state; quitclaim to United States; selection of lands in lieu thereof.]

The commissioner of public lands is authorized to quitclaim to the United States the title to any lands set apart to the state, under grants from the United States through error of the department of the interior or local land office, and which have been patented to other persons or corporations or on which, because of erroneous descriptions, filings have been made, and to select other lands of the United States in lieu thereof.

**History:** Laws 1913, ch. 37, § 1; Code 1915, § 5261; C.S. 1929, § 132-202; 1941 Comp., § 8-201; 1953 Comp., § 7-2-1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## ANNOTATIONS

**Authority to quitclaim.** — The land commissioner has no authority to quitclaim to the United States unpatented land occupied by a settler. 1912-13 Op. Att'y Gen. No. 13-1078.

## 19-2-2. Jurisdiction; transfer procedure.

A. In order to acquire all, or any measure of, legislative jurisdiction of the kind involved in Article I, Section 8, Clause 17 of the constitution of the United States over any land or other area, or in order to relinquish such legislative jurisdiction, or any measure thereof, which may be vested in the United States, the United States, acting through a duly authorized department, agency or officer, shall file a notice of intention to acquire or relinquish such legislative jurisdiction, together with a sufficient number of duly authenticated copies thereof to meet the recording requirements of Subsection C of this section, with the governor. The notice shall contain a description adequate to permit accurate identification of the boundaries of the land or other area for which the change in jurisdictional status is sought and a precise statement of the measure of legislative jurisdiction sought to be transferred. Immediately upon receipt of the notice, the governor shall furnish the attorney general with a copy of it and shall request his comments and recommendations.

B. The governor shall transmit the notice together with his comments and recommendations, if any, and the comments and recommendations of the attorney general, if any, to the next session of the legislature. Unless prior to the expiration of the legislative session to which the notice is transmitted the legislature has adopted a resolution approving the transfer of legislative jurisdiction as proposed in the notice, the transfer shall not be effective.

C. The governor shall cause a duly authenticated copy of the notice and resolution to be recorded in the office of the county clerk of the county where the land or other area affected by the transfer of jurisdiction is situated, and upon such recordation the transfer of jurisdiction shall take effect. If the land or other area is situated in more than one county, a duly authenticated copy of the notice and resolution shall be recorded in the county clerk's office of each such county.

D. The governor shall cause copies of all documents recorded pursuant to this act [19-2-2 to 19-2-4 NMSA 1978] to be filed with the state law library.

**History:** 1953 Comp., § 7-2-1.1, enacted by Laws 1963, ch. 262, § 1.

**Compiler's notes.** — Section 14-4-9 NMSA 1978 provides that whenever any law requires any agency to file a document with the law library, such shall be accomplished by filing as provided in the State Rules Act (Chapter 14, Article 4 NMSA 1978). Section 14-4-2 NMSA 1978 defines "agency" to include officers of state government, except those in the legislative or judicial branches.

Pursuant to Senate Joint Resolution 16 of the First Session of the 35th Legislature (1981), the state of New Mexico and the United States department of the interior have signed a concurrent resolution establishing concurrent legislative jurisdiction, between the United States and the state of New Mexico, over the following: Aztec ruins national monument, Bandelier national monument, Capulin mountain national monument, Carlsbad caverns national park, Chaco culture national historical park, El Morro national monument, Fort Union national monument, Gila cliff dwellings national monument, Salinas national monument, Pecos national monument, White Sands national monument, and the regional headquarters, southwest region.

Senate Joint Resolution No. 21 of the First Session of the 41st Legislature (Laws 1993) grants approval to the cession of concurrent legislative jurisdiction to the United States in accordance with a like cession of concurrent legislative jurisdiction by the United States to the state of New Mexico for land now owned, controlled, leased or administered by the United States within the boundaries

of El Malpais national monument and Pecos national historic park. Upon modifications to the boundary of El Malpais national monument due to land exchanges with the pueblo of Acoma as authorized in public law 100-255, a letter to that effect with adequate legal descriptions will be provided to the governor to assure that concurrent jurisdiction is acquired by the United States.

## ANNOTATIONS

**Application of Children's Code to residents of federal enclave.** — The state can exercise its jurisdiction and apply the provisions of the Children's Code (Chapter 32A NMSA 1978) to those who reside on a federal military enclave because, in those areas where the federal government has no laws or regulations, there is no interference by the state when it asserts jurisdiction; in such cases, there would be no need for the federal government to relinquish its jurisdiction as provided in this section. *State ex rel. Children, Youth & Families Dep't v. Debbie F.*, 1995-NMCA-113, 120 N.M. 665, 905 P.2d 205, cert. denied, 120 N.M. 533, 903 P.2d 844.

**Definitions under former law.** — "Sites" and "lands" as used in Laws 1912, ch. 47, § 1 (former 7-2-2, 1953 Comp.), providing for acquisition of land for federal purposes, had a synonymous meaning and embraced all lands acquired for the purposes enumerated. *Arledge v. Mabry*, 1948-NMSC-047, 52 N.M. 303, 197 P.2d 884, distinguished in *Smith v. State*, 1968-NMSC-144, 79 N.M. 450, 444 P.2d 961.



**Consent statute.** — Lands acquired by the United States with knowledge that they were being used for experimentation with fissionable materials constituted an arsenal within meaning of consent statute giving state's consent to federal acquisition of land for various purposes, including that of arsenal. *Arledge v. Mabry*, 1968-NMSC-144, 52 N.M. 303, 197 P.2d 884, distinguished in *Smith v. State*, 1968-NMSC-144, 79 N.M. 450, 444 P.2d 961.

**And extent of consent thereunder.** — In giving its consent to usage of lands for "custom-houses, court-houses, post offices, arsenals or other public buildings whatever, or for any other purposes of the government," the consent was not, under doctrine of ejusdem generis, limited to buildings of a nature similar to those specifically enumerated. *Arledge v. Mabry*, 1968-NMSC-144, 52 N.M. 303, 197 P.2d 884, distinguished in *Smith v. State*, 1968-NMSC-144, 79 N.M. 450, 444 P.2d 961.

**Federal government failed to comply with cession statute.** — Where, on February 14, 2018, the New Mexico state legislature ceded to the United States government exclusive legislative jurisdiction over three parcels of land on Kirtland air force base in Albuquerque that were under state criminal jurisdiction, including the Maxwell housing area which is a military-civilian family housing neighborhood on the air force base, and where defendant was charged by federal prosecutors under New Mexico's driving while intoxicated statutes after being arrested while attempting to enter the Maxwell housing area on February 19, 2018, and where defendant moved to dismiss asserting that the court lacked subject matter jurisdiction because the state of New Mexico did not properly cede criminal jurisdiction, the motion to dismiss was granted because it is conclusively presumed that jurisdiction has not been accepted until the United States government accepts jurisdiction over the land, and in this case, the federal government failed to carry its burden of proof by

presenting evidence that it accepted jurisdiction either by formal acceptance or that the recording requirements of this section were complied with. This section requires that the federal government's notice of intention to acquire legislative jurisdiction and the state's resolution approving the transfer of legislative jurisdiction be recorded in the county clerk's office, and in this case, there was no evidence that the notice of intention was ever filed with the county clerk. *U.S. v. Davenport*, 340 F.Supp.3d 1105 (D. N.M. 2018).

**Land not affected.** — Former 7-2-3, 1953 Comp. (ceding exclusive jurisdiction over land acquired by the United States to the United States, except for service of process) did not affect the property ceded to the United States for Elephant Butte Dam. 1914 Op. Att'y Gen. Nos. 14-1309, 14-1325, 14-1330.

**Apportioning funds to school district.** — Under former 7-2-3, 1953 Comp., it was not illegal to apportion funds to the school district in which the Elephant Butte Dam is located, since the statute had no relation to such land. 1914 Op. Att'y Gen. No. 14-1306.

**Residency.** — Those residing on former public domain land may exercise the elective franchise in both state and federal elections, since the state retained jurisdiction over the area not inconsistent with federal use (opinion rendered under former election laws). 1964 Op. Att'y Gen. No. 64-123.

Those people residing on land obtained by the United States through the constitutional method may not establish their residency so as to become electors; those residing on lands obtained by purchase without obtaining the consent of the state are in a similar position (opinion rendered under former election laws). 1964 Op. Att'y Gen. No. 64-123.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 81A C.J.S. States § 9.

### 19-2-3. Taxation; civil process; concurrent jurisdiction.

In no event shall any transfer of legislative jurisdiction between the United States and this state take effect, nor shall the governor transmit any notice proposing such a transfer under the applicable laws of the United States, unless:

A. this state shall have jurisdiction to tax private persons, private transactions and private property, real and personal, resident, occurring or situated within such land or other area to the same extent that this state has jurisdiction to tax such persons, transactions and property resident, occurring or situated generally within this state;

B. any civil or criminal process lawfully issued by competent authority of this state or any of its subdivisions, may be served and executed within such land or other area to the same extent and with the same effect as such process may be served and executed generally within this state; provided only that the service and execution of such process within land or other areas over which the federal government exercises jurisdiction shall be subject to such rules and regulations issued by authorized officers of the federal government, or of any department, independent establishment or agency thereof, as may be reasonably necessary to prevent interference with the carrying out of federal functions; and

C. this state shall exercise over such land or other area the same legislative jurisdiction which it exercises over land or other areas generally within this state, except that the United States shall not be required to forego such measure of exclusive legislative jurisdiction as may be vested in or retained by it over such land or other area pursuant to this act [19-2-2 to 19-2-4 NMSA 1978], and without prejudice to the right of the United States to assert and exercise such concurrent legislative jurisdiction as may be vested in or retained by it over such land or other area.

**History:** 1953 Comp., § 7-2-1.2, enacted by Laws 1963, ch. 262, § 2.

**Cross references.** — For state taxation, see Chapter 7 NMSA 1978.



For service of civil and criminal process, see Rules 1-004 and 5-103 NMRA, respectively.

### ANNOTATIONS

**Regulation of liquor traffic.** — State of New Mexico never ceded its right to regulate or tax the liquor traffic within the state of New Mexico upon lands acquired by federal government for reclamation purposes. *State v. Mimms*, 1939-NMSC-037, 43 N.M. 318, 92 P.2d 993, cert. denied, 308 U.S. 626, 60 S. Ct. 382, 84 L. Ed. 522, *reh'g denied*, 309 U.S. 694, 60 S. Ct. 512, 84 L. Ed. 1035 (1940), distinguished in *Arledge v. Mabry*, 1948-NMSC-047, 52 N.M. 303, 197 P.2d 884 and *Crownover v. Crownover*, 1954-NMSC-092, 58 N.M. 597, 274 P.2d 127 (decision under former law).

**Liquor license tax.** — Party under exclusive contract with federal bureau of reclamation authorizing him to sell beer and wine on land acquired for reclamation purposes by the federal government with consent of state had to pay state liquor license tax. *State v. Mimms*, 1939-NMSC-037, 43 N.M. 318, 92 P.2d 993, cert. denied, 308 U.S. 626, 60 S. Ct. 382, 84 L. Ed. 522, *reh'g denied*, 309 U.S. 694, 60 S. Ct. 512, 84 L. Ed. 1035 (1940), distinguished in *Arledge v.*

*Mabry*, 1948-NMSC-047, 52 N.M. 303, 197 P.2d 884 and *Crownover v. Crownover*, 1954-NMSC-092, 58 N.M. 597, 274 P.2d 127 (decision under former law).

**Former taxation exemption.** — Under 7-2-4, 1953 Comp., exempting lands ceded to the United States from state and local taxes, where land was ceded by the state to the United States without reservation, except for the service of process, none of the property of private corporations which invested funds in a construction thereon was subject to ad valorem taxation by state, county or municipal authorities. 1951-52 Op. Att'y Gen. No. 51-5463.

**Tax on contractors.** — The state may tax contractors who have entered into a cost-plus contract, which tax is eventually assumed by the United States government, so long as no federal area in which the United States government has exclusive jurisdiction is involved. 1951-52 Op. Att'y Gen. No. 51-5347.

**Licensing exemptions.** — Neither the Contractors' Licensing Act nor the State Plumbing Act could be enforced over any person or any matter over territory which is under the exclusive jurisdiction and control of the federal government. 1951-52 Op. Att'y Gen. Nos. 51-5348, 51-5340.

## 19-2-4. Application of act.

Nothing in this act [19-2-2 to 19-2-4 NMSA 1978] shall be construed to prevent or impair any transfer of legislative jurisdiction to this state occurring by operation of law.

Provided that the provisions of the preceding two sections [19-2-2, 19-2-3 NMSA 1978] shall be applicable to any change in the jurisdiction ceded under the provisions contained in Section 19-2-6 through 19-2-11 NMSA 1978.

**History:** 1953 Comp., § 7-2-1.3, enacted by Laws 1963, ch. 262, § 3.

## 19-2-5. New Mexico taxes apply in federal areas.

No person shall be relieved from liability for any tax levied by this state or by any duly constituted taxing authority of the state having jurisdiction to levy such a tax by reason of his residing within a federal area, having property within a federal area, engaging in business within a federal area or receiving income from transactions occurring or services performed in such area, with such taxes being applicable to all persons on federal areas to the extent permitted by acts of congress.

**History:** 1953 Comp., § 7-2-4.1, enacted by Laws 1957, ch. 224, § 1; 1983, ch. 35, § 1.

## 19-2-6. [Fort Bayard military reservation; jurisdiction ceded; limitation.]

Exclusive jurisdiction is ceded to the United States over all the territory now owned by the United States and comprised within the limits of the military reservation of Fort Bayard, in Grant county, as declared from time to time by the president of the United States, and over such lands as have been or may hereafter be acquired for the enlargement of said reservation; provided, however, that the state of New Mexico reserves the right to serve civil or criminal process within said reservation in suits or prosecutions for or on account of rights acquired, obligations incurred or crime committed in said state, but outside of such cession and reservation; and provided further, that the jurisdiction herein ceded shall continue no longer than the United States shall own and hold said reservation for military purposes.

**History:** Laws 1913, ch. 35, § 1; Code 1915, § 5565; C.S. 1929, § 146-104; 1941 Comp., § 8-205; 1953 Comp., § 7-2-5.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.



**Compiler's notes.** — Fort Bayard military reservation was transferred to treasury department for uses of the public health service by secretary of war under date of June 11, 1920, by order of the president, pursuant to § 3 of act of congress approved March 23, 1919, 40 Stat. 1303, but subject to reoccupation by the war department in case of emergency.

Laws 1921, ch. 54, § 1, recalls and withdraws the exclusive jurisdiction ceded to the United States over all of the territory occupied by the Fort Bayard military reservation and reestablishes jurisdiction of New Mexico over the same until such period as the reservation shall again be used by the United States exclusively for military purposes.

Laws 1921, ch. 54, § 2 made the act effective immediately. Approved March 8, 1921.

**Cross references.** — For taxation provisions, see Chapter 7 NMSA 1978.

For service of civil and criminal process, see Rules 1-004 and 5-103 NMRA, respectively.

#### ANNOTATIONS

**State citizenship.** — Men residing on Fort Bayard military reservation are not citizens of the state, nor entitled to vote at any elections in the state. 1915-16 Op. Att'y Gen. 40 (rendered under prior law).

**Marriage licenses.** — Although the military reservation of Fort Bayard was by this act ceded to the United States, the county would still have authority to issue marriage licenses to residents therein in the absence of congressional legislation. 1912-13 Op. Att'y Gen. No. 13-1094.

### 19-2-7. [Santa Fe national cemetery; jurisdiction ceded; limitation.]

That exclusive jurisdiction be, and the same is hereby ceded to the United States over the tract of land comprised within the cemetery known as the Santa Fe national cemetery, area about nine and one-half acres, in Santa Fe county; provided, however, that the state of New Mexico reserves the right to serve civil or criminal process within said cemetery reservation in suits or prosecutions for or on account of rights acquired, obligations incurred or crimes committed in said state but outside of said cemetery reservation.

**History:** Laws 1913, ch. 36, § 1; Code 1915, § 5566; C.S. 1929, § 146-105; 1941 Comp., § 8-206; 1953 Comp., § 7-2-6.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For service of civil and criminal process, see Rule 1-004 NMRA, and Rule 5-103 NMRA, respectively.

### 19-2-8. [Fort Wingate military reservation and Fort Bliss target range; jurisdiction ceded; limitation.]

That exclusive jurisdiction is hereby ceded to the United States over all the territory set apart from the public domain and comprised within the limits of the Fort Wingate military reservation, in McKinley county, and Fort Bliss target range, in Dona Ana county, and over such land as may hereafter be reserved from the public domain for the enlargement of said reservations; provided, however, that the state of New Mexico reserves the right to serve civil or criminal process within said reservations in suits or prosecutions for or on account of rights acquired, obligations incurred or crimes committed in said state, but outside of such cession and reservations; and provided further, that the jurisdiction herein ceded shall continue no longer than the United States shall own and hold said reservations for military purposes.

**History:** Laws 1941, ch. 8, § 1; 1941 Comp., § 8-207; 1953 Comp., § 7-2-7.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — Under Laws 1966, ch. 38, the state of New Mexico accepted legislative jurisdiction of an easement for right-of-way for a portion of United States highway 54 in Otero county, held by the United States within the Fort Bliss antiaircraft range military reservation.

**Cross references.** — For service of civil and criminal process, see Rules 1-004 and 5-103 NMRA, respectively.

#### ANNOTATIONS

**Licensing law exemptions.** — Under former law, neither the Contractors' Licensing Act nor the State Plumbing Act could be enforced over any person or any matter over territory which was under the exclusive jurisdiction and control of the federal government. 1951-52 Op. Att'y Gen. No. 51-5340.

### 19-2-9. [Veterans' administration facility at Fort Bayard; jurisdiction ceded; limitation.]

Exclusive jurisdiction be, and the same is hereby ceded to the United States over all those lands now comprising the reservation of the veterans' administration facility at Fort Bayard, Grant county, New Mexico, described as follows:

southwest quarter (SW1/4) of section 25; southeast quarter (SE1/4) of section 26; northeast quarter (NE1/4) of section 35; northwest quarter (NW1/4) of section 36, all in township 17 south, range 13 west, New Mexico principal meridian;

provided, however, that the state of New Mexico reserves the right to serve civil or criminal process within said reservation in suits or prosecutions for or on account of rights acquired, obligations incurred or crime committed outside the said reservation; and, provided further, that the jurisdiction herein ceded shall continue no longer than the United States shall own and hold said lands.

**History:** 1941 Comp., § 8-208, enacted by Laws 1945, ch. 23, § 1; 1953 Comp., § 7-2-8.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For service of civil and criminal process, *see* Rules 1-004 and 5-103 NMRA, respectively.

## 19-2-10. Quarai and Abo state monuments; jurisdiction ceded; approval; limitations.

A. Upon receipt by the governor of a notice of intention to acquire legislative jurisdiction by the United States for the creation of a national monument, submission of the notice to the attorney general for his comments and recommendations, in accordance with Section 19-2-2 NMSA 1978, and approval of the plan for the national monument by the director of the museum division, the cultural properties review committee and the state historic preservation officer, legislative jurisdiction is ceded to the United States over lands in Torrance county comprising the Quarai and the Abo state monuments. Jurisdiction is ceded subject to the limitations stipulated in Section 19-2-3 NMSA 1978. Jurisdiction is ceded only for the purpose of incorporating land within a national monument and shall revert to the state whenever all or part of such lands are not used for this purpose.

B. All transfers hereunder shall conform to the legal descriptions of the sites as established by the museum division of the office of cultural affairs.

**History:** 1953 Comp., § 7-2-8.1, enacted by Laws 1974, ch. 6, § 1; 1977, ch. 246, § 43; 1980, ch. 151, § 43.

## 19-2-11. [Holloman air force base; jurisdiction ceded; limitations.]

Exclusive jurisdiction is hereby ceded to the United States over the following described territory situated within the Holloman air force base and within Otero county, state of New Mexico, to wit:

sections 1, 3, 10, 11, 11 [sic], 12, 14, 15, the west half of the northwest quarter of section 23, and the east half of the northeast quarter of section 22 in township 17 south, range 8 east, New Mexico prime meridian.

Provided, however, that the state of New Mexico reserve [reserves] the right to serve civil or criminal process within the territory herein ceded in suits or prosecutions for or on account of rights acquired, obligations incurred or crimes committed in said state, but outside of such ceded territory, and provided further that the jurisdiction ceded shall continue no longer than the United States shall own and hold said reservation for military purposes.

**History:** Laws 1953, ch. 63, § 1; 1953 Comp., § 7-2-9.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For service of civil and criminal process, *see* Rules 1-004 and 5-103 NMRA, respectively.

### ANNOTATIONS

**Applicability of Children's Code.** — The state can exercise its jurisdiction and apply the provisions of the

Children's Code (Chapter 32A NMSA 1978) to those who reside on a federal military enclave because, in those areas where the federal government has no laws or regulations, there is no interference by the state when it asserts jurisdiction; in such cases, there would be no need for the federal government to relinquish its jurisdiction as provided in Section 19-2-2 NMSA 1978. *State ex rel. Children, Youth & Families Dep't v. Debbie F.*, 1995-NMCA-113, 120 N.M. 665, 905 P.2d 205, cert denied, 120 N.M. 533, 903 P.2d 844.



## 19-2-12. [Exchange of lands with United States.]

That the commissioner of public lands of the state of New Mexico is hereby authorized to enter into agreements with the secretary of the interior of the United States for the exchange of any lands of the state of New Mexico over which the commissioner of public lands is given the control, care and disposition for lands of the United States of equal value and in making such exchange, the commissioner of public lands is authorized to convey to the United States such lands to be given in exchange and to accept on behalf of the state of New Mexico title to lands given by the United States in such exchange; provided, however, the commissioner of public lands in his discretion may reserve title, to all oil, gas and other minerals or as to any specific minerals, in and under and that may be produced from any lands conveyed to the United States in exchange for lands of the United States of equal value, and provided further, that if such state lands lie within 25 miles from the exterior boundaries of any existing military reservation or, if they are being acquired by the secretary of interior for the purpose of permitting them to be withdrawn for military purposes, then no such exchange shall be effected without the consent of owner or owners of any leases issued by the state of New Mexico covering said lands until the rights of all such lessees have been acquired by the United States through purchase or condemnation proceedings.

**History:** 1953 Comp., § 7-2-11, enacted by Laws 1957, ch. 74, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## ARTICLE 3

### Occupation of Public Lands

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| <p><b>Sec.</b></p> <p>19-3-1. Possessory rights of occupant; notice and record; abandonment.</p> <p>19-3-2. Copy of record as evidence.</p> <p>19-3-3. Transfer of rights; consent of wife; exemption from sale under execution.</p> <p>19-3-4. Timber and articles reduced to possession; property right.</p> <p>19-3-5. Common pastures.</p> <p>19-3-6. Use of common pasturage.</p> <p>19-3-7. Meadows in common pastures; enclosure for hay.</p> <p>19-3-8. Exclusive occupation of meadow; penalty; civil damages.</p> | <p><b>Sec.</b></p> <p>19-3-9. Proceedings before magistrate.</p> <p>19-3-10. Jurisdiction of magistrate and of district court.</p> <p>19-3-11. Unlawful enclosure of public lands.</p> <p>19-3-12. Occupying or denying others use of public land; penalty.</p> <p>19-3-13. Right to appropriate and stock range on public domain; conditions.</p> <p>19-3-14. Second or subsequent use of range; conditions.</p> <p>19-3-15. Use of public land for range without owning water right; penalty.</p> <p>19-3-16. Each day's violation a separate offense.</p> |
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#### 19-3-1. [Possessory rights of occupant; notice and record; abandonment.]

Any person who has taken or may hereafter take possession of any lands being a part of the public domain of the United States, either for agriculture or stock-raising, may make out a notice setting forth that he has taken possession of such land, giving a description of the same according to legal subdivisions, if known, if not, then the best description possible, which said land shall not exceed three hundred and twenty acres, which said notice shall be dated and acknowledged as conveyances of real estate, and may then be recorded in the record of conveyances in the county where the property is situate, after which it shall be a notice to all persons of the contents thereof. And the person so making and recording the same shall have the right to the possession of said lands described therein, as against every other person except the United States, and those holding or deriving title from the United States, and may maintain an action of ejectment or forcible entry and detainer for the same: provided, that if such person shall not occupy said lands for the period of six months at any one time, he shall be deemed in law to have abandoned the same: and provided, further, that if such person shall fail to occupy said lands for one-half of the time in each year, counting from the date of recording said notice, he shall be deemed in law to have abandoned the same, but if he shall reenter upon the same

before anyone else may take possession thereof, then he shall not be held to have abandoned the same.

**History:** Laws 1878, ch. 6, § 1; C.L. 1884, § 2579; C.L. 1897, § 3753; Code 1915, § 4642; C.S. 1929, § 111-115; 1941 Comp., § 8-301; 1953 Comp., § 7-3-1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For location of mining claims, see 69-3-1 NMSA 1978 et seq.

### ANNOTATIONS

**Elements of adverse possession.** — A person claiming ownership of a piece of land on the Albuquerque town grant, by means of the running of the statute of limitations, must have been in the actual, visible, exclusive, hostile and continued possession thereof for a period of 10 years. *Johnston v. City of Albuquerque*, 1903-NMSC-011, 12 N.M. 20, 72 P. 9.

**Recovery of possession.** — Individual who had filed the possessory notice called for under this section, and was in the quiet and peaceable possession of the land in question at the time he was ousted, would be entitled to recover possession thereof, even though such land was

unsurveyed government land which he had no right to retain or possess. *Murrah v. Acrey*, 1914-NMSC-051, 19 N.M. 228, 142 P. 143.

**Grazing cattle on federal public lands.** — While this section and 19-3-13 NMSA 1978 purport to grant "possessory" interests in public domain lands that may be enforceable against non-federal claimants, no New Mexico statute grants (nor could it grant) a property interest in federal lands that may be enforced against the United States. *Diamond Bar Cattle Co. v. U.S.*, 168 F.3d 1209 (10th Cir. 1999).

**Contracts for disposal of territorial lands are valid after statehood.** 1912-13 Op. Atty Gen. No. 13-1124.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63A Am. Jur. 2d Public Lands §§ 5, 7.

Constitutionality and construction of statutes relating to grazing and pasturing sheep or goats on public land, 70 A.L.R. 410.

73A C.J.S. Public Lands § 41.

## 19-3-2. [Copy of record as evidence.]

The original notice when recorded, the record thereof provided for in the previous section [19-3-1 NMSA 1978], and a duly certified copy of said record shall be received in evidence with the same effect as deeds of conveyances, their records and copies thereof are now received under the laws of this state, in the trial of any action with reference to said lands contained in said notice or any part thereof.

**History:** Laws 1878, ch. 6, § 2; C.L. 1884, § 2580; C.L. 1897, § 3754; Code 1915, § 4643; C.S. 1929, § 111-116; 1941 Comp., § 8-302; 1953 Comp., § 7-3-2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For evidential effect of photographed or microfilmed documents or records, see 14-1-6, 14-3-15 NMSA 1978.

For rules regarding introduction into evidence of writings, recordings and photographs, see Rules 11-1001 to 11-1008.

## 19-3-3. [Transfer of rights; consent of wife; exemption from sale under execution.]

The owner of what is known as a valid claim or improvement under the laws of this state, on public lands of the United States, shall be deemed in possession of a transferable interest therein, and any sale of such improvement shall be considered a sufficient consideration to support a promise: provided, that no such sale shall be valid to convey such improvement when made by the head of a family, unless the wife of the vendor, if any there be, shall give her consent thereto: and provided, also, that such land and the claim thereto shall be exempt from forced sale under execution.

**History:** Laws 1851-1852, p. 274; C.L. 1865, ch. 86 (2d), § 1; C.L. 1884, § 2571; C.L. 1897, § 3745; Code 1915, § 4634; C.S. 1929, § 111-107; 1941 Comp., § 8-303; 1953 Comp., § 7-3-3.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For joinder of spouses required for transfers of real property, see 40-3-13 to 40-3-16 NMSA 1978.

For provisions on homestead exemption, see 42-10-9 to 42-10-11 NMSA 1978.

For rules governing garnishment and writs of execution in the district, magistrate, and metropolitan courts, see Rules 1-065.1, 2-801, and 3-801 NMRA, respectively.

For form for claim of exemptions on executions, see Rule 4-803 NMRA.

For form for order on claim of exemption and order to pay in execution proceedings, see Rule 4-804 NMRA.

For form for application for writ of garnishment and affidavit, see Rule 4-805 NMRA.

For form for notice of right to claim exemptions from execution, see Rule 4-808A NMRA.



For form for claim of exemption from garnishment, see Rule 4-809 NMRA.

#### ANNOTATIONS

**Water right is not improvement on land.** *First State Bank v. McNew*, 1928-NMSC-040, 33 N.M. 414, 269 P. 56, overruled by *Walker v. United States*, 2007-NMSC-038, 142 N.M. 45, 162 P.3d 882.

**Removal of improvements.** — This section does not attempt to give the owner of improvements upon public lands the right to remove the same, after such lands

have passed into the possession of a bona fide entryman or purchaser from the government. *Patterson v. Chaney*, 1918-NMSC-077, 24 N.M. 156, 173 P. 859, distinguished in *McCool v. Ward*, 1949-NMSC-059, 53 N.M. 467, 211 P.2d 131.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Rights as between adverse claimants to improvements placed on public lands, 6 A.L.R. 95.

Betterment or Occupying Claimant Acts as available to plaintiff seeking affirmative relief, 137 A.L.R. 1078.

73A C.J.S. Public Lands § 41.

### 19-3-4. [Timber and articles reduced to possession; property right.]

Timber or other articles of value on the lands of the United States, reduced to possession by any person, shall be deemed the property of such person against all persons except the United States, or some person claiming under them.

**History:** Laws 1851-1852, p. 274; C.L. 1865, ch. 86 (2d), § 2; C.L. 1884, § 2572; C.L. 1897, § 3746; Code 1915, § 4635; C.S. 1929, § 111-108; 1941 Comp., § 8-304; 1953 Comp., § 7-3-4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-3-5. [Common pastures.]

All public lands, proper for pasturing horned cattle, sheep and horses, of any class whatever, are reserved for such purpose, and declared common pastures.

**History:** Laws 1861-1862, p. 274; C.L. 1865, ch. 86 (2d), § 4; C.L. 1884, § 2573; C.L. 1897, § 3747; Code 1915, § 4636; C.S. 1929, § 111-109; 1941 Comp., § 8-305; 1953 Comp., § 7-3-5.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Application.** — This section does not apply to lands covered by indemnity on selections by the state. *Makemson v. Dillon*, 1918-NMSC-040, 24 N.M. 302, 171 P. 673.

**"Sheeping off" of lands.** — Compiled Laws 1897, § 102 was a valid exercise of the police power to prevent "sheeping off" of lands near settlements, and sheep for breeding

were within the statute which, however, was repealed by the general repealing clause of the 1915 Code after this action was brought. Although this section and Section 19-3-6 NMSA 1978 were enacted prior thereto, they did not affect C.L. 1897, § 102, even if in conflict with it. *State v. Coppinger*, 1916-NMSC-012, 21 N.M. 435, 155 P. 732.

**Law reviews.** — For article, "Attachment in New Mexico - Part II," see 2 Nat. Resources J. 75 (1962).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63A Am. Jur. 2d Public Lands §§ 22 to 30.

Constitutionality and construction of statutes relating to grazing and pasturing sheep or goats on public land, 70 A.L.R. 410.

73A C.J.S. Public Lands §§ 19 to 23.

### 19-3-6. [Use of common pasturage.]

Said lands shall not be used by any person as private property, but shall be held as public property for the use of any person, and common to all.

**History:** Laws 1861-1862, p. 274; C.L. 1865, ch. 86 (2d), § 5; C.L. 1884, § 2574; C.L. 1897, § 3748; Code 1915, § 4637; C.S. 1929, § 111-110; 1941 Comp., § 8-306; 1953 Comp., § 7-3-6.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Law reviews.** — For article, "Attachment in New Mexico - Part II," see 2 Nat. Resources J. 75 (1962).

### 19-3-7. [Meadows in common pastures; enclosure for hay.]

All persons are prohibited from occupying any meadow situated upon the public lands, and known as public pasture ground, for the purpose of speculating with the hay thereon, to the great detriment of the entire community: provided, however, one hundred and sixty acres may be so occupied by enclosing the same with a secure fence, and not otherwise.

**History:** Laws 1865, ch. 16, § 1; C.L. 1884, § 2575; C.L. 1897, § 3749; Code 1915, § 4638; C.S. 1929, § 111-111; 1941 Comp., § 8-307; 1953 Comp., § 7-3-7.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-3-8. [Exclusive occupation of meadow; penalty; civil damages.]

Should any person, contrary to the provisions of the preceding section [19-3-7 NMSA 1978], take possession of and appropriate to himself any such meadow with the object of selling the hay thereof, or to impede or prevent animals from grazing thereupon, or kill or otherwise injure such animals, the same shall be liable to punishment upon conviction in the district court, by fine of not more than one hundred and fifty [(\$150)] or not less than fifty dollars [(\$50.00)], provided, the party so offending shall be responsible in civil action to the party interested for all damages the latter may have suffered.

**History:** Laws 1865, ch. 16, § 2; C.L. 1884, § 2576; C.L. 1897, § 3750; Code 1915, § 4639; C.S. 1929, § 111-112; 1941 Comp., § 8-308; 1953 Comp., § 7-3-8.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-3-9. [Proceedings before magistrate.]

The justice of the peace [magistrate] before whom complaint shall have been made for a violation of the two foregoing sections [19-3-7, 19-3-8 NMSA 1978], shall immediately enter upon the due investigation of the same, as by law required in the case of other offenses, and shall transmit his proceedings to the proper court.

**History:** Laws 1865, ch. 16, § 3; C.L. 1884, § 2577; C.L. 1897, § 3751; Code 1915, § 4640; C.S. 1929, § 111-113; 1941 Comp., § 8-309; 1953 Comp., § 7-3-9.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. The

office of justice of the peace was abolished by 35-1-38 NMSA 1978, and all jurisdiction, powers and duties conferred by law on justices of the peace have been transferred to the magistrate court.

### 19-3-10. [Jurisdiction of magistrate and of district court.]

When the damages claimed shall not exceed one hundred dollars [(\$100)], judgment shall be rendered against the party as in a civil action the same as in other civil actions, but should they exceed one hundred dollars [(\$100)], then and in this case the party aggrieved shall apply in the district court for his justification and his rights.

**History:** Laws 1865, ch. 16, § 4; C.L. 1884, § 870; C.L. 1897, § 1295; Code 1915, § 4641; C.S. 1929, § 111-114; 1941 Comp., § 8-310; 1953 Comp., § 7-3-10.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. The office of justice of the peace was abolished by 35-1-38 NMSA

1978, and all jurisdiction, powers and duties conferred by law on justices of the peace have been transferred to the magistrate court.

**Cross references.** — For limits of magistrate's jurisdiction in civil matters, see 35-3-3 NMSA 1978.

### 19-3-11. [Unlawful enclosure of public lands.]

It shall not be legal for any person or persons, company or corporation, to construct and maintain inclosures [enclosures] upon land considered and held as public land in this state, nor to apply the same to private use, which may result in prejudice to the citizens thereto, unless the same be made and sustained in conformity with the provisions of the United States laws relative to government lands or the laws of this state.

**History:** Laws 1882, ch. 42, § 1; C.L. 1884, § 870; C.L. 1897, § 1295; Code 1915, § 4632; C.S. 1929, § 111-105; 1941 Comp., § 8-311; 1953 Comp., § 7-3-11.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**ANNOTATIONS**  
Am. Jur. 2d, A.L.R. and C.J.S. references. — 63A Am. Jur. 2d Public Lands § 36.  
73A C.J.S. Public Lands § 7.



## 19-3-12. [Occupying or denying others use of public land; penalty.]

Any person who shall, contrary to the provisions of the preceding section [19-3-11 NMSA 1978], be found occupying, or trying to deprive others of the free use and pasturing upon the public land, under the pretext of a deed, upon conviction thereof before any court having jurisdiction in the matter, shall be fined in a sum of not less than ten dollars [(\$10.00)], and shall besides, be liable for the damages caused thereto.

**History:** Laws 1882, ch. 42, § 4; C.L. 1884, § 873; C.L. 1897, § 1298; Code 1915, § 4633; C.S. 1929, § 111-106; 1941 Comp., § 8-312; 1953 Comp., § 7-3-12.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For disposition of fines and forfeitures collected under general law, see N.M. Const., art. XII, § 4.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 73A C.J.S. Public Lands § 18.

## 19-3-13. [Right to appropriate and stock range on public domain; conditions.]

Any person, company or corporation that may appropriate and stock a range upon the public domain of the United States, or otherwise, with cattle shall be deemed to be in possession thereof: provided, that such person, company or corporation shall lawfully possess or occupy, or be the lawful owner or possessor of sufficient living, permanent water upon such range for the proper maintenance of such cattle.

**History:** Laws 1889, ch. 61, § 1; C.L. 1897, § 127; Code 1915, § 4628; C.S. 1929, § 111-101; 1941 Comp., § 8-313; 1953 Comp., § 7-3-13.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### ANNOTATIONS

**Effect of water rights.** — New Mexico does not recognize a limited livestock forage right implicit in a vested water right or a limited livestock forage right implicit in a right-of-way for the maintenance and enjoyment of a vested water right. *Walker v. United States*, 2007-NMSC-038, 142 N.M. 45, 162 P.3d 882.

**Implied license to graze.** — There is an implied license on the part of the government to all of the people to graze their animals upon the public domain without compensation. *Yates v. White*, 1925-NMSC-012, 30 N.M. 420, 235 P. 437; *Hill v. Winkler*, 1915-NMSC-077, 21 N.M. 5, 151 P. 1014, explained in *Vanderford v. Wagner*, 1918-NMSC-099, 24 N.M. 467, 174 P. 426, distinguished in *Johnson v. Hickel*, 1923-NMSC-002, 28 N.M. 349, 212 P. 338.

**Grazing on unenclosed land not enjoined.** — Since attempt on the part of the legislature to grant the exclusive right or occupancy upon part of a public domain would be clearly within the prohibition of the act of congress of February 25, 1885, and invalid, defendant cannot be restrained by injunction from permitting his animals to graze on unenclosed lands of plaintiff. *Yates v. White*, 1925-NMSC-012, 30 N.M. 420, 235 P. 437; *Hill v. Winkler*, 1915-NMSC-077, 21 N.M. 5, 151 P. 1014, explained in *Vanderford v. Wagner*, 1918-NMSC-099, 24 N.M. 467, 174 P. 426, distinguished in *Johnson v. Hickel*, 1923-NMSC-002, 28 N.M. 349, 212 P. 338.

**Removal contract void.** — Contract to remove one's animals from an illegal enclosure upon the public domain, and

to keep them out, is void. *Yates v. White*, 1925-NMSC-012, 30 N.M. 420, 235 P. 437.

**Grazing cattle on federal public lands.** — While 19-3-1 NMSA 1978 and this section purport to grant "possessory" interests in public domain lands that may be enforceable against non-federal claimants, no New Mexico statute grants (nor could it grant) a property interest in federal lands that may be enforced against the United States. *Diamond Bar Cattle Co. v. United States*, 168 F.3d 1209 (10th Cir. 1999).

**Possessory rights.** — One having appropriated and stocked range with cattle, and being the owner of permanent water for use upon said range for maintenance of cattle thereon, has possessory rights in said public lands, which he has the right to protect. *First State Bank v. Mc-New*, 1928-NMSC-040, 33 N.M. 414, 269 P. 56, overruled by *Walker v. U.S.*, 2007-NMSC-038, 142 N.M. 45, 162 P.3d 882.

**Effect of water rights.** — One who owns all of the waters on his range has the right to the exclusive enjoyment of the license to graze these lands as against all others who did not develop other waters upon the same. *Yates v. White*, 1925-NMSC-012, 30 N.M. 420, 235 P. 437; *Hill v. Winkler*, 1915-NMSC-077, 21 N.M. 5, 151 P. 1014, explained in *Vanderford v. Wagner*, 1918-NMSC-099, 24 N.M. 467, 174 P. 426, distinguished in *Johnson v. Hickel*, 1923-NMSC-002, 28 N.M. 349, 212 P. 338.

**Law reviews.** — For article, "Attachment in New Mexico - Part II," see 2 Nat. Resources J. 75 (1962).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63A Am. Jur. 2d Public Lands §§ 22 to 36.

Trespassing or intruding livestock, liability for personal injury or death caused by, 49 A.L.R.4th 710.

73A C.J.S. Public Lands §§ 19 to 23.

### 19-3-14. [Second or subsequent use of range; conditions.]

Whenever any person, company or corporation turns loose on any range in this state, already occupied or in the possession of another or others by virtue of their having complied with the provisions of the preceding section [19-3-13 NMSA 1978], he or they must be the owner or owners of, or must be lawfully entitled to the possession of some other living, permanent water upon such range, sufficient for the proper maintenance of all such additional cattle so turned loose, other than that owned by or lawfully possessed, or lawfully in the possession of any other person, company or corporation that may have previously appropriated, stocked or taken possession of such range in accordance with the provisions of this and the preceding section; and such person, company or corporation so turning loose cattle upon such range must at all times, furnish, supply and maintain upon such range such other permanent living water free and unfenced and upon the surface of the ground.

**History:** Laws 1889, ch. 61, § 2; C.L. 1897, § 128; Code 1915, § 4629; C.S. 1929, § 111-102; 1941 Comp., § 8-314; 1953 Comp., § 7-3-14.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Law reviews.** — For article, "Attachment in New Mexico - Part II," see 2 Nat. Resources J. 75 (1962).

### 19-3-15. [Use of public land for range without owning water right; penalty.]

Any person, company or corporation violating the provisions of the preceding section [19-3-14 NMSA 1978] shall be guilty of a misdemeanor and punishable by imprisonment in the county jail of the county wherein the offense was committed, for a period not to exceed six months, or by a fine of not less than one hundred dollars [(\$100)] nor more than one thousand dollars [(\$1,000)], and such person, company or corporation violating such provisions as aforesaid shall further be liable to any party or parties injured for all damages which such party or parties may sustain; the same to be recoverable by a civil suit. All fines and costs so assessed and all damages which may at any time be awarded shall be and constitute a lien upon such herd of cattle.

**History:** Laws 1889, ch. 61, § 3; C.L. 1897, § 129; Code 1915, § 4630; C.S. 1929, § 111-103; 1941 Comp., § 8-315; 1953 Comp., § 7-3-15.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Grant of exclusive right invalid.** — Any attempt on the part of the legislature to grant the exclusive right or

occupancy upon part of a public domain would be clearly within the prohibition of the act of congress of February 25, 1885, and invalid, for defendant cannot be restrained by injunction from permitting his animals to graze on unenclosed lands of plaintiff. *Yates v. White*, 1925-NMSC-012, 30 N.M. 420, 235 P. 437; *Hill v. Winkler*, 1915-NMSC-077, 21 N.M. 5, 151 P. 1014, explained in *Vanderford v. Wagner*, 1918-NMSC-099, 24 N.M. 467, 174 P. 426, distinguished in *Johnson v. Hickel*, 1923-NMSC-002, 28 N.M. 349, 212 P. 338.

### 19-3-16. [Each day's violation a separate offense.]

Each day's violation of the provisions of the first two sections [19-3-13, 19-3-14 NMSA 1978] of this chapter shall be and constitute a separate cause of action against any person, company or corporation violating the same.

**History:** Laws 1889, ch. 61, § 4; C.L. 1897, § 130; Code 1915, § 4631; C.S. 1929, § 111-104; 1941 Comp., § 8-316; 1953 Comp., § 7-3-16.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## ARTICLE 4

### Townsites

Sec.

19-4-1. Patents of townsites to be recorded.

Sec.

19-4-2. Failure to record townsite patent; penalty.



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| <p>Sec.<br/>19-4-3. Prosecutions for failure to record; duty of district attorneys.<br/>19-4-4. Title to townsite vested in probate judge in trust; suit to determine rights; execution of deeds.<br/>19-4-5. Notice of suit; intervention.<br/>19-4-6. Vacating all or part of townsite.<br/>19-4-7. Disposal of lots after entry.<br/>19-4-8. Conveyances to persons entitled to possession or occupancy.<br/>19-4-9. Notice of entry; posting and publication.<br/>19-4-10. Claim for lots; time limit; unclaimed lots revert to town.<br/>19-4-11. Notice of meeting to elect trustees; qualifications; duties.<br/>19-4-12. Term of office of trustees.<br/>19-4-13. Board of appraisers; appointment; oath; refusal to act; new board.<br/>19-4-14. Appraisement; contents; valuations.<br/>19-4-15. Notice of sale; publication; contents.<br/>19-4-16. Conduct of sales.<br/>19-4-17. Conveyance of streets, parks and commons by probate judge.<br/>19-4-18. Purchase at private sale by person in possession.<br/>19-4-19. Reservation for park or public purpose.<br/>19-4-20. Disposition of proceeds.<br/>19-4-21. Adverse claims; litigation.<br/>19-4-22. Paramount right to lands.</p> | <p>Sec.<br/>19-4-23. Notice to file suit; service; publication; relinquishment on failure to obey.<br/>19-4-24. Service of process; publication.<br/>19-4-25. Appeals.<br/>19-4-26. Reports of expenses.<br/>19-4-27. Conveyances; payment of costs.<br/>19-4-28. Commissioner; appointment; qualifications; powers; office hours; bond.<br/>19-4-29. Recording of order appointing commissioner.<br/>19-4-30. Conveyance by probate judge; land for town benefit.<br/>19-4-31. Conveyances; time for execution.<br/>19-4-32. Probate judge; claim for lands in individual right.<br/>19-4-33. Streets, alleys, parks and public grounds.<br/>19-4-34. Claimant failing to pay costs and fees.<br/>19-4-35. Trustees; organization; officers; quorum.<br/>19-4-36. Probate judges declared county judges for purpose of trust.<br/>19-4-37. Taxation of costs.<br/>19-4-38. Unsold lots; petition; appraisers.<br/>19-4-39. Appraisement; report; compensation.<br/>19-4-40. Preference right of possessor to purchase.<br/>19-4-41. Commissioner; sale; notice by publication; deeds; fees.<br/>19-4-42. Disposition of proceeds.</p> |
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### 19-4-1. [Patents of townsites to be recorded.]

It shall be the duty of any person who receives a patent from the government of the United States for a townsite in the state of New Mexico, to at once file such patent for record with the county clerk of the county wherein such townsite is situated.

**History:** Laws 1909, ch. 50, § 1; Code 1915, § 5513; C.S. 1929, § 144-101; 1941 Comp., § 8-501; 1953 Comp., § 7-5-1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 73A C.J.S. Public Lands § 52.

### 19-4-2. [Failure to record townsite patent; penalty.]

Any person or persons failing to file for record the patent they have received for a townsite in the state of New Mexico, shall, upon conviction, before any court of competent jurisdiction, be imprisoned in the county jail for a period of not less than one year, and be fined in a sum of not less than five hundred dollars [(\$500)], together with the costs of the prosecution.

**History:** Laws 1909, ch. 50, § 2; Code 1915, § 5514; C.S. 1929, § 144-102; 1941 Comp., § 8-502; 1953 Comp., § 7-5-2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-4-3. [Prosecutions for failure to record; duty of district attorneys.]

It is hereby made the duty of the several district attorneys in the state of New Mexico to prosecute all violators of the preceding section [19-4-2 NMSA 1978].

**History:** Laws 1909, ch. 50, § 3; Code 1915, § 5515; C.S. 1929, § 144-103; 1941 Comp., § 8-503; 1953 Comp., § 7-5-3.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For provision on duties of district attorney, see 36-1-18 NMSA 1978.

#### 19-4-4. [Title to townsite vested in probate judge in trust; suit to determine rights; execution of deeds.]

Any land embraced in any townsite which has been entered as provided by the laws of the United States and the title of which is vested in the probate judge, in trust for the use and benefit of the several occupants of the land embraced within the said townsite, which has not been conveyed to the occupants, their heirs, executors, successors or assigns, who were entitled to the same at the time the entry of such land was made, or at the time patent was received from the United States, by reason of the failure of said probate judge to give notice of such entry, or the receiving of said patent, or by reason of such occupants, their heirs, executors, successors and assigns failing to make the statement and filing the same as required by law, then in such case any such occupant, or the heirs, executors, successors or assigns of any such occupant, may file a suit in the district court in the county wherein such land is situated, to have his or its interest in the said land, at the time of such entry, or the receiving of such patent, or the successor in title to the right of such occupant, declared and ascertained. The probate judge shall be made a party defendant and the said district court, upon a hearing, shall adjudicate and determine the interest of such occupant at the time of such entry, or the receiving of such patent, or the interest of the heirs, executors, successors and assigns of such occupant, and entering a decree declaring the interest of such occupant. Upon the entering by the said district court of the decree declaring the interest of such occupant, or his or its successors in title, the probate judge of the county shall immediately thereafter make, execute and deliver to the parties so declared to be entitled to any part of the land embraced within the said townsite, a deed for his or its respective interest.

**History:** Laws 1912, ch. 12, § 1; Code 1915, § 5516; C.S. 1929, § 144-104; 1941 Comp., § 8-504; 1953 Comp., § 7-5-4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

##### ANNOTATIONS

**Entry pursuant to law essential.** — Probate judge takes no title to townsite land until entry is made pursuant to law. *Dugan v. Montoya*, 1918-NMSC-035, 24 N.M. 102, 173 P. 118.

**Requisites of complaint.** — In action under this section and Section 19-4-10 NMSA 1978, the complaint must show that plaintiff complied with the law as to filing and notice; and when the complaint shows legal title in one of the defendants, the plaintiff is barred from maintaining the suit. *Kemp Lumber Co. v. Whitlatch*, 1915-NMSC-075, 21 N.M. 88, 153 P. 1050, criticized in *Alvarez v. Board of Trustees*, 1957-NMSC-022, 62 N.M. 319, 309 P.2d 989.

**Section cannot be circumvented by improper conveyances by probate judge.** *Alvarez v. Board of Trustees*, 1957-NMSC-022, 62 N.M. 319, 309 P.2d 989.

**Remedy not foreclosed.** — Action of Catholic bishop on behalf of church, occupant of land granted to probate

judge in 1925 to be held in trust for the occupant, in seeking to have the land conveyed to him by townsite's board of trustees, operated neither as an election of remedies nor an estoppel in pais, nor did his act in defending the action brought to have the deed set aside have such an effect; the only remedy available to him was that provided in this section, which he pursued in his first affirmative judicial act of seeking a conveyance from the probate judge. *Alvarez v. Board of Trustees*, 1957-NMSC-022, 62 N.M. 319, 309 P.2d 989.

**Repeal of conflicting provisions.** — Two provisions of Section 19-4-10 NMSA 1978 are repugnant to and irreconcilable with this section and were therefore repealed thereby, namely, the absolute bar in Section 19-4-10 NMSA 1978 to an occupant who failed to file a claim within the specified time limit and the provision of Section 19-4-10 NMSA 1978 that upon failure to file a claim the property reverted to the town, since if failure to file resulted in property reverting to the town, title would no longer be in the probate judge and this section could never be utilized. *Alvarez v. Board of Trustees*, 1957-NMSC-022, 62 N.M. 319, 309 P.2d 989.

#### 19-4-5. [Notice of suit; intervention.]

Such suit may be brought by any one or more of such occupants, or their heirs, executors, successors or assigns. Notice of such suit shall be by publication in the same manner that notice of the pendency of other civil suits by publication is made. Any party interested in the land embraced within the said townsite shall have the right to enter his appearance in said suit and to have his interest in the said land embraced in the said townsite adjudicated and determined.

**History:** Laws 1912, ch. 12, § 2; Code 1915, § 5517; C.S. 1929, § 144-105; 1941 Comp., § 8-505; 1953 Comp., § 7-5-5.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For publication of notice, see 14-11-1 to 14-11-13 NMSA 1978.

For rule on service of process by publication, see Rule 1-004 NMRA.

For rule on intervention in civil suit, see Rule 1-024 NMRA.



### 19-4-6. [Vacating all or part of townsite.]

When any tract of land may be filed upon, platted and recorded as a townsite in accordance with the provisions of an act of congress or law of New Mexico, and no town or organization under the laws of New Mexico shall have been perfected by the inhabitants residing thereon, or the owners thereof, the same may be vacated by consent of all such inhabitants or owners and disposed of as the said inhabitants or owners shall agree: provided, that a statement, signed and certified to by a majority of said inhabitants or owners, setting forth the fact of the vacation of such townsite, be filed with the clerk of the county in which the same shall be situated. When any tract of land has been recorded as a townsite, or has been annexed as an addition to a townsite, any part or portion thereof may be vacated upon the written consent of all the owners of that part or portion which it is proposed to vacate: provided, that no expenditures of money have been theretofore made or incurred by said town for the improvement or benefit of said part or portion, and that the same is bounded in same [whole] or in part by exterior town lines, and that when so vacated a statement, subscribed by such owners, setting forth the facts of such vacation, together with an accurate description, map and plat of such part vacated shall be filed in the office of the county clerk of the county in which such town is situated.

**History:** Laws 1884, ch. 39, § 98; C.L. 1884, § 1706; C.L. 1897, § 3977; Code 1915, § 5518; C.S. 1929, § 144-106; 1941 Comp., § 8-506; 1953 Comp., § 7-5-6.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 73A C.J.S. Public Lands §§ 52 to 55.

### 19-4-7. [Disposal of lots after entry.]

When the corporate authorities of any town, or the probate judge of the county for any county in this state, in which any town may be situated, shall have entered, at the proper land office, the land, or any part of the land, settled and occupied as the site of such town, pursuant to and by virtue of the provisions of the act of congress entitled, "An act for the relief of citizens of towns upon lands of the United States under certain circumstances," passed May 23, 1844, and any amendments that may be made thereto, it shall be the duty of the corporate authorities or probate judge, as the case may be, and they are hereby directed and required to dispose of and convey the title to such land, or to the several blocks, lots, parcels or shares thereof, to the persons hereinafter in this chapter described, and in the manner hereinafter specified, and apply the proceeds of the sale thereof under the following regulations.

**History:** Laws 1882, ch. 70, § 1; C.L. 1884, § 2775; C.L. 1897, § 3978; Code 1915, § 5519; C.S. 1929, § 144-107; 1941 Comp., § 8-507; 1953 Comp., § 7-5-7.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The words "this chapter" were inserted by the 1915 Code compilers, and referred to chapter 108 of that code, which is identical with this article.

The Townsite Act of May 23, 1844 (5 Stat. 657), referred to in this section, is not compiled in the United States Code.

**Cross references.** — For sale of common lands within community land grants, see 49-1-11 NMSA 1978.

#### ANNOTATIONS

**Nature of railroad right-of-way.** — A railroad company, by complying with the act of congress, giving it a right to lands for right-of-way and station purposes, takes a limited fee therein, to which no other person can acquire any right or title, either by adverse possession or by grant from the company itself; hence, a claimant of lots in a townsite which embraces a part of such right-of-way and station grounds is not entitled to a deed from the probate judge including any portion thereof. *Dugan v. Montoya*, 1918-NMSC-035, 24 N.M. 102, 173 P. 118.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 73A C.J.S. Public Lands § 54.

### 19-4-8. [Conveyances to persons entitled to possession or occupancy.]

Such corporate authorities or probate judge, holding the title of such lands in trust, as declared in the said act of congress, his or their successors shall, by a good and sufficient deed of conveyance, grant and convey the title to each and every block, lot, share or parcel of the same to the person or persons who shall have possession, or be entitled to the possession or occupancy thereof, according to his, her or their several and respective rights or interest in the same, as they existed

in law or equity at the time of the entry of such lands, or to his, her or their heirs and assigns. Every such deed to be made by such corporate authorities, or by such probate judge, shall be so executed and acknowledged as to admit the same to be recorded.

**History:** Laws 1882, ch. 70, § 2; C.L. 1884, § 2776; C.L. 1897, § 3979; Code 1915, § 5520; C.S. 1929, § 144-108; 1941 Comp., § 8-508; 1953 Comp., § 7-5-8.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The act of congress referred to in this section is the Townsite Act of 1844 (5 Stat. 657), which act is not compiled in the United States Code.

#### ANNOTATIONS

**Disposition of lands.** — Under this section, 19-4-9 and 19-4-10 NMSA 1978, the townsite lands must be disposed of for the use and benefit of the occupants who are in actual, bona fide possession, and they are entitled to their deeds on payment of their proportion of the expenses. *City of Socorro v. Cook*, 1918-NMSC-072, 24 N.M. 202, 173 P. 682; *Gill v. Wallis*, 1902-NMSC-022, 11 N.M. 481, 70 P. 575.

### 19-4-9. [Notice of entry; posting and publication.]

Within thirty days after the entry of such lands, the corporate authorities or probate judge entering the same, shall give public notice of such entry, by posting notice thereof in at least three public places within such town and by publishing such notice in a newspaper published in the county in which such town shall be situated. In case there shall not be any newspaper published in such county, then in some newspaper published nearest to such town in this state. Such notice shall be published once in each week for at least three successive weeks, and shall contain an accurate description of the lands so entered, as the same is stated in the certificate of entry, or duplicate receipt for the purchase money thereof, given by the land officers at the time of such entry. In case of entry of such lands by corporate authorities, the mayor or president shall give such notice in behalf of the town, in his official capacity.

**History:** Laws 1882, ch. 70, § 3; C.L. 1884, § 2777; C.L. 1897, § 3980; Code 1915, § 5521; C.S. 1929, § 144-109; 1941 Comp., § 8-509; 1953 Comp., § 7-5-9.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-4-10. [Claim for lots; time limit; unclaimed lots revert to town.]

Each and every person or association or company of persons claiming to be an occupant or occupants, or to have possession, or to be entitled to the occupancy or possession of such lands, or to any lot, block, share or parcel thereof, shall, within sixty days after the first publication of such notice, in person, or by his, her or their, duly authorized agent or attorney, sign a statement in writing, containing an accurate description of the particular parcel or parts of lands, in which he, she or they, claim to have an interest, and the specific right, interest or estate therein which he, she or they, claim to be entitled to, [and shall] receive and deliver the same to, or into, the office of such corporate authorities, or probate judge, and all persons failing to sign and deliver such statement within the time specified in this section shall be forever barred the right of claiming or recovering such lands, or any interest or estate therein, or any part, parcel or share thereof, in any court of law or equity. In case any lots in such town remain unclaimed and unconveyed at the end of said sixty days, all such lots shall revert to and become the property of such town.

**History:** Laws 1882, ch. 70, § 4; C.L. 1884, § 2778; C.L. 1897, § 3981; Code 1915, § 5522; C.S. 1929, § 144-110; 1941 Comp., § 8-510; 1953 Comp., § 7-5-10.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Provisions repealed.** — Two provisions of this section are repugnant to and irreconcilable with Section 19-4-4

NMSA 1978 and were therefore repealed by the latter section, namely, the absolute bar to an occupant who failed to file a claim within the specified time limit and the provision that upon failure to file a claim the property reverted to the town, since if failure to file resulted in the property reverting to the town, the title would no longer be in the probate judge and Section 19-4-4 NMSA 1978 could never be utilized. *Alvarez v. Board of Trustees*, 1957-NMSC-022, 62 N.M. 319, 309 P.2d 989.



### 19-4-11. [Notice of meeting to elect trustees; qualifications; duties.]

Within ten days after the time, as prescribed in the preceding section [19-4-10 NMSA 1978], the corporate authorities, or, if there be no corporate authorities, the probate judge holding the land in trust, shall give ten days' notice of the time and place wherein a public meeting of the inhabitants of such town will be held, at which public meeting a board of five trustees shall be elected by a majority of the votes of the legally qualified voters residing within said town, present at said meeting. Said board of five trustees shall consist of legally qualified voters, being owners of real estate in said town: provided, further, that after said election has been duly certified to by the chairman and secretary of the public meeting so held, they are, and are hereby authorized to dispose of all said lots, blocks or parcels, of said land, as described in the preceding section, as may seem best for the use of the school funds of said inhabitants of such town, as hereinafter provided in this chapter.

**History:** Laws 1882, ch. 70, § 5; C.L. 1884, § 2779; C.L. 1897, § 3982; Code 1915, § 5523; C.S. 1929, § 144-111; 1941 Comp., § 8-511; 1953 Comp., § 7-5-11.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The words "this chapter" were inserted by the 1915 Code compilers, and referred to Chapter 108 of that code, which is identical to this article.

### 19-4-12. [Term of office of trustees.]

The board of trustees, when elected, shall hold the office for the period of one year, and until their successors shall be duly elected and qualified under the laws of this state.

**History:** Laws 1882, ch. 70, § 6; C.L. 1884, § 2780; C.L. 1897, § 3983; Code 1915, § 5524; C.S. 1929, § 144-112; 1941 Comp., § 8-512; 1953 Comp., § 7-5-12.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-4-13. [Board of appraisers; appointment; oath; refusal to act; new board.]

The board of trustees of any such town shall appoint, by order, resolution or ordinance, a board of appraisers, to consist of three freeholders of any such town, who shall have no interest in such unclaimed or unconveyed lots, or parcels of land, or the improvements thereon. Each of said appraisers shall take an oath to faithfully discharge his duties as such appraiser, and shall file such oath in the office of the clerk of said board before commencing his duties as such appraiser. In case such appraisers should fail or neglect to make the appraisal hereinafter specified in this chapter [19-4-14 NMSA 1978], and file the same with the clerk of said board, for a period of more than ten days after their appointment, then said board may appoint a new board of appraisers for the purposes herein provided. It shall be the duty of such board to appoint such appraisers within thirty days after the time has expired for persons to present claims for lots in such towns.

**History:** Laws 1882, ch. 70, § 7; C.L. 1884, § 2781; C.L. 1897, § 3984; Code 1915, § 5525; C.S. 1929, § 144-113; 1941 Comp., § 8-513; 1953 Comp., § 7-5-13.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-4-14. [Appraisal; contents; valuations.]

Said appraisers shall appraise all lots or parcels of land, unclaimed or not, conveyed by virtue of any law, in such town, at their just and full cash value, and file their written appraisal, as aforesaid. Said appraisal shall contain a description of each lot or parcel of land so appraised, and a statement of the cash value of each lot and parcel of land so appraised. Said appraisers shall make a separate statement of the value of such lots and parcels of land without improvements, and the aggregate value of both; there shall be attached to such appraisal a written affidavit of said appraisers, verifying each statement of such appraisal, and alleging that each of said

lots and parcels of land is appraised at its just and full value. The appraisement shall be required only in cases where the time has expired by prior laws for claimants to file their statements.

**History:** Laws 1882, ch. 70, § 8; C.L. 1884, § 2782; C.L. 1897, § 3985; Code 1915, § 5526; C.S. 1929, § 144-114; 1941 Comp., § 8-514; 1953 Comp., § 7-5-14.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-4-15. [Notice of sale; publication; contents.]

The mayor, or president, or probate judge, as the case may be, shall, upon the filing of such appraisement, give notice, signed in his official capacity, of the time and place of sale of said lots and parcels of land, by advertisement, published once a week for three successive weeks in some newspaper published in the county where such town is situated, or if no newspaper is published in said county, then in the paper published nearest such town. Such sale shall be advertised to be made at some public place in said town, and to be sold at some specified time between the hours of sunrise and sunset.

**History:** Laws 1882, ch. 70, § 9; C.L. 1884, § 2783; C.L. 1897, § 3986; Code 1915, § 5527; C.S. 1929, § 144-115; 1941 Comp., § 8-515; 1953 Comp., § 7-5-15.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-4-16. [Conduct of sales.]

Such lots or parcels of land shall be sold at public vendue to the highest bidder for cash and shall be offered for sale singly unless a greater price can be obtained by selling several lots or parcels of land together, in which case several lots or parcels of land can be sold together, after an attempt has been first made to sell them singly. Such sale may be continued if necessary, from day to day for a period not to exceed three days at any one sale. In case all said lands are not sold at first sale, the remaining lands shall be advertised as many times as may be necessary to sell said lands, and all sales subsequent to the first sale shall be advertised and conducted the same as the first sale. No lot or parcel of land shall be sold at less than its appraised value. A new appraisement may be had of all lands remaining unsold: provided, that such new appraisement shall not be made oftener than three months. Such new appraisement shall be made by a new board of appraisers, or the old board of appraisers, to be appointed in the manner of the first board of appraisers.

**History:** Laws 1882, ch. 70, § 10; C.L. 1884, § 2784; C.L. 1897, § 3987; Code 1915, § 5528; C.S. 1929, § 144-116; 1941 Comp., § 8-516; 1953 Comp., § 7-5-16.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-4-17. [Conveyance of streets, parks and commons by probate judge.]

If the title to any such land shall be vested in any probate judge, such probate judge shall convey to any such town, the land used or laid out by the town authorities, or otherwise, as streets, lanes, avenues, parks, commons and public grounds, within such time as provided in this chapter, for making conveyances to individuals, and in the same manner, and the mayor, president or probate judge, may make such statements in behalf of the town, showing the right of such town to such lands.

**History:** Laws 1882, ch. 70, § 11; C.L. 1884, § 2785; C.L. 1897, § 3988; Code 1915, § 5529; C.S. 1929, § 144-117; 1941 Comp., § 8-517; 1953 Comp., § 7-5-17.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The words "this chapter" were inserted by the 1915 Code compilers, and referred to Chapter 108 of that code, which is identical to this article.

### 19-4-18. [Purchase at private sale by person in possession.]

In all cases, when subsequent to the time provided by law for persons to claim lots on such town-sites, and prior to the taking effect of this law, any person may have entered thereon and improved



any lots belonging to such town, such person, after the report of such board of appraisers, and prior to the public sale, may purchase any such lots from the said trustees or commissioners at private sale, for cash, at the appraised value of such lots, exclusive of improvements, unless there shall be adverse claimants to any such lots, in which case the respective rights of such claimants shall be determined, as hereinafter provided in this chapter.

**History:** Laws 1882, ch. 70, § 12; C.L. 1884, § 2786; C.L. 1897, § 3989; Code 1915, § 5530; C.S. 1929, § 144-118; 1941 Comp., § 8-518; 1953 Comp., § 7-5-18.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The words "this chapter" were inserted by the 1915 Code compilers, and referred to Chapter 108 of that code, which is identical to this article.

### 19-4-19. [Reservation for park or public purpose.]

The corporate authorities of any town or board of trustees, may set apart and reserve any of said lots or blocks, not to exceed four blocks in all, nor situated in more than eight different blocks in any one town, for the public use of said town, for a town park, or other purposes, for the benefit of the public, in lieu of offering them for sale, and shall execute to such town a deed for said lots so reserved.

**History:** Laws 1882, ch. 70, § 13; C.L. 1884, § 2787; C.L. 1897, § 3990; Code 1915, § 5531; C.S. 1929, § 144-119; 1941 Comp., § 8-519; 1953 Comp., § 7-5-19.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-4-20. Disposition of proceeds.

The proceeds received from the sale shall be disposed of as follows:

- A. first, to pay the expenses of the sale;
- B. second, to discharge any outstanding claims incurred in entering the townsite of the town; and
- C. third, the surplus, if any, shall be retained by the town trustees to be used for making improvements within the townsite for public purposes.

**History:** Laws 1882, ch. 70, § 14; C.L. 1884, § 2788; Laws 1891, ch. 29, § 1; C.L. 1897, § 3991; Code 1915, §

5532; C.S. 1929, § 144-120; 1941 Comp., § 8-520; 1953 Comp., § 7-5-20; Laws 1967, ch. 279, § 1.

### 19-4-21. [Adverse claims; litigation.]

In case there shall be adverse claimants to such lands, or to any part, parcel or share thereof, either party may bring a suit against the adverse claimant or claimants, in the district court of the judicial district, or in any court of competent jurisdiction in the county in which the lands shall be situated, or in any county to which the county in which such lands shall be situated is attached for judicial purposes: provided, always, that no judge of the district court, or county judge, who has been an adverse claimant, directly or indirectly, of any portion of the lands embraced within such towns, or who is a party to any action brought to determine a right to a conveyance of any portion of the lands within such town, shall entertain, hear or determine any such claims, by or between any parties whomsoever; but in all such cases, if the cause shall be pending in a district court, the judge thereof shall order all papers, with a transcript of the record in the cause, to be transmitted to another judicial district, as in cases of changes of venue, and if the cause shall be pending in a county court, the judge thereof shall order all papers, with a transcript of the record, to be transmitted to the district court of said county, and the cause shall proceed in the courts to which the same is removed as if originally instituted in that court: provided, also, that the laws applicable to a change of venue, shall apply to such actions; and provided, also, that nothing in this chapter shall prevent the district or probate judge of the district or county in which such lands are situated from executing any and all conveyances of such lands, pursuant to the determination of such action. Suits shall be brought against adverse claimants or defendants, and it shall not be

necessary to make the judge, or corporate authorities, parties thereto. The complaint must show what interest or estate in the lands in controversy the plaintiff claims. The answer, pleadings and other proceedings shall be as in cases in chancery, except that oral testimony may be introduced upon the trial, and the evidence, if not in the form of depositions, shall be reduced to writing, certified by the judge and filed with the papers in the cause.

**History:** Laws 1882, ch. 70, § 15; C.L. 1884, § 2789; C.L. 1897, § 3993; Code 1915, § 5534; C.S. 1929, § 144-122; 1941 Comp., § 8-522; 1953 Comp., § 7-5-22.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The words "this chapter" were inserted by the 1915 Code compilers, and referred to Chapter 108 of that code, which is identical to this article.

The Rules of Civil Procedure now govern all civil suits, whether cognizable as cases at law or in equity (except for special statutory or summary proceedings), and provide for one form of action, "civil action." See Rules 1-001 and 1-002 NMRA.

## 19-4-22. [Paramount right to lands.]

Upon the trial of any such action, either party may give in evidence the statement mentioned in Section 19-4-10 NMSA 1978, deposited by the other, or by the person under whom he, or she, claims, with the corporate authorities or probate judge. And the person, or persons, who shall have first acquired the right to the possession, or occupancy, of such lands, either in person, or by agent, servant or tenant, or those claiming under him, her or them, shall be deemed to have the prior and paramount right to such lands: provided, that nothing in this section shall be so construed to recognize the right of any person or persons who have virtually abandoned any land held as a townsite, to any title therein.

**History:** Laws 1882, ch. 70, § 16; C.L. 1884, § 2790; C.L. 1897, § 3994; Code 1915, § 5535; C.S. 1929, § 144-123; 1941 Comp., § 8-523; 1953 Comp., § 7-5-23.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73A C.J.S. Public Lands § 53.

## 19-4-23. [Notice to file suit; service; publication; relinquishment on failure to obey.]

In case suits shall not be brought for the purpose of settling or determining any controversy to any such lands by either of the adverse claimants, within sixty days after the expiration of the time for filing the statement, as provided in Section 19-4-10 NMSA 1978, it shall be the duty of the probate judge or corporate authorities to give notice to the adverse claimant filing his claim, or, if there be more than one adverse claim filed, then to the last adverse claimant, directing him to commence his action against the other claimants, as defendants, to determine their respective rights to said lands, within twenty days from service of notice on him, and in case such adverse claimant neglect or refuse to commence the action within the time specified, he shall be deemed to have relinquished all right, title, interest and estate in the lands so in controversy, and be forever barred from asserting or claiming any right, title, interest or estate, therein. Such notice shall be served by the proper officer of said courts, in the same manner as now provided for service of summons in any county in this state. If the officer return such notice, not found, notice shall be made by publication for three weeks in some newspaper published in the county where the lands are situated, and if no paper be published in said county, then by posting such notice in three public places in the town where such lands are situated. And in addition thereto a copy of said notice shall be mailed to such adverse claimant at his residence or usual place of abode. And in case there be more than one adverse claimant, and the last neglect or refuse to commence his action after service of notice, as aforesaid, said probate judge or corporate authorities shall serve like notice on the next last adverse claimants, until all have been notified, as aforesaid.



**History:** Laws 1882, ch. 70, § 17; C.L. 1884, § 2791; C.L. 1897, § 3995; Code 1915, § 5536; C.S. 1929, § 144-124; 1941 Comp., § 8-524; 1953 Comp., § 7-5-24.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For publication of legal notice, see 14-11-1 to 14-11-13 NMSA 1978.

For rule on service of process by publication, see Rule 1-004 NMRA.

## 19-4-24. [Service of process; publication.]

Whenever complaint shall be filed in any such action, summons shall be issued against the proper parties, and served upon the person or persons named therein, as in other cases provided by law, or upon the agent or attorney of such person or persons who shall have filed their statements as required by Section 19-4-10 NMSA 1978. And in case service cannot be had upon the defendants, their agents or attorney, the complainant shall file an affidavit in the office of the clerk of the court in which the action in [is] pending, to the effect and as now provided by law. It shall be lawful for the clerk of said court to cause publication to be made as provided by law, and when such publication shall have been made, the cause shall proceed, as if the parties had been personally served with summons.

**History:** Laws 1882, ch. 70, § 18; C.L. 1884, § 2792; C.L. 1897, § 3996; Code 1915, § 5537; C.S. 1929, § 144-125; 1941 Comp., § 8-525; 1953 Comp., § 7-5-25.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For publication of legal notice, see 14-11-1 to 14-11-13 NMSA 1978.

For rule on service of process by publication, see Rule 1-004 NMRA.

## 19-4-25. [Appeals.]

Appeals and writs of error shall be allowed and may be taken and prosecuted from the judgments or decrees, or any order of the courts in proceedings under this chapter, to the supreme court, as in other cases.

**History:** Laws 1882, ch. 70, § 19; C.L. 1884, § 2793; C.L. 1897, § 3997; Code 1915, § 5538; C.S. 1929, § 144-126; 1941 Comp., § 8-526; 1953 Comp., § 7-5-26.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The words "this chapter" were inserted by the 1915 Code compilers, and referred to Chapter 108 of that code, which is identical to this article.

**Cross references.** — For appealability of civil matters from district court, see 39-3-2 NMSA 1978 and Rule 12-201 NMRA.

## 19-4-26. [Reports of expenses.]

Within ninety days from the first publication of the notice mentioned in Section 19-4-9 NMSA 1978, the corporate authorities or probate judge holding the title to the lands described in such notice, shall make a true, full and complete statement in writing, containing a true account of all moneys paid by him or them, expended in the acquisition of the title and execution of the trust to that time, including all moneys paid by him or them for the purchase of said lands, necessary traveling expenses, moneys paid for all other necessary and proper expenses incident to such trust and a true account of his or their reasonable charges for time and services employed in the business of such trust to that time, and all moneys by him or them expended, and reasonable charges for compensation, as aforesaid, which shall be and remain a first charge upon said lands in favor of the trustee, and paid by the several claimants entitled to such lands, in proportion to the several quantities thereof to which they may be respectively entitled.

**History:** Laws 1882, ch. 70, § 20; C.L. 1884, § 2794; C.L. 1897, § 3998; Code 1915, § 5539; C.S. 1929, § 144-127; 1941 Comp., § 8-527; 1953 Comp., § 7-5-27.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 19-4-27. [Conveyances; payment of costs.]

Before said corporate authorities, through commissioners hereinafter provided in this chapter, or probate judge, shall be required to execute and deliver any deed of conveyance to any person

or persons claiming to be entitled to said lands and deed, such person or persons shall pay to him or them, through said commissioners, the sum of money chargeable on the portion to be conveyed according to the statement or account mentioned in Section 19-4-26 NMSA 1978; and in case when the trust is held by corporate authorities, such additional sum as said corporate authorities may charge for the same, not exceeding five dollars [(\$5.00)] for each five thousand square feet of such lands, and the further sum of one dollar [(\$1.00)] for the execution and acknowledging of the deed, together with the sum of twenty-five cents [(\$.25)] for attestation, with the seal of the town, by the town clerk. When the land is entered by a probate judge of the county court, deeds shall be signed by such probate judge, or his successor in office, under his private seal or scroll, and such probate judge of the county court shall receive the sum of one dollar [(\$1.00)] for each and every lot, piece or parcel thereof so conveyed in addition to the several sums as prescribed in Section 19-4-26 NMSA 1978, to be paid by the person or persons claiming to be entitled to such deed or conveyance.

**History:** Laws 1882, ch. 70, § 21; 1884, ch. 42, § 1; C.L. 1884, § 2795; C.L. 1897, § 3999; Code 1915, § 5540; C.S. 1929, § 144-128; 1941 Comp., § 8-528; 1953 Comp., § 7-5-28.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The words "this chapter" were inserted by the 1915 Code compilers, and referred to Chapter 108 of that code, which is identical to this article.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 73A C.J.S. Public Lands § 54.

### 19-4-28. [Commissioner; appointment; qualifications; powers; office hours; bond.]

Said board may, by order, resolution or ordinance, appoint a commission [commissioner] to sell and convey any such real estate, and to affix to any conveyance thereof the seal of such town, and have control of such seal for such purpose, and such conveyance, executed in accordance with such order, shall have the effect to transfer, to the grantee named a title in fee simple to any such real estate so conveyed. Said commissioner may be removed at the will of the board, as often as it may seem fit, by an order entered to that effect, and a new commissioner appointed with like powers. Said commissioner shall be a freeholder in such town, and not a member of the board, and have no personal interest in the land so to be sold. Said commissioner shall, during his term of office, keep open an office in some public and well-known place in such town, from ten o'clock a.m. until noon of each day, Sundays and holidays excepted, for the purpose of receiving payments from and executing deeds to persons who are entitled to deeds by reason of purchase, and who have made improvements upon such land, as hereinafter stated in this chapter. No claimant shall be allowed to suffer on account of the misconduct of such commissioner in the discharge of his duties. Such commissioner shall receive such reasonable fees for his services as said board may prescribe. Before entering upon his duties, such commissioner shall enter into a bond, with good and sufficient securities, to be approved by the board, executed in behalf of the town, with obligations to faithfully account to the board for all money received, and to pay the same over to the town treasury.

**History:** Laws 1882, ch. 70, § 22; C.L. 1884, § 2796; C.L. 1897, § 4000; Code 1915, § 5541; C.S. 1929, § 144-129; 1941 Comp., § 8-529; 1953 Comp., § 7-5-29.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The words "this chapter" were inserted by the 1915 Code compilers, and referred to Chapter 108 of that code, which is identical to this article.

**Cross references.** — For provisions relating to bonds for public officers, see 10-2-1 NMSA 1978 et seq.

For Surety Bond Act, see 10-2-13 NMSA 1978 et seq.

### 19-4-29. [Recording of order appointing commissioner.]

The clerk or recorder of any such town shall at once make a copy of any such order, resolution or ordinance appointing any such commissioner, certified by such clerk or recorder, under the seal of the town, and deliver the same without delay to the county clerk of any county in which such



town shall be situated. Such county clerk shall file and record such copy and the certificate thereof of such order, resolution or ordinance, and shall receive fees therefor at the same rate as for deeds. The record of such copy and certificate shall have the same effect in evidence as is provided for the record of powers of attorneys.

**History:** Laws 1882, ch. 70, § 24; C.L. 1884, § 2798; C.L. 1897, § 4002; Code 1915, § 5542; C.S. 1929, § 144-130; 1941 Comp., § 8-530; 1953 Comp., § 7-5-30.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For recording fees, see 14-8-13 NMSA 1978.

For execution of power of attorney and effect thereof, see 47-1-7 to 47-1-11 NMSA 1978.

### 19-4-30. [Conveyance by probate judge; land for town benefit.]

When the land is entered by the probate judge of the county, deeds shall be signed by such judge or his successor in office, under his private seal or scroll. Such judge shall make such conveyance by deed to such town, at private sale, upon the payment by said town of the cost of the proceedings and sale to such land as is used for the benefit of such town only.

**History:** Laws 1882, ch. 70, § 23; C.L. 1884, § 2797; C.L. 1897, § 4001; Code 1915, § 5543; C.S. 1929, § 144-131; 1941 Comp., § 8-531; 1953 Comp., § 7-5-31.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-4-31. [Conveyances; time for execution.]

At any time after the expiration of ninety days from the time of first publication of the notice mentioned in Section 19-4-9 NMSA 1978, the corporate authorities or probate judge shall, upon demand or request and payment as required by Section 19-4-26 NMSA 1978, execute and deliver to each and every claimant, or association, or company of claimants to such lands or any parcel thereof, a deed of conveyance therefor, according to the statement made and deposited by him or them, pursuant to Section 19-4-10 NMSA 1978; provided, however, that no such deed of conveyance shall be executed or delivered for any part, portion or share of such lands, to which there shall be adverse contesting claimants, until the controversy thereon has been settled and determined in the manner described in this chapter.

**History:** Laws 1882, ch. 70, § 25; C.L. 1884, § 2799; C.L. 1897, § 4003; Code 1915, § 5544; C.S. 1929, § 144-132; 1941 Comp., § 8-532; 1953 Comp., § 7-5-32.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The words "this chapter" were inserted by the 1915 Code compilers, and referred to Chapter 108 of that code, which is identical to this article.

### 19-4-32. [Probate judge; claim for lands in individual right.]

In case any judge who shall have entered such land and thus have become the sole trustee thereof, shall be possessed or entitled to any part or portion of such lands in his individual right, and his claim or right shall not be claimed adversely to him, he shall be deemed to be seized and possessed of the title thereto and the estate therein to his own use, in fee simple absolute, free and discharged of such trust; and no conveyance, other than the receipt of the officers of the United States land office or patent to the lands including the same, shall be necessary to perfect his title thereto. But in case individual right shall be claimed by any person adversely to him, the conflicting claims between them shall be settled and determined by an action, as provided in this chapter and tried before some judge who shall be disinterested and possessed of complete jurisdiction for the trial therefor.

**History:** Laws 1882, ch. 70, § 26; C.L. 1884, § 2800; C.L. 1897, § 4004; Code 1915, § 5545; C.S. 1929, § 144-133; 1941 Comp., § 8-533; 1953 Comp., § 7-5-33.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The words "this chapter" were inserted by the 1915 Code compilers, and referred to Chapter 108 of that code, which is identical to this article.

**Cross references.** — For duty of judge to transfer suit claiming townsite land in which he has an interest, see 19-4-21 NMSA 1978.

### 19-4-33. [Streets, alleys, parks and public grounds.]

Whenever the title to any such lands shall be vested in any probate judge, he shall convey to the proper or legal authorities so much of the land as is or shall be laid out by the town authorities into streets, lanes, avenues, parks, public grounds and commons, within the time prescribed in this chapter for making conveyance to individuals. But when the title to such lands shall be held by the corporate authorities of any town, all land used, laid out or designated for public use by such corporate authorities, as streets, lanes, avenues, alleys, parks, commons and public grounds, shall vest in and be held by the corporation absolutely, and shall not be claimed adversely by any person or persons whosoever [whomsoever], and it shall not be necessary to execute any conveyance for the same to the corporation or people of such town.

**History:** Laws 1882, ch. 70, § 27; C.L. 1884, § 2801; C.L. 1897, § 4005; Code 1915, § 5546; C.S. 1929, § 144-134; 1941 Comp., § 8-534; 1953 Comp., § 7-5-34.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The words "this chapter" were inserted by the 1915 Code compilers, and referred to Chapter 108 of that code, which is identical to this article.

### 19-4-34. [Claimant failing to pay costs and fees.]

Each and every person, association and company of persons, who shall be entitled to any lots, pieces or parcels of land so held in trust by the authorities of any incorporated town, and respecting which there shall be no controversy, shall, within three months after the expiration of the time for filing statements, as provided in Section 19-4-10 NMSA 1978, pay to such corporate authorities the sum of money chargeable upon such piece or parcel of land, and the fees for executing a deed therefor. And in case of failure so to do, such person or persons shall be deemed to have relinquished all right, title, interest or estate thereto, and such corporate authorities shall thereafter be, and deemed to be, seized of the title thereto in fee simple, absolute, free and discharged of such trust, and no conveyance, other than the receipt of the United States land office or patent of the lands including the same shall be necessary to perfect their title thereto, and also all persons, company or association of persons, who, by the determination and judgment of the court, shall be adjudged to have the rightful title to such lands, shall within three months of such adjudication and judgment, pay to such corporate authorities the sum of money chargeable to such lands, together with the fees for executing a deed to the same; and in case of failure so to do, such person, company or association, shall be deemed to have relinquished all right, title, interest or estate, in said lands, and such corporate authorities shall be, and deemed to be, seized and possessed of the title thereto to their own use in fee simple, absolute and no further conveyance shall be necessary to perfect their absolute title thereto.

**History:** Laws 1882, ch. 70, § 28; C.L. 1884, § 2803; C.L. 1897, § 4006; Code 1915, § 5547; C.S. 1929, § 144-135; 1941 Comp., § 8-535; 1953 Comp., § 7-5-35.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-4-35. [Trustees; organization; officers; quorum.]

It shall be the duty of the board of trustees, who are elected as provided for in Section 19-4-11 NMSA 1978, on receipt of notice of their election, duly signed and certified to by the chairman and secretary of the meeting of the legal voters of such town, to at once organize, by the election of a president and secretary who shall be members of said board of trustees, and who shall attest by their signatures all acts and orders of said board: provided, that before organizing, such members shall qualify in the same manner as justices of the peace [magistrates] under the laws of this state, and a majority of said board shall constitute a quorum for the transaction of business.



**History:** Laws 1882, ch. 70, § 29; C.L. 1884, § 2803; C.L. 1897, § 4007; Code 1915, § 5548; C.S. 1929, § 144-136; 1941 Comp., § 8-536; 1953 Comp., § 7-5-36.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The office of justice of the peace has been abolished by 35-1-38 NMSA 1978, and all

jurisdiction, powers and duties thereof transferred to the magistrate courts. Section 35-1-38 NMSA 1978 further provided that reference in the law to justices of the peace shall be construed to mean the magistrate courts.

**Cross references.** — For qualification of magistrates, see 35-2-1 to 35-2-5 NMSA 1978.

### 19-4-36. [Probate judges declared county judges for purpose of trust.]

The probate judges of the several counties in this state and their successors in office, are hereby declared to be county judges, for the purpose of executing the trust mentioned in the aforesaid act of congress.

**History:** Laws 1882, ch. 70, § 30; C.L. 1884, § 2804; C.L. 1897, § 4008; Code 1915, § 5549; C.S. 1929, § 144-137; 1941 Comp., § 8-537; 1953 Comp., § 7-5-37.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The act of congress referred to in this section is the Townsite Act of May 23, 1844 (5 Stat. 657); it is not compiled in the United States Code.

### 19-4-37. [Taxation of costs.]

All costs of proceedings in actions under this chapter, including fees for services of all writs and notices and clerk's fees, shall be as provided by law for service of writs in other actions, and shall be taxed and collected as now provided by law in other cases.

**History:** Laws 1882, ch. 70, § 31; C.L. 1884, § 2805; C.L. 1897, § 4009; Code 1915, § 5550; C.S. 1929, § 144-138; 1941 Comp., § 8-538; 1953 Comp., § 7-5-38.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The words "this chapter" were inserted by the 1915 Code compilers, and referred to Chapter 108 of that code, which is identical to this article.

### 19-4-38. [Unsold lots; petition; appraisers.]

Whenever it shall be made to appear to the judge of the district court of the county wherein the lands embraced within the limits of any townsite are situate, the title to which was and is vested in the probate judge of such county, by a verified petition that any lots, blocks, parts or parcels thereof have not been sold, disposed of and conveyed in the manner prescribed by law, that such lots, blocks, parts or parcels or any of them can be sold, that no board of trustees of such townsite was ever elected in the manner prescribed by law, or, if at any time a board was elected, that such board of trustees was not elected or actually acted as such board for more than two years next preceding the date of the verification of the petition, and that the petitioner or petitioners will deposit in court such sum of money as the court may order to cover all costs of procedure hereinafter mentioned in this chapter in case the lands are not sold, then the judge of such district court shall appoint, by order and decree, a board of appraisers to consist of three residents of the county wherein such townsite is situated, who shall have no interest in such unsold, undisposed of and unconveyed lots, blocks, parts and parcels of land. Each of said appraisers shall take an oath to faithfully discharge his duties as such appraiser and shall file such oath in the office of the clerk of said district court before commencing his duties as such appraiser within ten days after his appointment. In case such appraisers or any of them should fail or neglect to file his or their oath or oaths with the said clerk within the time above limited, then the judge of such district court shall appoint another or other appraisers in place of the appraiser or appraisers so failing to file his or their oath or oaths.

**History:** Laws 1907, ch. 43, § 1; Code 1915, § 5551; C.S. 1929, § 144-139; 1941 Comp., § 8-539; 1953 Comp., § 7-5-39.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The words "this chapter" were inserted by the 1915 Code compilers, and referred to Chapter 108 of that code, which is identical to this article.

### 19-4-39. [Appraisement; report; compensation.]

Such appraisers shall within twenty days from the time of filing their oaths appraise all lots, blocks, parts or parcels of land mentioned and described in the petition, order and decree of said court at their just and full cash value and when their appraisement has been completed, forthwith file in the office of the clerk of such district court a report of their actions and doings and appraisements verified by their respective oaths. In case of the members of said board not agreeing in their appraisement, the valuation and appraisement of the majority of said members of the board shall control and fix the valuation and appraisement of the respective lots, blocks, parts and parcels of land appraised. Each of such appraisers shall receive three dollars [(\$3.00)] a day for his services, but in no case shall more than five days be charged for making such valuation and appraisement.

**History:** Laws 1907, ch. 43, § 2; Code 1915, § 5552; C.S. 1929, § 144-140; 1941 Comp., § 8-540; 1953 Comp., § 7-5-40.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-4-40. [Preference right of possessor to purchase.]

In all cases where such unsold, undisposed of and unconveyed lots, blocks, parts or parcels of land are in the possession of any person, persons, company, companies, corporation or corporations, such person, persons, company, companies, corporation or corporations shall have the right to purchase the lands at private sale for the appraised value thereof and the probate judge must make and execute to such person, persons, company, companies, corporation or corporations, a proper deed therefor upon the payment to him of the purchase price.

**History:** Laws 1907, ch. 43, § 3; Code 1915, § 5553; C.S. 1929, § 144-141; 1941 Comp., § 8-541; 1953 Comp., § 7-5-41.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-4-41. [Commissioner; sale; notice by publication; deeds; fees.]

The judge of said district court in all cases other than those mentioned in the preceding section [19-4-40 NMSA 1978] shall appoint a commissioner who shall be a resident of the county in which such townsite is situate to make sale of the lots, blocks, parts or parcels of such townsite not covered by the provisions of the preceding section, either at public or private sale. In case of public sale such commissioner shall give notice thereof by publication for four consecutive weeks in a newspaper published at the county seat of the county where such townsite is situate, and by posting three notices at public places within the limits of such townsite. In no case shall any of the lots, blocks, parts or parcels of land be sold for less than their appraised value. Whenever the lands for sale in the hands of the commissioner can be disposed of for more than or at their appraised value the same shall be sold by him within ninety days from the day of his appointment. Upon the payment to such commissioner of the purchase price of any lot or lots, block or blocks, parts or parcels of land such commissioner shall give a receipt to the purchaser or purchasers for the purchase price, containing a description of the lands sold to such purchaser or purchasers; and upon the presentation of such receipt to the probate judge of the county where the land so sold is situate and in whom the title thereto is vested, such probate judge shall forthwith make, deliver and execute a sufficient deed to the purchaser or purchasers for the lands described in such receipt. Such commissioner shall receive for his fees and in full payment for his services five per centum of the purchase price on all lands sold by him. The probate judge shall receive for executing a deed under the provisions of this chapter the sum of two and fifty one-hundredths dollars (\$2.50). The receipt of the commissioner shall be filed in the office of the county clerk and recorded, for which filing and record the county clerk shall charge the sum of one dollar (\$1.00). The judge of the probate court shall receive five per centum on all moneys received by him under the provisions of Section 19-4-40 NMSA 1978. Such commissioner shall give a bond for the faithful performance of his duties in such sum as the district court may designate.



**History:** Laws 1907, ch. 43, § 4; Code 1915, § 5554; C.S. 1929, § 144-142; 1941 Comp., § 8-542; 1953 Comp., § 7-5-42.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The words "this chapter" were inserted by the 1915 Code compilers, and referred to Chapter 108 of that code, which is identical to this article.

**Cross references.** — For publication of legal notice, see 14-11-1 to 14-11-13 NMSA 1978.

## 19-4-42. [Disposition of proceeds.]

All expenses of sale shall first be deducted from the proceeds and the surplus, if any, shall be paid over by the said probate judge and the commissioner to the county treasurer for the benefit and to the use of the school district where such townsite is situated.

**History:** Laws 1907, ch. 43, § 5; Code 1915, § 5555; C.S. 1929, § 144-143; 1941 Comp., § 8-543; 1953 Comp., § 7-5-43.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

# ARTICLE 5

## Classification, Care and Protection of State Lands

Sec.

19-5-1. Data on nature, character, quality and value of public lands; classification; duties of land commissioner.

19-5-2. Maps, plats and tract books for recording data.

19-5-3. Fire protection; expenses.

19-5-4. State engineer to investigate water supply.

Sec.

19-5-5. Wells to be equity of state.

19-5-6. Purchaser of land to pay value of well.

19-5-7. Irrigation systems; contracts for construction.

19-5-8. Proposal to construct irrigation system.

19-5-9. Water developed by lessee; credit.

19-5-10. Water appropriation application.

## 19-5-1. [Data on nature, character, quality and value of public lands; classification; duties of land commissioner.]

The commissioner of public lands is hereby authorized to expend, out of the state lands maintenance fund not to exceed \$10,000 per annum, for the purpose of obtaining full and complete data as to the nature, character, quality and value of the lands of the state of New Mexico, and their adaptability for grazing, stock farming and agriculture. And the commissioner of public lands is further authorized to classify the lands of the state as mineral bearing, or otherwise, and to ascertain the possibilities of the state's mineral land for development in the production of coal, petroleum or other minerals therein contained. The commissioner of public lands is further authorized to ascertain what lands of the state contain merchantable timber and procure data with respect to the state's timberlands which will be available for the information of intending or prospective purchasers.

**History:** Laws 1919, ch. 78, § 2; C.S. 1929, § 111-202; 1941 Comp., § 8-601; 1953 Comp., § 7-6-1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — Laws 1919, ch. 78, § 1, set out the need for detailed information on the nearly 10,000,000 acres of land owned by the state in order to secure the just and proper administration thereof.

**Cross references.** — For other statutory powers and duties of commissioner, see 19-1-1, 19-1-2 NMSA 1978, and throughout this chapter.

For establishment of state lands maintenance fund, see 19-1-11 NMSA 1978.

For constitutional duties of commissioner of public lands, see N.M. Const., art. XIII, § 2.

### ANNOTATIONS

**Declaration on land classification.** — This section and Section 19-5-2 NMSA 1978 constitute a legislative declaration that no classification of public lands has been

made and that the commissioner had not then had sufficient data from which to make such classification. *State ex rel. Otto v. Field*, 1925-NMSC-019, 31 N.M. 120, 241 P.1027.

**Constitutionality.** — Although N.M. Const., art. XIII, § 2 provides that the commissioner shall select, locate, classify and have the direction, control, care and disposition of all public lands under the provisions of the acts of congress relating thereto "and such regulations as may be provided by law," the fact that this section limits the commissioner to the expenditure of \$10,000 per year, which would prevent him from properly classifying and intelligently administering the trust of public lands imposed by the Enabling Act, does not make this act unconstitutional, particularly in view of the fact that the legislature may not have intended by it to restrict expenditures of the land commissioner in all things relating to appraisal, examination and classification of lands, but only had in mind additional detailed data than that then being gathered not immediately necessary at the time in administering

the trust, and restricted the expenditures to be used for obtaining that data. 1939-40 Op. Att'y Gen. No. 39-3202.

**Expenditures.** — Both this section and Sections 19-1-10, 19-1-11 NMSA 1978 may be considered as being in effect; under this section, in the procurement of detailed information and data, \$10,000 may be expended; and under the others whatever is necessary "for the purpose of inspecting, appraising and investigating state lands" in

dealing therewith shall also be paid out of the 20 percent maintenance fund over and above the \$10,000 provided hereby. 1939-40 Op. Att'y Gen. No. 39-3202.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63A Am. Jur. 2d Public Lands §§ 12 to 38.

Constitutionality of reforestation or forest conservation legislation, 13 A.L.R.2d 1095.

73A C.J.S. Public Lands §§ 4, 5.

## 19-5-2. [Maps, plats and tract books for recording data.]

For the purpose of carrying into effect the provisions of this act [19-5-1, 19-5-2 NMSA 1978], the commissioner of public lands is authorized to install in his office such a system of maps, plats and tract books as shall be necessary and convenient for properly recording, in readily accessible form, such data as he may obtain, pertaining to the character of the state's lands.

**History:** Laws 1919, ch. 78, § 3; C.S. 1929, § 111-203; 1941 Comp., § 8-602; 1953 Comp., § 7-6-2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 19-5-3. [Fire protection; expenses.]

The commissioner is given authority to exercise the police power of the state in preventing and extinguishing fires upon any state lands, including lands under lease or contract of sale, and for such purposes he may enter upon private lands and may employ such assistants as may be necessary. He may allow such assistants while in actual discharge of their duties, per diem, in lieu of subsistence, at a rate not exceeding two and one-half dollars [(\$2.50)] and actual necessary transportation expenses, which shall be paid out of the state lands maintenance fund.

**History:** Laws 1912, ch. 82, § 66; Code 1915, § 5244; C.S. 1929, § 132-178; 1941 Comp., § 8-603; 1953 Comp., § 7-6-3.

**Cross references.** — For state lands maintenance fund, see 19-1-11 NMSA 1978.

For prevention of fire on timberlands, see 68-1-1 to 68-1-5 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 19-5-4. State engineer to investigate water supply.

The state engineer is authorized to investigate the water supply available for state lands, by drilling or digging wells or otherwise as he may deem best, in order to determine the location of permanent water reservoirs for irrigation purposes, and to employ the necessary assistance or to let contracts therefor. The sums heretofore appropriated for such purposes out of the water reservoirs for irrigation purposes income fund shall be paid out on warrants of the secretary of finance and administration, supported by vouchers signed by the state engineer.

**History:** Laws 1913, ch. 85, § 1; Code 1915, § 5262; C.S. 1929, § 132-203; 1941 Comp., § 8-604; 1953 Comp., § 7-6-4; Laws 1977, ch. 247, § 88.

**Compiler's notes.** — Laws 1977, ch. 254, § 92, compiled as 72-2-1 NMSA 1978 made the director of the water resources division of the natural resources department the state engineer.

**Sale of well.** — On sale or disposition of well drilled by state engineer on state lands, the purchaser should refund and pay its value to state treasurer to be credited to water reservoir for irrigation purposes income fund. 1931-32 Op. Att'y Gen. No. 31-335.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 78 Am. Jur. 2d Waters § 179.

Discrimination between property within and that outside municipality or other governmental district as to public service or utility rates, 4 A.L.R.2d 595.

Water well drilling contracts, 90 A.L.R.2d 1346.

### ANNOTATIONS

**Nature of funds.** — Funds provided for by this section to Section 19-5-8 NMSA 1978 are not a mortgage or other encumbrance within Section 10 of the Enabling Act. 1931-32 Op. Att'y Gen. No. 31-335.



**19-5-5. [Wells to be equity of state.]**

All such wells, so sunk or dug by the state engineer for said purpose, shall be declared an equity of the state besides the land on which such well is situated.

**History:** Laws 1913, ch. 85, § 2; Code 1915, § 5263; C.S. 1929, § 132-204; 1941 Comp., § 8-605; 1953 Comp., § 7-6-5.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — Laws 1977, ch. 254, § 92, compiled as 72-2-1.NMSA 1978 made the director of the water resources division of the natural resources department the state engineer.

**19-5-6. [Purchaser of land to pay value of well.]**

When the land, on which any such well is located or situated, is sold or disposed of to any person, corporation, partnership or society of persons, he or they shall refund and pay to the state treasurer for the state, to be credited to the water reservoirs for irrigation purposes income fund, the value of such well, said value to be based on the amount of money expended in the construction thereof by the state engineer as provided in the two preceding sections [19-5-4, 19-5-5 NMSA 1978]. This shall apply to wells on each particular forty acres of land, and shall be paid to the state in addition to the price of the land sold.

**History:** Laws 1913, ch. 85, § 3; Code 1915, § 5264; C.S. 1929, § 132-205; 1941 Comp., § 8-606; 1953 Comp., § 7-6-6.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**ANNOTATIONS**

**Payment for well.** — Upon sale or disposition of land, purchaser should refund and pay to the state treasurer the value of the well upon such property, as provided by this section. 1931-32, Op. Att'y Gen. No. 31-335.

**19-5-7. [Irrigation systems; contracts for construction.]**

The commissioner may contract with persons, associations of persons or corporations to construct irrigation systems for the purpose of irrigating and reclaiming state lands, and for the sale of such lands or any portion thereof, upon such terms and conditions as he may deem for the best interests of the state, not inconsistent with the provisions of law.

**History:** Laws 1912, ch. 82, § 44; Code 1915, § 5222; C.S. 1929, § 132-145; 1941 Comp., § 8-607; 1953 Comp., § 7-6-7.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**19-5-8. [Proposal to construct irrigation system.]**

Any person, association of persons or corporation desiring to construct any such irrigation system, shall file with the commissioner a proposal in all respects in accordance with law governing irrigation projects and regulations by the commissioner not inconsistent therewith.

**History:** Laws 1912, ch. 82, § 45; Code 1915, § 5223; C.S. 1929, § 132-146; 1941 Comp., § 8-608; 1953 Comp., § 7-6-8.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**19-5-9. [Water developed by lessee; credit.]**

The commissioner may contract with lessees of state lands to develop water thereon, and in consideration of any such improvement the lessee shall be credited with not to exceed one-third of the rental value of the land leased during the term of the lease.

**History:** Laws 1912, ch. 82, § 46; Code 1915, § 5224; C.S. 1929, § 132-147; 1941 Comp., § 8-609; 1953 Comp., § 7-6-9.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 19-5-10. [Water appropriation application.]

Before any contract as provided in Sections 19-5-7 to 19-5-9 NMSA 1978, shall issue, the applicant shall file with the commissioner a certificate of the state engineer showing a compliance with the laws, and regulations for the appropriation of water, and that applicant has the right to appropriate water for such purposes: provided, that no such contract shall operate to prevent the cancellation, according to law, of any permit to appropriate waters of the state.

**History:** Laws 1912, ch. 82, § 47; Code 1915, § 5225; C.S. 1929, § 132-148; 1941 Comp., § 8-610; 1953 Comp., § 7-6-10.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — Laws 1977, ch. 254, § 92, compiled as 72-2-1 NMSA 1978 made the director of the water resources division of the natural resources department the state engineer.

## ARTICLE 6

### Trespass and Violations Relating to State and United States Lands

Sec.

- 19-6-1. Fires on state lands; lighting or leaving; penalty.
- 19-6-2. Duty to extinguish fires; penalty for failure.
- 19-6-3. Trespass or waste; penalty.
- 19-6-4. Depredations; penalty.
- 19-6-5. Lessee to protect land against waste or trespass.
- 19-6-6. Failure of lessee or purchaser to provide gates and runways at intersection of public highway; failure to close gate; penalty.

Sec.

- 19-6-7. Destruction or damage to fence or gate on state lands; penalty.
- 19-6-8. Opening and failing to close gates on forest reserves and adjoining lands.
- 19-6-9. Liability for resultant damage or trespass.
- 19-6-10. Penalty for failing to close gates.

## 19-6-1. [Fires on state lands; lighting or leaving; penalty.]

Any person who shall willfully and maliciously set on fire, or cause to be set on fire, any timber, underbrush or grass upon state lands, or shall leave or suffer fire to burn unattended near any timber or other inflammable material, shall be deemed guilty of a felony, and upon conviction thereof shall be imprisoned for not more than two years, or fined in a sum not more than one thousand dollars [(\$1,000)], or both.

**History:** Laws 1912, ch. 82, § 67; Code 1915, § 5245; C.S. 1929, § 132-179; 1941 Comp., § 8-701; 1953 Comp., § 7-7-1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For fire offenses generally, including arson, see 30-17-1 to 30-17-6 NMSA 1978.

#### ANNOTATIONS

**Law reviews.** — For note, "Forest Fire Protection on Public and Private Lands in New Mexico," see 4 Nat. Resources J. 374 (1964).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 35 Am. Jur. 2d Fires §§ 5, 6; 63A Am. Jur. 2d Public Lands § 129. Liability for spread of fire intentionally set for legitimate purpose, 25 A.L.R.5th 391.

73A C.J.S. Public Lands §§ 7 to 12.

## 19-6-2. [Duty to extinguish fires; penalty for failure.]

Any person who shall build a fire in or near any forest, timber or other inflammable material upon state lands shall, before leaving said fire, totally extinguish the same. Any person failing to do so shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not more than one thousand dollars [(\$1,000)], or be imprisoned for a term of not more than one year, or both.

**History:** Laws 1912, ch. 82, § 68; Code 1915, § 5246; C.S. 1929, § 132-180; 1941 Comp., § 8-702; 1953 Comp., § 7-7-2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.



**Cross references.** — For offense of improper handling of fire, *see* 30-17-1 NMSA 1978.

For negligent arson, *see* 30-17-5 NMSA 1978.

#### ANNOTATIONS

**Law reviews.** — For note, "Forest Fire Protection on Public and Private Lands in New Mexico," *see* 4 Nat. Resources J. 374 (1964).

### 19-6-3. [Trespass or waste; penalty.]

Any person, association of persons or corporation, in any manner entering upon, occupying or using for any purpose whatsoever any land belonging to the state, without having leased or purchased the same, or obtained a legal right to the use or occupation of the same, or any lessee of lands who shall not vacate same within thirty days after expiration or cancellation of his lease, or any person, association of persons or corporation constructing a ditch, reservoir, railroad, tramway, public or private road, telegraph, telephone or power line upon state lands, without legal authority, or any person, association of persons or corporation, whether lessee or not, committing waste upon any state lands or any lessee who shall use the lands leased for any purpose other than that specified in the lease, or purposes incident thereto, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than five hundred dollars [(\$500)], and in default of payment thereof by imprisonment not to exceed six months. Each day's violation of any of the provisions of this section shall constitute a separate offense.

**History:** Laws 1912, ch. 82, § 48; Code 1915, § 5226; C.S. 1929, § 132-149; 1941 Comp., § 8-703; 1953 Comp., § 7-7-3.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For offense of criminal trespass, *see* 30-14-1 NMSA 1978.

For offense of wrongful use of public property, *see* 30-14-4 NMSA 1978.

For exemptions of state and federal government from property posting requirements, *see* 30-14-6 NMSA 1978.

For imprisonment for failure to pay fine, *see* 33-3-11 NMSA 1978.

For use of injunction to prevent trespass on community land grants, *see* 49-1-16 NMSA 1978.

#### ANNOTATIONS

**Remedies.** — This section furnishes no remedy to a lessee and is not exclusive of the right to injunction for intentional trespasses upon leased lands. *Makemson v. Dillon*, 1918-NMSC-040, 24 N.M. 302, 171 P. 673.

**Grazing on state lands.** — To constitute an offense under this section, it is not necessary that the stock be driven upon the state lands, if they are permitted to graze thereon. 1921-22 Op. Att'y Gen. No. 22-3498.

**No hunting charge by lessee.** — The lessee of state lands for grazing purposes may post it against hunting, but cannot charge for hunting privilege. 1933-34 Op. Att'y Gen. No. 34-818.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63A Am. Jur. 2d Public Lands § 128.

### 19-6-4. [Depredations; penalty.]

Any person who shall cut down, remove, destroy or injure, or who shall take, remove or carry away, any timber, trees or firewood standing, growing or lying upon any state lands, or who shall extract or remove, or attempt to extract or remove, from any state lands, any stone, minerals, oil, gas, salt or other natural products or deposit, or any lessee who shall permit the same to be done, without authority from the commissioner, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in the preceding section [19-6-3 NMSA 1978], and in addition thereto shall forfeit and pay to the state an amount double the value of material so cut, removed, destroyed, injured or extracted.

**History:** Laws 1912, ch. 82, § 49; Code 1915, § 5227; C.S. 1929, § 132-150; 1941 Comp., § 8-704; 1953 Comp., § 7-7-4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For offense of wrongful use of public property, *see* 30-14-4 NMSA 1978.

For criminal damage to property generally, *see* 30-15-1 to 30-15-4 NMSA 1978.

### 19-6-5. [Lessee to protect land against waste or trespass.]

Every lessee of state lands shall protect the land leased by him from waste or trespass by unauthorized persons, and failure so to do shall subject his lease to forfeiture and cancellation in the

manner hereinbefore prescribed in this chapter, and the attorney general may bring suit for damages caused by any such waste or trespass.

**History:** Laws 1912, ch. 82, § 50; Code 1915, § 5228; C.S. 1929, § 132-151; 1941 Comp., § 8-705; 1953 Comp., § 7-7-5.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The words "in this chapter" were inserted by the 1915 Code compilers. The words "this chapter" evidently refers to chapter 102 of the 1915 Code, §§ 5178 to 5290, compiled herein as 19-1-1 to 19-1-6, 19-1-9 to 19-1-16, 19-1-21, 19-2-1, 19-5-3 to 19-5-10, 19-6-1 to 19-6-7, 19-7-1, 19-7-7, 19-7-8, 19-7-11, 19-7-13, 19-7-19 to 19-7-22, 19-7-25, 19-7-27 to 19-7-30, 19-7-34, 19-7-36, 19-7-50, 19-7-51, 19-7-52, 19-7-53, 19-7-57, 19-7-58, 19-7-64 to 19-7-67, 19-8-1 to 19-8-3, 19-8-10, 19-8-12, 19-8-13, 19-9-1 to 19-9-8 and 19-11-10 NMSA 1978.

**Cross references.** — For procedure for forfeiture and cancellation of lease of state lands for violation of provisions thereof, see 19-7-50 NMSA 1978.

#### ANNOTATIONS

**Law obligates lessee of state land to protect it from trespass and waste by unauthorized persons.** *Burguete v. Del Curto*, 1945-NMSC-025, 49 N.M. 292, 163 P.2d 257.

**Land commissioner's consent necessary for lessee to sublet state lands or permit others to use same.** *Burguete v. Del Curto*, 1945-NMSC-025, 49 N.M. 292, 163 P.2d 257.

**Standing to sue.** — A plaintiff who had become a joint owner of a state land lease without commissioner's knowledge or consent could not litigate the question of whether the defendant as actual lessee held lease under trust relationship entitling plaintiff to an equal undivided interest therein. *Burguete v. Del Curto*, 1945-NMSC-025, 49 N.M. 292, 163 P.2d 257.

**Parties in trespass complaint.** — Cross-complaint of lessee of state land for trespass did not require the presence of the land commissioner as an indispensable party where no issues relating to public policy or the enforcement of a state lease were involved. *Sproles v. McDonald*, 1962-NMSC-071, 70 N.M. 168, 372 P.2d 122.

**Law reviews.** — For note, "Forest Fire Protection on Public and Private Lands in New Mexico," see 4 Nat. Resources J. 374 (1964).

### 19-6-6. [Failure of lessee or purchaser to provide gates and runways at intersection of public highway; failure to close gate; penalty.]

Every lessee [lessee] of state lands, and every purchaser of state lands holding same under contract to purchase, who shall fence the same, shall erect and maintain gates and runways at all intersections at public highways, and failure so to do shall constitute a misdemeanor, upon conviction of which the lessee or holder of contract to purchase so convicted shall be punished by a fine of not more than twenty-five dollars [(\$25.00)] and in default of payment thereof, shall be imprisoned for not more than thirty days. Any person passing through such gate and failing to close the same shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided by this section.

**History:** Laws 1912, ch. 82, § 51; Code 1915, § 5229; Laws 1915, ch. 73, § 5; C.S. 1929, § 132-152; 1941 Comp., § 8-706; 1953 Comp., § 7-7-6.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For fence across public road being unlawful unless gate and cattle-guard passageway are maintained and permit secured, see 67-7-10 NMSA 1978.

#### ANNOTATIONS

**Lessees of state lands may fence same and maintain gates at intersections of public highways.** While a

gate is an obstruction, yet it may be legalized by legislative enactment. 1914 Op. Att'y Gen. Nos. 14-1268, 14-1353, 14-1408.

**Keeping open section line.** — Fact that a line across state lands is a section line does not impose any obligation on anyone to keep it open, unless there has been a road established by the county commissioners, or by general usage before any right was acquired to the land on each side of the section line; but, even in case of such establishment of road, gates could be maintained. 1915-16 Op. Att'y Gen. No. 15-1455.

### 19-6-7. [Destruction or damage to fence or gate on state lands; penalty.]

Any person who shall willfully and maliciously cut, destroy or injure any gate or fence enclosing, in whole or in part, any state lands, including lands under lease or contract of sale, upon conviction thereof shall be punished by a fine of not more than five hundred dollars [(\$500)] or by imprisonment for not more than five years or both.

**History:** Laws 1912, ch. 82, § 52; Code 1915, § 5230; C.S. 1929, § 132-153; 1941 Comp., § 8-707; 1953 Comp., § 7-7-7.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For offense of criminal damage to property, see 30-15-1 NMSA 1978.



## ANNOTATIONS

**Applicant for purchase.** — The cutting of a fence, and the removing of a gate erected on public land by person

making application to state to purchase the land, was not a violation of statute. 1915-16 Op. Att'y Gen. No. 15-1526.

### 19-6-8. [Opening and failing to close gates on forest reserves and adjoining lands.]

It shall be unlawful for any person or persons to open and neglect to close, before leaving the immediate vicinity thereof, the gate or gates of any fence on, or enclosing any, lands of the different national forest reserves of this state, or to open and fail to close the gate or gates of any fence on the land of any person, firm or corporation, where the same is situate within the boundaries of, or adjoining any national forest reserve; provided, such gates are so constructed as to be easily opened and shut.

**History:** Laws 1919, ch. 158, § 1; C.S. 1929, § 50-119; 1941 Comp., § 8-708; 1953 Comp., § 7-7-8.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-6-9. [Liability for resultant damage or trespass.]

Any person or persons failing to comply with the provisions of the preceding section [19-6-8 NMSA 1978] shall be subject and responsible for any damage or trespass caused from such neglect.

**History:** Laws 1919, ch. 158, § 2; C.S. 1929, § 50-120; 1941 Comp., § 8-709; 1953 Comp., § 7-7-9.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-6-10. [Penalty for failing to close gates.]

Any person failing to comply with the provisions of this act [19-6-8 to 19-6-10 NMSA 1978] shall also be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than ten [(\$10.00)] nor more than twenty-five dollars [(\$25.00)].

**History:** Laws 1919, ch. 158, § 3; C.S. 1929, § 50-121; 1941 Comp., § 8-710; 1953 Comp., § 7-7-10.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## ARTICLE 7

### Sale and Lease of Lands

Sec.

- 19-7-1. Application for lease or purchase; appraisalment.
- 19-7-2. Formal requirements for applications; state officers and employees prohibited from acting as, or procuring, agents or attorneys.
- 19-7-3. Numbering and dating applications upon receipt.
- 19-7-4. Deposit of funds; rejection of application without deposit.
- 19-7-5. Simultaneous applications.
- 19-7-6. Offenses by officers or employees of land office; penalty.
- 19-7-7. False swearing in application or appraisalment.
- 19-7-8. Cancellation of lease or contract obtained by fraud or mistake; notice to show cause; appeal.
- 19-7-9. Sale and lease of state lands; conveyance for term of years; terms and conditions.

Sec.

- 19-7-9.1. State land office; public notice; public meetings.
- 19-7-10. Restrictions on deferred payments.
- 19-7-11. Repealed.

Sec.

- 19-7-12. Outstanding contracts may be canceled and new contracts granted; conditions.
- 19-7-13. Repealed.
- 19-7-14. Owner of improvements compensated by purchaser or by subsequent lessee.
- 19-7-15. Definition of improvements.
- 19-7-16. Cost of appraisal.
- 19-7-17. Appeal.
- 19-7-18. Bond required.
- 19-7-19. Failure to comply with contract; forfeiture at option of commissioner.
- 19-7-20. Assignment of contracts not in default; certified copy to be filed with commissioner.
- 19-7-21. Townsite lands; subdivision.
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- 19-7-23. School section used for cemeteries; not to be sold.
- 19-7-24. Management of cemeteries on school sections; sale of lots; cemetery association.

- Sec. 19-7-25. Reservation from sale of saline, mineral and oil and gas lands; leasing authorized.
- 19-7-26. State irrigable lands; sale; conveyance to United States.
- 19-7-27. Lands subject to lease.
- 19-7-28. Grazing and agricultural leases; reservation of mineral deposits, products and easements.
- 19-7-29. Grazing leases; rental rates; annual rental; appraisal of land.
- 19-7-30. Grazing or agricultural leases; maximum term; method of payment.
- 19-7-31. Power of commissioner to reject grazing lease application by a previous lessee when land is located within Taylor grazing allotment of another.
- 19-7-32. Open and unleased land within Taylor grazing allotment of another.
- 19-7-33. Right of relinquishment not restricted.
- 19-7-34. Rent lien; attachment; forfeiture.
- 19-7-35. Cancellation or forfeiture of agricultural or grazing leases restricted; sale of leased land.
- 19-7-36. Assignment or relinquishment of lease; consent of commissioner required.
- 19-7-37. Assignment of grazing or agricultural lease or purchase contract as collateral; approval of commissioner; effect.
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- 19-7-41. Foreclosure of assignments; rights of purchaser.
- 19-7-42. Release of assignments; recording.
- 19-7-43. Conditions for approval; right of cancellation reserved; preference of state liens.
- 19-7-44. Rules and regulations; filing and recording fee.
- 19-7-45. Construction of act; prior assignments and mortgages.
- 19-7-46. Satisfaction of debt for which assignment of grazing or agricultural lease or purchase contracts given as security; filing of release.

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- 19-7-48. Existing collateral assignments ratified; application of act thereto.
- 19-7-49. New grazing lease; time for filing application; prior lessee preferred.
- 19-7-50. Violation of lease or instrument covering state lands; notice; forfeiture for noncompliance with demand.
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- 19-7-53. Preferences in leasing; occupants of land acquired by state; persons or firms domiciled or paying taxes in state.
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- 19-7-57. Commissioner; powers; easements; rights of way.
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- 19-7-59. Repayment of money erroneously paid on lease or purchase contract after distribution.
- 19-7-60. Claim for refund; contents; time limit; notice of erroneous payment; limitation of action.
- 19-7-61. Endorsement of claims; filing in district court of Santa Fe county; notice to claimant; procedure; judgment; appeal; costs.
- 19-7-62. Annual appropriation for refunds; payment from state lands maintenance fund.
- 19-7-63. Erroneous distribution to permanent fund.
- 19-7-64. Contesting rights to state lands; rules and regulations.
- 19-7-65. Commissioner's power relative to oaths, witness and documents.
- 19-7-66. Perjury in contest proceedings; penalty.
- 19-7-67. Contest; commissioner; appeal to district court.
- 19-7-68, 19-7-69. Repealed.

### 19-7-1. [Application for lease or purchase; appraisement.]

Applications to lease or purchase state lands shall be made under oath, and applicants to lease shall, at their own expense, procure appraisements thereof to be made under oath by some disinterested and creditable person or persons familiar therewith. All statements contained in such appraisements, except as to the true value of the land appraised, must be based upon personal knowledge and not upon information and belief. No such appraisement shall be conclusive upon the commissioner.

**History:** Laws 1912, ch. 82, § 17; Code 1915, § 5194; C.S. 1929, § 132-117; 1941 Comp., § 8-601; 1953 Comp., § 7-8-1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For sale, mortgage or alienation of common lands within community land grants, see 49-1-11 NMSA 1978.

### ANNOTATIONS

**Law reviews.** — For note, "Administration of Grazing Lands in New Mexico: A Breach of Trust," see 15 Nat. Resources J. 581 (1975).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63A Am. Jur. 2d Public Lands §§ 113 to 121.

73A C.J.S. Public Lands §§ 182, 197.

### 19-7-2. Formal requirements for applications; state officers and employees prohibited from acting as, or procuring, agents or attorneys.

All applications for the purchase of state lands and all applications for leases, whether for grazing, oil and gas, mining or other purposes, shall be made with ink or with typewriter using a record



ribbon, upon forms to be prescribed by the commissioner of public lands. All applications shall be signed by original applicant or his agent or attorneys authorized by written power of attorney, shall be acknowledged before an officer authorized to administer oaths and shall be accompanied by application fees for oil and gas, mining, business leases, grazing leases and other purposes, as appropriate, in amounts set by the commissioner of public lands by regulation. The fees shall be deposited in the state lands maintenance fund. No state officer or employee of the state land office shall act as agent or attorney or procure another to act as agent or attorney for any application, but this act [19-1-23, 19-7-2 to 19-7-6 NMSA 1978] shall not be construed so as to prevent the commissioner of public lands or any employee of the state land office from assisting applicants to make out their applications without pay.

**History:** Laws 1921, ch. 174, § 1; C.S. 1929, § 111-301; 1941 Comp., § 8-802; Laws 1947, ch. 95, § 1; 1953 Comp., § 7-8-2; Laws 1971, ch. 95, § 1.

**Cross references.** — For establishment of state lands maintenance fund, see 19-1-11 NMSA 1978.

#### ANNOTATIONS

**Leaseholds compensable in condemnation proceedings.** — In a condemnation suit brought by the United States against state grazing lease, for a five-year term as provided in the New Mexico Enabling Act, and issued under the statutory authority of this section with a preference right for renewal under Section 19-7-49 NMSA 1978, which

for all practical purposes was an absolute right as against other applicants, the trial court stated that compensation is to be based on a valuation formula which includes both the state-owned lands leased by the defendants as well as the fee lands of the defendants as one ownership unit, that defendants who have grazing leases of state-owned tracts have compensable interests therein and are to receive, upon distribution of the proceedings, the condemnation award for the state lands they have leased and finally, that the leases of the state-owned tracts executed or renewed by the state after July 1, 1970, created in the lessee a property compensable in these proceedings. *United States v. 41,098.98 Acres of Land*, 548 F.2d 911 (10th Cir. 1977).

### 19-7-3. [Numbering and dating applications upon receipt.]

All applications shall be stamped immediately upon their receipt by the land office with ink or with some device indicating correctly the date, hour and minute of such receipt, and such applications shall have stamped thereon a serial number in the order of their receipt.

**History:** Laws 1921, ch. 174, § 2; C.S. 1929, § 111-302; 1941 Comp., § 8-803; 1953 Comp., § 7-8-3.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-7-4. [Deposit of funds; rejection of application without deposit.]

All applications mentioned in Section One (1) [19-7-2 NMSA 1978] hereof shall be accompanied by the proper fees and moneys as required by law or by the rules and regulations of the land commissioner and the amount of money deposited shall be entered in ink upon said applications; provided, however, that checks not certified shall be deposited in or sent to a bank for collection immediately upon their receipt. All applications not accompanied by the proper deposit shall be immediately stamped "rejected, no deposit," and shall not be deemed proper applications. Minor defects in the wording of said applications shall not be deemed fatal to their validity, but the same may be corrected; provided, however, that the descriptions of land therein set forth shall be substantially correct so that said lands can be identified. All applications rejected for any reason shall have written thereon in ink or with typewriter using a record ribbon the reason for such rejection and the date thereof, and shall be preserved in the files of the office open to public inspection.

**History:** Laws 1921, ch. 174, § 3; C.S. 1929, § 111-303; 1941 Comp., § 8-804; 1953 Comp., § 7-8-4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-7-5. [Simultaneous applications.]

All published or posted rules and regulations of the land office shall prescribe and define what shall constitute simultaneous applications and shall also set forth an equitable method of determining the rights of applicants in such contingency.

**History:** Laws 1921, ch. 174, § 5; C.S. 1929, § 111-305; 1941 Comp., § 8-805; 1953 Comp., § 7-8-5.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-7-6. [Offenses by officers or employees of land office; penalty.]

It shall be unlawful for any officers or employe [employee] of the state land office to act as agent or attorney for any applicant for the purchase or leasing of public lands of this state or to wilfully [willfully] withhold or conceal any such application, in order to give any applicant priority or advantage over another, or to receive any money or thing of value as a gift or compensation for aiding, or conniving or conspiring to aid, in procuring priority of application or directly or indirectly to aid or conspire to aid one applicant as against another by any fraudulent means whatever, or to receive any money or thing of value as a gift, compensation or otherwise from any person applying for the lease or purchase of public lands, and upon conviction thereof the offender shall be punished by a fine of not less than one hundred (\$100) dollars nor more than one thousand (\$1,000) dollars or by imprisonment in the state penitentiary for a term of not less than six months nor more than three years or by both such fine and imprisonment in the discretion of the court.

**History:** Laws 1921, ch. 174, § 6; C.S. 1929, § 111-306; 1941 Comp., § 8-806; 1953 Comp., § 7-8-6.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For prohibition against state officers and employees of state land office acting as agent or attorney for any application, or procuring another so to act, see 19-7-2 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63A Am. Jur. 2d Public Lands § 129.  
73A C.J.S. Public Lands § 180.

### 19-7-7. [False swearing in application or appraisement.]

Any person or persons applying to lease or purchase state lands, or acting as appraiser or appraisers thereof, who shall knowingly and willfully swear falsely as to any material matter contained in any application to lease or purchase any such lands, or in any appraisement thereof, shall be deemed guilty of perjury, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars [(\$500)], or by imprisonment for not more than five years, or by both such fine and imprisonment.

**History:** Laws 1912, ch. 82, § 18; Code 1915, § 5195; C.S. 1929, § 132-118; 1941 Comp., § 8-807; 1953 Comp., § 7-8-7.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For false swearing to affidavit accompanying contract of sale or deed for purchase of timberlands, see 19-11-3 NMSA 1978.

For perjury in general, see 30-25-1, 30-25-2 NMSA 1978.

#### ANNOTATIONS

**Law reviews.** — For note, "Administration of Grazing Lands in New Mexico: A Breach of Trust," see 15 Nat. Resources J. 581 (1975).

### 19-7-8. [Cancellation of lease or contract obtained by fraud or mistake; notice to show cause; appeal.]

The commissioner shall have power to cancel any lease, contract or other instrument executed by him which shall have been obtained by fraud or executed through mistake or without authority of law. In such case he shall serve upon the party or parties in interest notice, as prescribed by Section 19-7-50 NMSA 1978 to show cause before him, upon a date to be fixed in such notice, why such instrument shall not be canceled in accordance with the rules and regulations of the state land office.

From the decision rendered by the commissioner upon such hearing an appeal shall lie as provided by this chapter in cases of contest.

**History:** Laws 1912, ch. 82, § 75; Code 1915, § 5253; C.S. 1929, § 132-187; 1941 Comp., § 8-808; 1953 Comp., § 7-8-8.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The words "this chapter" apparently refer to ch. 102 of the 1915 Code, §§ 5178 to 5290,



the presently effective sections of which are compiled herein as 19-1-1, 19-1-2, 19-1-4 to 19-1-6, 19-1-9 to 19-1-16, 19-1-21, 19-2-1, 19-5-3 to 19-5-10, 19-6-1 to 19-6-7, 19-7-1, 19-7-7, 19-7-8, 19-7-11, 19-7-13, 19-7-19 to 19-7-22, 19-7-25, 19-7-27 to 19-7-30, 19-7-34, 19-7-36, 19-7-50 to 19-7-53, 19-7-57, 19-7-58, 19-7-64 to 19-7-67, 19-8-1 to 19-8-3, 19-8-10, 19-8-12, 19-8-13, 19-9-1 to 19-9-8, 19-11-10 NMSA 1978.

**Cross references.** — For limitation of actions brought on ground of fraud, see 37-1-4 NMSA 1978.

For accrual of cause of action based on fraud or mistake, see 37-1-7 NMSA 1978.

### ANNOTATIONS

**Contract not cancelable.** — Under the constitution and statutes, the state land commissioner has the power to alienate certain public lands which are held in trust for public schools within the limits and under the terms so prescribed. However, after having sold public lands on which a railroad as a trespasser had built a diversion dam and water pipe, such commissioner could not cancel the contract of sale of those lands covered by such improvements, despite the fact that the contract resulted from

mutual mistake by him and the purchasers, who were not aware of such improvements, that the improvements were of no value to purchaser, who was repaid no part of the consideration, and the contract was not divisible. *Application of Dasburg*, 1941-NMSC-024, 45 N.M. 184, 113 P.2d 569.

**Standing to sue.** — In a contest proceeding involving the right to lease certain state lands, lessee's heirs had no right to put in issue defendant's fraud in acquiring lease, where land was leased to defendant on refusal of administrator of lessee to renew lease. *Hart v. Walker*, 1935-NMSC-089, 40 N.M. 1, 52 P.2d 123.

**Standing in contest proceeding.** — A railroad, which was not a party to a case of the state before its state land commissioner, which was initiated by an order to show cause why a contract to purchase realty on which such railroad as a trespasser had made improvements should not be canceled, was not in position to urge a judgment in the supreme court directing cancellation of the contract under this section or Section 19-7-67 NMSA 1978. *Application of Dasburg*, 1941-NMSC-024, 45 N.M. 184, 113 P.2d 569, explained in *Ellison v. Ellison*, 1944-NMSC-012, 48 N.M. 80, 146 P.2d 173.

## 19-7-9. Sale and lease of state lands; conveyance for term of years; terms and conditions.

Any state lands offered for sale by the commissioner may be sold at the commissioner's discretion for cash or upon payment of not less than one-tenth of the purchase price in cash and payment of the balance in amortized installments for any period up to thirty years with interest on the principal balance at a rate to be set by the commissioner in the notice of auction pertaining to the particular sale in advance. Additional payments on the principal may be made at any time, but such payments shall not be effective for credit until the date the next installment is due. The purchase contract shall be upon a form prescribed by the commissioner prior to publication of the notice of auction and shall contain the terms and conditions the commissioner may deem to be in the best interest of the state and consistent with law. Should a purchaser die before completing the contract, the due date of the next installment payment shall, upon written application, be deferred by the commissioner for one year. In addition, the commissioner is authorized to convey for any period of time state lands under the commissioner's jurisdiction having value for commercial development or public use purposes, provided that:

A. all of the requirements for the disposition of lands set forth in the constitution of New Mexico and the New Mexico Enabling Act are complied with, including but not limited to those pertaining to appraisal at true value, advertising and public auction;

B. the term and nature of the estate to be conveyed is set forth in the public notice of auction pertaining to the particular conveyance; and

C. if the conveyance is a business lease for real estate planning or development purposes, then, notwithstanding the term of the lease, it shall only be issued after notice and competitive bid.

**History:** 1953 Comp., § 7-8-9, enacted by Laws 1971, ch. 93, § 1; 1981, ch. 278, § 1; 1989, ch. 179, § 1; 2009, ch. 219, § 1.

**Repeals and reenactments.** — Laws 1971, ch. 93, § 1, repealed 7-8-9, 1953 Comp., relating to sale of state lands for cash or in deferred payments, and enacted a new 7-8-9, 1953 Comp.

**Cross references.** — For issuance of limited patent with reservation of minerals on lands sold on deferred payment plan with reservation of minerals or classified as mineral lands prior to full payment or issuance of patent, see 19-10-27 NMSA 1978.

For the New Mexico Enabling Act, see Pamphlet 3 in Volume 1 NMSA 1978.

For obligation of lessee or purchaser to destroy rodent pests, see 77-15-4 NMSA 1978.

**Temporary provisions.** — Laws 2019, ch. 171, § 1, effective April 2, 2019, provided:

A. The legislature finds that:

(1) the transfer of land and buildings of the Mesilla Valley Bosque state park by the commissioner of public lands by quitclaim deed to the state game commission in June 2018 was without required legislative approval;

(2) the land and buildings of the Mesilla Valley Bosque state park are not in excess of the reasonable needs of the state parks division of the energy, minerals and natural resources department for use as a state park; and



(3) the provisions of Sections 13-6-3 and 17-4-3 NMSA 1978 shall not apply to the transfer of property required by Subsection B of this section.

B. The state game commission shall return to the energy, minerals and natural resources department by quitclaim deed for use by the state parks division of the department as a state park all land, buildings and interests in the following thirteen and thirty-nine hundredths acres, more or less, situated in Dona Ana county, New Mexico, and described as follows:

A tract of land situated within the Mesilla Civil Colony Grant in Sections 2 & 3, T.24S., R.1E., and Section 34, T.23S., R.1E., N.M.P.M. of the U.S.R.S. Surveys being U.S.R.S. Tracts Map 12-12, 12-13, 12-14, 12-15, 12-16A, 12-16C, 12-16D, 12-16E & 12-34, and being more particularly described as follows, to wit:

Beginning at a 1/2" iron rod set on the East line of the Picacho Drain for a corner of the tract herein described; whence meander corner No. 20 on the Mesilla Civil Colony Grant bears N.46 deg. 43'29"W., 4155.14 feet;

Thence from the point of beginning and leaving said Picacho Drain, N.58 deg.30'00"E., 597.65 feet to a 1/2" iron rod set for a corner of this tract;

Thence S.31 deg. 30'00"E., 424.07 feet to a 1/2" iron rod set on the West line of a 60 foot wide road for a corner of this tract and point of curvature;

Thence along the West line of said 60 foot wide road the following courses and distances, around the arc of a curve to the left, having a radius of 1055.81 feet, through a central angle of 42 deg. 21'00" and whose long cord bears N.20 deg. 00'18"E., 762.75 feet to a 1/2" iron rod set;

Thence N.01 deg. 08'54"W., 1184.93 feet to a 1/2" iron rod set a point of curvature;

Thence around the arc of a curve to the left, having a radius of 1819.90 feet, through a central angle of 41 deg. 03'48" and whose long cord bears N.21 deg. 39'44"W., 1276.57 feet to a 1/2" iron rod set;

Thence N.42 deg. 11'36"W., 1248.73 feet to a 1/2" iron rod set for a corner of this tract;

Thence N.19 deg. 05'52"W., 152.96 feet to a 1/2" iron rod set on the West line of the Rio Grande for the most Northerly corner of this tract;

Thence along the West line of the Rio Grande the following courses and distances, S.42 deg. 11'36"E., 1389.48 feet to an I.B.C. Pipe found and point of curvature;

Thence around the arc of a curve to the right, having a radius of 1879.90 feet, an arc length of 1347.26 feet, through a central angle of 41 deg. 03'43" and whose long chord bears S.21 deg. 39'42"E., 1318.61 feet to an I.B.C. Pipe found;

Thence S.01 deg.08'54"E., 1184.91 feet to an I.B.C. Pipe found and point of curvature;

Thence around the arc of a curve to the right, having a radius of 1115.81 feet, an arc length 1237.36 feet, through a central angle of 63 deg. 32'14" and whose long chord bears S.30 deg. 35'57"W., 1174.93 feet to an I.B.C. Pipe found;

Thence S.62 deg.21'12"W., 161.86 feet to a 1/2" iron rod set at the Southwest intersection of the Rio Grande and Picacho Drain for Southwest corner of this tract;

Thence along East line of the Picacho Drain the following courses and distances, N.41 deg. 30'00"W., 161.24 feet to a 1/2" iron rod found and point of curvature;

Thence around the arc of a curve to the right, having a radius of 1095.90 feet, an arc length of 202.02 feet, through a central angle of 10 deg. 33'44" and whose long chord bears N.36 deg. 46'52"W., 201.74 feet to a 1/2" iron rod set;

Thence N.31 deg. 30'00"W., 158.85 feet to the point of beginning, containing 13.392 acres of land, more or less.

C. The real property transferred pursuant to Subsection B of this section shall be used to reestablish Mesilla Valley Bosque state park as that park existed prior to the

transfer of the property by quitclaim deed of the commissioner of public lands on June 18, 2018.

The 2009 amendment, effective June 19, 2009, added Subsection C.

The 1989 amendment, effective June 16, 1989, in the first sentence substituted "commissioner may" for "commissioner of public lands shall"; inserted "not less than", and substituted "amortize installments for any period up to thirty years" for "thirty equal annual installments"; in the next-to-last sentence deleted "annual" preceding "installment"; and in the last sentence deleted "of public lands" following "commissioner" and "in excess of five years" following "time".

## ANNOTATIONS

**Rock was a reserved mineral.** — Where in 1919, the state land office classified all land owned by the state as mineral land and required the state to reserve all minerals when selling state lands; in 1930, the original purchaser, plaintiff's predecessors in title, applied to purchase state land for grazing purposes; and the purchaser and the appraiser stated that the land was non-mineral grazing land; in the sales contract, the purchaser agreed that the land was being purchased for purposes of grazing and agriculture, and that if minerals were discovered on the land, minerals would be reserved to the state; the patent for the land reserved to the state "all minerals of whatsoever kind"; and rock on the land had commercial value for use as railroad ballast and other construction aggregates, substantial evidence supported the finding that the intent of the parties to the original sale of the state land was that rock on the land constituted a mineral reserved to the state under the reservation of "all minerals of whatsoever kind". *Prather v. Lyons*, 2011-NMCA-108, 267 P.3d 78, cert. granted, 2011-NMCERT-010.

**Taxation.** — Under former 72-1-3, 1953 Comp., deferred payment purchasers' legal and equitable interests in state lands were taxable at full cash value, and the state could enforce collection of the tax against said interests. *Board of Equalization v. Heights Real Estate Co.*, 1964-NMSC-059, 74 N.M. 101, 391 P.2d 328.

**Issuance of patent prior to completion of payment.** — No specific authority is given the commissioner to issue a patent to a portion of a tract of land sold under contract when only that part covered by the patent has been paid for and the balance due under said contract has not been paid at the time the patent is issued. *Zinn v. Hampson*, 1956-NMSC-088, 61 N.M. 407, 301 P.2d 518.

**Sale of school lands.** — Under N.M. Const., art. XIII, § 2, and former C.S. 1929, § 132-162, the state land commissioner could alienate public lands held in trust for the public schools within the limits and under the terms of the Enabling Act. *Application of Dasburg*, 1941-NMSC-024, 45 N.M. 184, 113 P.2d 569.

**Exchange of state trust lands.** — The commissioner of public lands may exchange state trust lands for other public or private lands of equal or greater value provided that the exchange transaction is in substantial conformity with the requirements of the Enabling Act. 1991 Op. Att'y Gen. No. 91-15.

The commissioner may not exchange state trust lands for lands of equal value whether held in private ownership or by other state agencies, local governing bodies, trust land beneficiary institutions and federal agencies, other than the Department of the Interior. 1988 Op. Att'y Gen. No. 88-35, overruled by Op. Att'y Gen. No. 91-10.

**Partial assignment.** — Under this section a partial assignment of land under contract can be made, but any assignment, whether it be to the whole or to a portion of the land, is subject to final payment of the whole; if an assignment is made to a part, the commissioner, before issuing a patent to that portion, must await full and final



payment of all of the contract. 1955-56 Op. Att'y Gen. No. 55-6130.

**Extensions under former law.** — Under former 7-8-13, 1953 Comp., which provided for extensions of purchase contracts, the commissioner could extend present form of purchase contracts up to 30 years or the term of the original contract when doing so appeared in the interest of the state and of the purchaser. 1943-44 Op. Att'y Gen. No. 43-4282.

**Lease by purchaser.** — Purchaser of state lands under this plan is not authorized to lease the lands. 1919-20 Op. Att'y Gen. No. 19-2191.

**Terms of sale.** — The terms of sale of state lands must conform to this section, and no further sales can be made under the terms formerly in force. The holder of a contract under the old statute may surrender the same and take advantage of the new terms. 1917-18 Op. Att'y Gen. No. 17-1972.

**Law reviews.** — For annual survey of New Mexico law relating to property, see 12 N.M.L. Rev. 459 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 73A C.J.S. Public Lands § 184.

### 19-7-9.1. State land office; public notice; public meetings.

A. Prior to taking final agency action, the commissioner of public lands shall publish notice of and hold a public meeting to receive public comment regarding the following activities:

- (1) land sales;
- (2) land exchanges;
- (3) right-of-way permits for electrical transmission lines in excess of two hundred thirty kilovolts situated on state trust land; and
- (4) right-of-way permits for oil or gas pipelines in excess of twenty-four inches in diameter and at least ten contiguous miles in length situated on state trust land.

B. A notice of a proposed land sale, land exchange or right-of-way permit as set forth in Subsection A of this section shall be published on the state land office website and in a newspaper of general circulation published in Santa Fe and in a newspaper of general circulation published near the general geographic location of the proposed activity.

C. The notice required in this section shall contain:

- (1) a description of the state trust land offered for sale or exchange or on which the right of way is to be located;
- (2) a summary of the effect or potential effect of the proposed transaction or right of way on surrounding lands;
- (3) the time, place and location for the public meeting on the sale, exchange or right-of-way permit; and
- (4) the name of a person to contact at the state land office for additional information on the sale, exchange or right-of-way permit and the subject state trust land.

D. The public meeting required pursuant to Subsection A of this section shall be held in the same general geographic location as the proposed activity.

E. The requirement for a hearing is waived if public input has been solicited pursuant to another state process or federal law. The commissioner of public lands shall by rule establish the procedures for a hearing held pursuant to this section.

F. No provisions of this section shall alter, change, restrict or diminish the rights, powers and duties of the commissioner of public lands in the administration, management, care and control of state trust lands as provided for by the Enabling Act for New Mexico and applicable state statutes.

**History: Laws 2019, ch. 115, § 1.**

**Effective dates.** — Laws 2019, ch. 115 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

### 19-7-10. [Restrictions on deferred payments.]

At any time after sale and prior to the expiration of thirty years from the date of the contract, the purchaser or his successor in interest may pay all or any part of the purchase price due on any contract for purchase of state lands, but no payment shall be accepted, other than the first payment, for less than one-thirtieth of ninety-five per centum of the purchase price, nor be effective for credit on any date other than the anniversary of the date of the contract next following the date of tender.

**History: Laws 1917, ch. 52, § 2; C.S. 1929, § 132-159; 1941 Comp., § 8-810; 1953 Comp., § 7-8-10.**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### ANNOTATIONS

**Issuance of patent prior to completion of payment.** — No specific authority is given the commissioner of public lands to issue a patent to a portion of a tract of land sold under contract when only that part covered by the patent has been paid for and the balance due under said contract has not been paid at the time the patent is issued. *Zinn v. Hampson*, 1956-NMSC-088, 61 N.M. 407, 301 P.2d 518.

**Authority of commissioner.** — Land commissioner does not have authority to accept payments of principal less interest paid and funded, nor to accept for credit full amount of principal and cause interest paid in advance to be funded, nor to accept for credit only payments of delinquent interest where the purchaser tenders the principal amount due on contract. 1947-48 Op. Att'y Gen. No. 47-5034.

### 19-7-11. Repealed.

**Repeals.** — Laws 1981, ch. 49, § 1, repealed 19-7-11 NMSA 1978, relating to the authorization of payment for

the purchase of state lands with state or county bonds, effective March 30, 1981.

### 19-7-12. [Outstanding contracts may be canceled and new contracts granted; conditions.]

That contracts for the purchase of state lands now outstanding shall, upon application of the holders thereof and payment of a fee of four dollars [(\$4.00)] for each contract of one section or less, and ten cents [(\$.10)] for each additional section or fraction thereof, be canceled, and new contracts issued under the provisions of this act [19-7-10, 19-7-12 NMSA 1978], in lieu of such outstanding contracts. Provided, that the provisions of this act shall not be applicable to lands selected for the benefit of the Santa Fe and Grant county railroad bond fund, but such lands shall be sold as provided by Section 19-7-13 [repealed] NMSA 1978, and outstanding contracts for such lands shall not be subject to the provisions of this section.

**History:** Laws 1917, ch. 52, § 4; C.S. 1929, § 132-161; 1941 Comp., § 8-812; 1953 Comp., § 7-8-12.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1989, ch. 179, § 2 repealed 19-7-13 NMSA 1978, effective June 16, 1989.

### ANNOTATIONS

**Constitutionality.** — There is nothing in the constitution which prevents the state from canceling contracts of purchase of state land, where the purchaser is unable

to make his payments, and then leasing them to him on terms which he can meet. *Vesely v. Ranch Realty Co.*, 1934-NMSC-067, 38 N.M. 480, 35 P.2d 297.

**Replacement of contract with lease.** — Commissioner of public lands may agree with purchaser to cancel contracts of purchase of state lands held by purchaser, where purchaser alleges his inability to carry such contract, and at the same time issue to such purchaser a lease for the same land at a rental lower than the amount necessary to carry contracts of purchase. *Vesely v. Ranch Realty Co.*, 1934-NMSC-067, 38 N.M. 480, 35 P.2d 297.

### 19-7-13. Repealed.

**Repeals.** — Laws 1989, ch. 179, § 2 repealed 19-7-13 NMSA 1978, as enacted by Laws 1912, ch. 82, § 58,

relating to sales of lands for Santa Fe and Grant county railroad bond funds, effective June 16, 1989.

### 19-7-14. Owner of improvements compensated by purchaser or by subsequent lessee.

Whenever any state lands are sold or leased to a person other than the holder of an existing surface lease and upon which lands there are improvements belonging to such lessee or to another person, the purchaser or subsequent lessee, as the case may be, shall pay to the commissioner of public lands for the benefit of the owner of the improvements the value thereof as determined by an appraisal made by the commissioner of public lands. In lieu of such payment, a subsequent purchaser or lessee may file with the commissioner a bill of sale or waiver of payment signed by the owner of the improvements.

**History:** 1953 Comp., § 7-8-19.1, enacted by Laws 1963, ch. 237, § 1.

**Cross references.** — For restrictions on improvements on grazing or agricultural leases and effect of exceeding same, see 19-7-51, 19-7-52 NMSA 1978.

For removal by certain holders of mineral leases of all removable improvements and forfeiture of rest without compensation, see 19-8-29 NMSA 1978.

For payment for value of improvements by purchaser or subsequent oil and gas lessee to owner thereof, see 19-10-28 NMSA 1978.



For oil and gas lessee's right to remove certain improvements upon cancellation or forfeiture of lease, *see* 19-10-29 NMSA 1978.

For removal by lessee under Geothermal Resources Act of removable improvements and forfeiture of others without compensation, *see* 19-13-24 NMSA 1978.

#### ANNOTATIONS

**Ownership of improvements.** — Under 8-832, 1941 Comp., with reference to existing water rights, lessee owned only such improvements as it placed upon the lands or purchased from one authorized by law to dispose of them. *Frank A. Hubbell Co. v. Curtis*, 1936-NMSC-033, 40 N.M. 234, 58 P.2d 1163.

**Improvements by trespasser.** — In absence of some contract or agreement with the state land commissioner, a railroad company was a trespasser, where it constructed, on public lands, water pipeline improvements in form of a diversion dam, for it should have secured the right-of-way for such dam, pipeline and other facilities for the project, although no provision was made for payment

for use of such right of way. *Application of Dasburg*, 1941-NMSC-024, 45 N.M. 184, 113 P.2d 569.

**Same not compensable.** — A railroad was not entitled to compensation under C.S. 1929, § 132-162, for improvements where it constructed a diversion dam and water pipeline on public lands without any agreement with the state land commissioner. *Application of Dasburg*, 1941-NMSC-024, 45 N.M. 184, 113 P.2d 569.

**Lease contains provisions not authorized by law.** — Business Planning Lease No. BL-1775 between the commissioner of public lands and Solo Investments, LLC under which the commissioner leased state trust land to Solo to complete a land development project, contains provisions that are not authorized by New Mexico law, including provisions which entitle Solo to be paid by a subsequent purchaser of the land the amount of Solo's reasonable project costs plus 40% of the change in value of the land as determined by before and after appraisals of the total consideration received by the commissioner of public lands. 2008 Op. Att'y Gen. No. 08-02.

**Law reviews.** — For note, "Administration of Grazing Lands in New Mexico: A Breach of Trust," *see* 15 Nat. Resources J. 581 (1975).

### 19-7-15. Definition of improvements.

The word "improvements" herein shall include appurtenant water rights and all improvements placed upon the land in compliance with Section 19-7-51 NMSA 1978, and shall include those appurtenant water rights and improvements placed upon the land prior to March 1, 1955, whether or not the value be in excess of the amount prescribed by Section 19-7-51 NMSA 1978. Appurtenant water rights and improvements placed upon the land after March 1, 1955 but prior to March 1, 1975 may be included by the commissioner in accordance with rules and regulations adopted by the commissioner.

**History:** 1953 Comp., § 7-8-19.2, enacted by Laws 1963, ch. 237, § 2; 1975, ch. 111, § 1.

### 19-7-16. Cost of appraisal.

Reasonable costs and expenses of appraising improvements on state lands and other costs of sale shall be paid by the purchaser or subsequent lessee.

**History:** 1953 Comp., § 7-8-19.3, enacted by Laws 1963, ch. 237, § 3.

**Cross references.** — For appraisalment of state lands themselves, *see* 19-7-1 NMSA 1978.

For false swearing in purchase or lease application or appraisalment, *see* 19-7-7 NMSA 1978.

#### ANNOTATIONS

**Law reviews.** — For note, "Administration of Grazing Lands in New Mexico: A Breach of Trust," *see* 15 Nat. Resources J. 581 (1975).

### 19-7-17. Appeal.

A person in interest aggrieved by the decision of the commissioner in fixing the value of improvements or in collecting costs may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**History:** 1953 Comp., § 7-8-19.4, enacted by Laws 1963, ch. 237, § 4; 1998, ch. 55, § 27; 1999, ch. 265, § 28.

**Cross references.** — For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

For scope of review of the district court, *see Zamora v. Village of Ruidoso Downs*, 120 N.M. 778, 907 P.2d 182 (1995).

**The 1999 amendment**, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1".

**The 1998 amendment**, effective September 1, 1998, rewrote this section to the extent that a detailed comparison is impracticable.

## 19-7-18. Bond required.

No contract, patent or lease shall be issued until the value of improvements shall be paid unless a good and sufficient corporate or cash bond is filed with the commissioner to insure [ensure] payment upon final determination of value.

**History:** 1953 Comp., § 7-8-19.5, enacted by Laws 1963, ch. 237, § 5.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 19-7-19. [Failure to comply with contract; forfeiture at option of commissioner.]

Failure by a purchaser of state lands to comply with the terms and conditions of his contract of purchase shall, at the option of the commissioner, work a forfeiture of such contract after notice as prescribed by Section 19-7-50 NMSA 1978.

In case of forfeiture all monies theretofore paid on any such contract shall remain the property of the state.

**History:** Laws 1912, ch. 82, § 60; Code 1915, § 5238; C.S. 1929, § 132-163; 1941 Comp., § 8-820; 1953 Comp., § 7-8-20.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For forfeiture of lease for failure to pay rent, see 19-7-34 NMSA 1978.

For grounds of forfeiture of grazing or agricultural lands, see 19-7-35 NMSA 1978.

For forfeiture procedure on violation of lease or other written instrument, see 19-7-50 NMSA 1978.

For forfeiture of timberland purchase contract for failure to observe protective regulations, see 19-11-4 NMSA 1978.

For obligation of lessee or purchaser to destroy rodent pests, see 77-15-4 NMSA 1978.

### ANNOTATIONS

#### Issuance of patent prior to completion of payments.

— No specific authority is given the commissioner of public lands to issue a patent to a portion of a tract of land sold under contract when only that part covered by the patent has been paid for and the balance due under said contract has not been paid at the time the patent is issued. *Zinn v. Hampson*, 1956-NMSC-088, 61 N.M. 407, 301 P.2d 518.

**Exclusive remedy.** — The only remedy the state has where a contract purchaser defaults is cancellation of the contract and retention on moneys paid in as liquidated damages. 1955-56 Op. Att'y Gen. No. 55-6130.

**Contract not personal obligation.** — The state upon default cannot proceed against the purchaser for no personal obligation is created in this type of transaction. 1955-56 Op. Att'y Gen. No. 55-6130.

**Nature of state's security.** — The only security for the payment of the purchase price that the state has is the land itself, and thus the legal title which remains in the state until final payment is made is the only inducement to purchaser to complete and fully execute the contract. 1955-56 Op. Att'y Gen. No. 55-6130.

**Complete performance of contract required.** — Where pursuant to Enabling Act, § 10, a tract of public land was sold by purchase contract of 30-year term, and various assignments and parceling thereof occurred, until payment in full for the tract was tendered, the state could honor the assignment of the purchase contract and the assignee of the vendee's interest in 10 parcels could have equitable title thereto, but even though said assignee had paid for its 10 parcels, it could not receive patents thereto until the contract was fully and completely performed as to the entire original acreage. 1957-58 Op. Att'y Gen. No. 58-206.

**Effect of partial assignee's default.** — Where contract purchaser of state lands had made assignments of his interest to various parties, default of any assignee could gravely prejudice the others' ultimate acquisition of legal title because of this section. 1957-58 Op. Att'y Gen. No. 58-206.

## 19-7-20. [Assignment of contracts not in default; certified copy to be filed with commissioner.]

Any purchaser of state lands under deferred payment contract, not in default as to any payment, may assign all right, title and interest under any such contract; provided, certified copy of the assignment shall be filed with the commissioner before same shall become effective.

**History:** Laws 1912, ch. 82, § 61; Code 1915, § 5239; C.S. 1929, § 132-164; 1941 Comp., § 8-821; 1953 Comp., § 7-8-21.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### ANNOTATIONS

**Parties to assignment dispute.** — Commissioner of public lands was not an indispensable party in dispute between private parties concerning assignment of an interest in land purchased from the state under deferred payment contract. *Ballard v. Echols*, 1970-NMSC-066, 81 N.M. 564, 469 P.2d 713.



**Partial assignments.** — The commissioner of public lands may approve assignments of a portion of a purchase contract, providing he safeguards the right of the

state in the transaction. 1924 Op. Att'y Gen. Nos. 24-3762, 24-3762-0A.

### 19-7-21. [Townsite lands; subdivision.]

Whenever any of the state lands shall be valuable or desirable for townsite purposes, the commissioner may cause or permit the same to be subdivided into suitable tracts, or surveyed into lots and blocks, with the usual reservations for streets, alleys and public purposes, and shall cause appraisement of such lands to be made and prescribe rules and regulations for the use and occupancy thereof, and may lease or sell such lots, blocks and subdivisions in accordance with law.

**History:** Laws 1912, ch. 82, § 62; Code 1915, § 5240; C.S. 1929, § 132-174; 1941 Comp., § 8-822; 1953 Comp., § 7-8-22.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For appraisement of state lands, see 19-7-1 NMSA 1978.

For false swearing in purchase or lease application or appraisement, see 19-7-7 NMSA 1978.

#### ANNOTATIONS

**Procedure for leasing or selling state lands for townsite purposes is mandatory.** 1931-32 Op. Att'y Gen. No. 31-52.

### 19-7-22. [Cemetery or school site lands; subdivision and sale.]

Should any state lands be valuable or desirable for cemetery or school site purposes, the commissioner may subdivide and sell such lands for such purposes in accordance with law.

**History:** Laws 1912, ch. 82, § 63; Code 1915, § 5241; C.S. 1929, § 132-175; 1941 Comp., § 8-823; 1953 Comp., § 7-8-23.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-7-23. [School section used for cemeteries; not to be sold.]

Where a school section of the state or any part thereof has been used for cemeteries or cemetery purposes prior to January 6, 1912, that part of said section, not exceeding one hundred and sixty (160) acres may be set aside by the commissioner of public lands and forever reserved for such cemetery purposes and no sale thereof shall be made by the commissioner of public lands.

**History:** Laws 1913, ch. 30, § 1; Code 1915, § 561; C.S. 1929, § 20-102; 1941 Comp., § 8-824; 1953 Comp., § 7-8-24.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-7-24. [Management of cemeteries on school sections; sale of lots; cemetery association.]

Where a school section or any part thereof is used for cemetery purposes under the provisions of the preceding section [19-7-23 NMSA 1978], the management and control thereof is hereby given to the governing body of the city, town or village now using the same for such purpose, but said governing body shall not be authorized to sell any portion of such lands, except for cemetery lots or other purposes directly connected with cemetery purposes.

That sales of said lands for cemetery purposes shall be made by such governing body and the money received from the sale thereof shall be converted into a fund which shall be used only for the care and maintenance of said cemetery. Said cemetery may be managed and controlled by a cemetery association created or authorized by the governing body of such city, town or village.

**History:** Laws 1913, ch. 30, § 2; Code 1915, § 562; C.S. 1929, § 20-103; 1941 Comp., § 8-825; 1953 Comp., § 7-8-25.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For municipal cemeteries, see 3-40-1 to 3-40-9 NMSA 1978.

## 19-7-25. [Reservation from sale of saline, mineral and oil and gas lands; leasing authorized.]

State saline lands and state lands known to contain valuable minerals, petroleum or natural gas in paying quantities, and sections of state lands adjoining lands upon which there are producing mines, oil wells or gas wells, or which are known to contain valuable minerals, petroleum or natural gas in paying quantities, shall not be sold, but may be leased as provided in this chapter.

**History:** Laws 1912, ch. 82, § 40a; Code 1915, § 5218; C.S. 1929, § 132-141; 1941 Comp., § 8-826; 1953 Comp., § 7-8-26.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The words "this chapter" apparently refer to ch. 102 of the 1915 Code, §§ 5178 to 5290, the presently effective sections of which are compiled herein as 19-1-1, 19-1-2, 19-1-4 to 19-1-6; 19-1-9 to 19-1-16, 19-1-21, 19-2-1, 19-5-3 to 19-5-10, 19-6-1 to 19-6-7, 19-7-1, 19-7-7, 19-7-8, 19-7-11, 19-7-13, 19-7-19 to 19-7-22, 19-7-25, 19-7-27 to 19-7-30, 19-7-34, 19-7-36, 19-7-50 to 19-7-53, 19-7-57, 19-7-58, 19-7-64 to 19-7-67, 19-8-1 to 19-8-3, 19-8-10, 19-8-12, 19-8-13, 19-9-1 to 19-9-8, 19-11-10 NMSA 1978.

**Cross references.** — For leases of potassium lands, see 19-8-4 NMSA 1978 et seq.

For leases of saline lands, see 19-8-10, 19-8-11 NMSA 1978.

For leases of coal lands, see 19-9-9 NMSA 1978 et seq.

For leases of oil and gas lands, see 19-10-1 NMSA 1978 et seq.

For issuance of limited patent with reservation of minerals on lands sold on deferred payments with reservation of minerals or classified as mineral lands prior to full payment or issuance of patent, see 19-10-27 NMSA 1978.

For reservation of geothermal resources in leases, deeds or sales contracts of state lands, see 19-13-16 NMSA 1978.

For reservation of mineral purchase rights on state lands leased or conveyed, see 19-14-1 to 19-14-3 NMSA 1978.

### ANNOTATIONS

"Lands known to contain valuable minerals".  
— Lands upon which metals or minerals have been

discovered in rock, in place, are "lands known to contain valuable minerals" within the meaning of this section. *State ex rel. Otto v. Field*, 1925-NMSC-019, 31 N.M. 120, 241 P. 1027.

**Construction of section.** — The prohibition against sale of mineral lands is a prohibition against sale of the mineral content, not the surface, and in this construction § 10 of the Enabling Act is not offended. *State ex rel. Otto v. Field*, 1925-NMSC-019, 31 N.M. 120, 241 P. 1027.

**Mineral rights to be leased.** — Mineral content of state lands is to be disposed of only on lease, from which state is to derive royalties. *State ex rel. Otto v. Field*, 1925-NMSC-019, 31 N.M. 120, 241 P. 1027.

**Severance of surface rights.** — Commissioner of public lands may sever surface rights from mineral rights and reserve the one and sell the other. *Terry v. Midwest Ref. Co.*, 64 F.2d 428 (10th Cir.), cert. denied, 290 U.S. 660, 54 S.Ct. 74, 78 L.Ed. 571 (1933); *State ex rel. Otto v. Field*, 1925-NMSC-019, 31 N.M. 120, 241 P. 1027.

**Reservation of minerals to fund or institution.** — The commissioner of public lands has the power to reserve the minerals in the land to the fund or institution to which the land belongs, when making sale thereof. *State ex rel. Otto v. Field*, 1925-NMSC-019, 31 N.M. 120, 241 P. 1027.

**Sale of lands preserving mineral content.** — The commissioner of public lands, in his discretion, may under federal Enabling Act sell lands upon which are producing oil wells, provided their mineral content is not included. 1931-32 Op. Att'y Gen. No. 31-31.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 73A C.J.S. Public Lands § 197.

## 19-7-26. State irrigable lands; sale; conveyance to United States.

No lands belonging to the state, within the areas to be irrigated from works constructed or controlled by the United States, or its duly authorized agencies, shall hereafter be sold except in conformity with the classification of farm units by the United States, and the title to such lands shall not pass from the state until the applicant therefor shall have fully complied with the provisions of the laws of the United States and the regulations thereunder concerning the acquisition of the right to use water from such works and shall produce the evidence thereof duly issued. After the withdrawal of lands by the United States for any irrigation project, no application for the purchase of state lands within the limits of such withdrawal shall be accepted, except upon the conditions prescribed in this section. Any state lands needed by the United States for irrigation works shall be conveyed to the United States in consideration of the conveying by the United States, from its public lands or domain, lands of equal quality or value.

**History:** Laws 1907, ch. 49, § 55; Code 1915, § 5713; C.S. 1929, § 151-166; Laws 1941, ch. 126, § 22; 1941 Comp., § 8-827; 1953 Comp., § 7-8-27.

**Cross references.** — For relinquishment to United States of lands needed for irrigation works and selection of other lands in lieu thereof, see §§ 10, 11 of the Enabling Act, Pamphlet 3, Volume 1 NMSA 1978.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 73A C.J.S. Public Lands § 181.



## 19-7-27. [Lands subject to lease.]

All lands owned by the state of New Mexico shall be subject to lease as provided by law; provided, however, that the commissioner of public lands must give first preference in all cases to any department of the state which has been authorized by the legislature to acquire lands for the purpose of erecting thereon buildings for state use.

**History:** Laws 1912, ch. 82, § 12; Code 1915, § 5189; C.S. 1929, § 132-112; 1941 Comp., § 8-828; Laws 1951, ch. 108, § 1; 1953 Comp., § 7-8-28.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For right of existing grazing lessee to meet higher rental offer of new applicant for lease, see 19-7-49 NMSA 1978.

For preference to occupants of lands acquired by state, and to persons domiciled or paying taxes therein, see 19-7-53 NMSA 1978.

For lease preference rights of municipality, county or school district, see 19-7-56 NMSA 1978.

### ANNOTATIONS

**Meaning of "owned".** — The word "owned" applies to any lands in which the state has any right or interest, whether or not full title has been acquired. *Makemson v. Dillon*, 1918-NMSC-040, 24 N.M. 302, 171 P. 673.

**Townsite procedure mandatory.** — Procedure for leasing or selling state lands for townsite purposes is mandatory. 1931-32 Op. Att'y Gen. No. 31-52.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 73A C.J.S. Public Lands § 197.

## 19-7-28. [Grazing and agricultural leases; reservation of mineral deposits, products and easements.]

In all leases of state lands for grazing or agricultural purposes there shall be inserted a clause reserving the right to execute leases for mining purposes thereon, or for the extraction of petroleum, natural gas, salt or other deposit therefrom, and the right to sell or dispose of any other natural surface products of such lands other than grazing, agricultural or horticultural products; also a clause reserving the right to grant rights-of-way and easements for any of the purposes mentioned in Section 19-7-57 NMSA 1978.

**History:** Laws 1912, ch. 82, § 55; Code 1915, § 5233; C.S. 1929, § 132-156; 1941 Comp., § 8-829; 1953 Comp., § 7-8-29.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For issuance of limited patent with reservation of minerals on lands sold on deferred payments with reservation of minerals or classified as mineral lands prior to full payment or issuance of patent, see 19-10-27 NMSA 1978.

For reservation of geothermal resources in leases, deeds or sales contracts of state lands, see 19-13-16 NMSA 1978.

For reservation of mineral purchase rights on state lands leased or conveyed, see 19-14-1 to 19-14-3 NMSA 1978.

### ANNOTATIONS

**Reservations of minerals.** — Commissioner of public lands could make a reservation of minerals in contract for sale of agricultural or grazing lands sought to be purchased, and in which it was not then known that any mineral products existed. *State ex rel. Otto v. Field*, 1925-NMSC-019, 31 N.M. 120, 241 P. 1027.

**Reservations of rights-of-way.** — Grazing leases are held subject to the reservation or exception of the state to grant rights-of-way for purposes and upon terms set forth in statutes. *Lea Cnty. Water Co. v. Reeves*, 1939-NMSC-020,

43 N.M. 221, 89 P.2d 607, explained in *Application of Dasburg*, 1941-NMSC-024, 45 N.M. 184, 113 P.2d 569.

**Reservations of rights-of-way for pipeline.** — Reservation of right-of-way for pipeline over state lands was held part of lease of grazing lands at time of its execution. *Lea Cnty. Water Co. v. Reeves*, 1939-NMSC-020, 43 N.M. 221, 89 P.2d 607, explained in *Application of Dasburg*, 1941-NMSC-024, 45 N.M. 184, 113 P.2d 569.

**Liability for damages to grazing lessees.** — Persons performing seismographic work upon state land with consent of mineral lease holders and commissioner of public land are liable for damages caused to holders of grazing leases on the land, since under § 11 of form lease found at 19-10-4.1 NMSA 1978, mineral lease holder would be liable for such damages. *Tidewater Associated Oil Co. v. Shipp*, 1954-NMSC-129, 59 N.M. 37, 278 P.2d 571.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Oil and gas as "minerals" within deed, lease or license, 37 A.L.R.2d 1440.

**Easement:** effect, as between lessor and lessee, of provision in mineral lease purporting to except or reserve a previously granted right-of-way or other easement through, over or upon the premises, 49 A.L.R.2d 1191.

"Mine" as used in written instrument, 92 A.L.R.2d 868.

Clay, sand or gravel as "minerals" within deed, lease or license, 95 A.L.R.2d 843.

## 19-7-29. [Grazing leases; rental rates; annual rental; appraisal of land.]

The commissioner of public lands of the state of New Mexico shall determine the annual rental to be charged for grazing lands belonging to the state, and such rentals shall be based

upon the classification and valuation herein provided for and upon the appraisal required by the act of congress granting the lands to the state. The commissioner shall, as soon as practicable, classify and determine the value of all grazing lands belonging to the state, and in such determination, shall take into consideration the carrying capacity of such lands; that is, the number of livestock such lands will reasonably carry per annum without injury to such lands. In determining such carrying capacity, the commissioner may take into consideration the determination by the grazing service of the bureau of land management, by the soil conservation service, by the forest service or by any other federal agency, of the carrying capacity of similar lands, and may also take into consideration the carrying capacity of similar patented lands as determined by the New Mexico state tax commission [property tax division of the taxation and revenue department] or other taxing authorities. In determining such capacity, five sheep shall be considered the equivalent of one cow, and the commissioner may determine such carrying capacity by counties or some natural division instead of by individual sections or leases. All appraisals of state grazing land hereafter made shall set out the opinion of the appraiser as to the average carrying capacity of the land appraised. The commissioner shall at all times take into consideration economic conditions in arriving at the value of grazing lands for leasing purposes, and shall have the power, in renewing any lease, to reduce the minimum rentals hereinafter set out by not more than thirty-three and one-third percent, if severe drouth or economic conditions, in his judgment, require such reduction. All leases for grazing purposes entered into for any period beginning after the effective date of this act [section] shall carry a minimum annual rental per acre as follows:

#### Number of cows the land will

carry per section

Annual rental

5 head and less	3 cents per acre
6 head	4 cents per acre
7 head	5 cents per acre
8 head	6 cents per acre
9 head	7 cents per acre
10 head	8 cents per acre
11 head	9 cents per acre
12 head	10 cents per acre
13 head	11 cents per acre
14 head	12 cents per acre
15 head	13 cents per acre
16 head	14 cents per acre
17 head	15 cents per acre
18 head	16 cents per acre
19 head	17 cents per acre
20 head	18 cents per acre
21 head	19 cents per acre
22 head	20 cents per acre
23 head	21 cents per acre
24 head and over	22 cents per acre

Any state grazing leases which, at the time of the passage and approval of this act [section], are subject to any civil action by the government of the United States or are subject to any supplemental agreement with the United States government in any land acquisition program by the United States in the establishment of military reservations within this state, shall not be subject to the



minimum rates established by this act [section], but shall be at the rate established and ordered by the commissioner of public lands.

**History:** Laws 1912, ch. 82, § 13; Code 1915, § 5190; Laws 1915, ch. 73, § 2; 1921, ch. 14, § 1; C.S. 1929, § 132-113; 1941 Comp., § 8-830; Laws 1951, ch. 123, § [1]; 1953 Comp., § 7-8-30; Laws 1961, ch. 38, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Section 72-6-1, 1953 Comp., providing for a state tax commission, was repealed by Laws 1970, ch. 31, § 22. Laws 1970, ch. 31, §§ 21 and 22, compiled as 72-25-20, 72-25-21, 1953 Comp., establishing the property appraisal department, were repealed by Laws 1974, ch. 92, § 34 (amending Laws 1973, ch. 258, § 156), effective January 1, 1975. Laws 1973, ch. 258 and Laws 1974, ch. 92, dealt with the property tax department, which department was given authority for valuation of property for tax purposes. Laws 1977, ch. 249, § 45, compiled as 7-2-2 NMSA 1978, abolished the property tax department. The taxation and revenue department, consisting of several divisions, including a property tax division, was established by Laws 1977, ch. 249, § 4, compiled as 9-11-4 NMSA 1978.

**Cross references.** — For appraisalment of state land by lease applicants, *see* 19-7-1 NMSA 1978.

For false swearing in purchase or lease application or appraisalment, *see* 19-7-7 NMSA 1978.

For requirement of appraisal of all grant lands prior to disposal thereof, *see* § 10 of the Enabling Act, Pamphlet 3, Volume 1 NMSA 1978.

#### ANNOTATIONS

**Rental rate.** — Under this section prior to the 1915 amendment, the appraised value of lands could be less than the \$5.00 per acre fixed by the Enabling Act, and leasing by the commissioner at five cents an acre was not error. *Makemson v. Dillon*, 1918-NMSC-040, 24 N.M. 302, 171 P. 673 (decided under prior law).

**Classification to establish rental.** — Under this section, prior to its 1951 amendment, the grazing lands of the state could all be put in one classification by the land commissioner and the minimum rental charged. 1923-24 Op. Att'y Gen. No. 23-3730 (rendered under prior law).

### 19-7-30. Grazing or agricultural leases; maximum term; method of payment.

All leases for grazing or agricultural purposes shall be for a term of not exceeding five years except as provided in this chapter. All rents are payable cash in advance or, if the lessee so elects, may be divided into five equal annual payments as follows: one-fifth in advance, the remainder to be evidenced by four equal joint and several promissory notes of even date with the lease, signed by the lessee and by two other persons satisfactory to the commissioner, due in one, two, three and four years respectively, but the commissioner may by regulation provide for waiving the promissory note requirement and may also by regulation provide for acceptance of a surety bond in lieu of promissory notes. All leases shall terminate on the thirtieth of September.

**History:** Laws 1912, ch. 82, § 14; Code 1915, § 5191; C.S. 1929, § 132-114; 1941 Comp., § 8-831; 1953 Comp., § 7-8-31; Laws 1971, ch. 90, § 1.

**Cross references.** — For bidding requirements for leases of greater than five years' duration, *see* § 10 of the Enabling Act, Pamphlet 3, Volume 1 NMSA 1978.

#### ANNOTATIONS

**Renewal of lease.** — C.S. 1929, § 132-120, which gave to good-faith lessee of state lands preferred right to renew lease, applied to leases under this section. *State ex rel. McElroy v. Vesely*, 1935-NMSC-096, 40 N.M. 19, 52 P.2d 1090, explained in *Ellison v. Ellison*, 1944-NMSC-012, 48 N.M. 80, 146 P.2d 173.

**Lease relinquishment and consolidation.** — Allowing relinquishment of a lessee's several existing leases on grazing or agricultural lands subject to the Enabling Act and permitting application for a new consolidated lease, with the net result being a lease of more than five years' duration without the opportunity for competitive bidding or adverse applications as provided by law is beyond the discretion of the commissioner of public lands. 1969 Op. Att'y Gen. No. 69-67.

**Law reviews.** — For comment, "Grazing Rights: Time for a New Outlook," *see* 32 Nat. Resources J. 623 (1992).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Agricultural leases, construction and effect of statutes limiting duration of, 17 A.L.R.2d 566.

### 19-7-31. [Power of commissioner to reject grazing lease application by a previous lessee when land is located within Taylor grazing allotment of another.]

At the expiration of any lease issued for grazing purposes only, the commissioner of public lands in his discretion and after investigation of facts may withhold approval of application to lease any land filed by a previous lessee, which land is located within the duly permitted individual Taylor

grazing allotment of another where the land is not being used by prior lessee; provided, however, the holder of such grazing allotment has made timely and proper application to lease such land.

**History:** 1941 Comp., § 8-831a, enacted by Laws 1947, ch. 177, § 1; 1953 Comp., § 7-8-32.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The "Taylor grazing allotment" apparently refers to permits under the Taylor Grazing Act, 43 U.S.C. § 315 et seq.

### 19-7-32. [Open and unleased land within Taylor grazing allotment of another.]

The commissioner of public lands in his discretion and after investigation of the facts may withhold approval of application to lease any land which at any time is open and unleased for grazing purposes, whether now owned, or hereafter acquired, by the state of New Mexico, which land is located within the duly permitted individual Taylor grazing allotment of another; provided, however, that the holder of such allotment permit, after reasonable notice, shall make application therefor.

**History:** 1941 Comp., § 8-831b, enacted by Laws 1947, ch. 177, § 2; 1953 Comp., § 7-8-33.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The "Taylor grazing allotment" apparently refers to permits under the Taylor Grazing Act, 43 U.S.C. § 315 et seq.

### 19-7-33. [Right of relinquishment not restricted.]

Nothing herein [19-7-31 to 19-7-33 NMSA 1978] shall be construed as restricting the right of relinquishment.

**History:** 1941 Comp., § 8-831c, enacted by Laws 1947, ch. 177, § 3; 1953 Comp., § 7-8-34.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-7-34. [Rent lien; attachment; forfeiture.]

Rentals shall constitute a first lien on any and all improvements and crops upon the land leased, prior and superior to any other lien or encumbrance whatsoever whether created with or without notice of the lien for rental due or to become due. When any rental is due and unpaid the commissioner may forthwith attach, without attachment bond, all improvements and crops upon the land leased, or so much thereof as may be sufficient to pay such rental together with all costs necessarily incurred in the enforcement of such lien, and the enforcement of such lien shall work a forfeiture of such lease. The failure of any lessee of state land to pay the rental therefor when due or to furnish additional security for any deferred payment, when required by the commissioner, shall be sufficient cause for declaring any such lease forfeited.

**History:** Laws 1912, ch. 82, § 16; Code 1915, § 5193; C.S. 1929, § 132-116; 1941 Comp., § 8-833; 1953 Comp., § 7-8-36.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For forfeiture on failure to comply with contract of purchase, *see* 19-7-19 NMSA 1978.

For forfeiture of agricultural or grazing leases, *see* 19-7-35 NMSA 1978.

For forfeiture procedure on violation of lease or other written instrument, *see* 19-7-50 NMSA 1978.

For forfeiture for defrauding state of royalties, *see* 19-8-1 NMSA 1978.

For forfeiture on failure to develop and operate mineral lands in workmanlike manner, *see* 19-8-13 NMSA 1978.

For forfeiture of certain mineral leases for violation thereof, *see* 19-8-27 NMSA 1978.

For forfeiture on failure to comply with coal lease, *see* 19-9-13 NMSA 1978.

For cancellation of oil and gas lease, *see* 19-10-20 NMSA 1978.

For forfeiture of timberlands purchase contract for failure to observe protective regulations, *see* 19-11-4 NMSA 1978.

For forfeiture of lease under Geothermal Resources Act, *see* 19-13-23 NMSA 1978.

#### ANNOTATIONS

**Options on default.** — Where the lessee of a grazing lease of public lands had defaulted on payments of notes, the commissioner had the option to look to lessee and



endorsers for payment, and to the security of the lien on improvements, or cancel the lease. An acceleration clause in the lease is within the power of the commissioner to insert. *Raynolds v. Hinkle*, 1933-NMSC-060, 37 N.M. 493, 24 P.2d 738.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Subrogation of lessee in respect of liens superior to his lease, 1 A.L.R.2d 286.

Tenant's right to lien, in absence of agreement therefor, for improvements made on leased premises, 25 A.L.R.2d 885.

Compensation for improvements made or placed on premises of another by mistake, 57 A.L.R.2d 263.

## 19-7-35. [Cancellation or forfeiture of agricultural or grazing leases restricted; sale of leased land.]

That no lease of state lands for agricultural or grazing purposes shall be canceled or forfeited by the commissioner of public lands, before the expiration of the full term thereof, without the written consent of the lessee, except for fraud, collusion, mutual mistake or default of the lessee, and the right to cancel or forfeit such lease without cause, based on any agreement or consent contained in such lease is hereby waived. All sales of state lands embraced within such lease shall be made subject to all the terms and provisions thereof, except the right of the lessee to a renewal at the end of the term. Provided that nothing in this act [section] shall prevent the commissioner from granting right-of-way [rights-of-way] and easements over, across or upon the land embraced in the lease for public highways, railroads, tramways, telegraph, telephone and power lines, irrigation works, mining, logging and business leases.

**History:** Laws 1935, ch. 130, § 1; 1941 Comp., § 8-834; 1953 Comp., § 7-8-37.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For forfeiture of contract for failure to comply therewith, see 19-7-19 NMSA 1978.

For forfeiture of lease for failure to pay rent, see 19-7-34 NMSA 1978.

For forfeiture procedure on violation of lease or other written instrument, see 19-7-50 NMSA 1978.

For forfeiture for defrauding state of royalties, see 19-8-1 NMSA 1978.

For forfeiture on failure to develop and operate mineral lands in workmanlike manner, see 19-8-13 NMSA 1978.

For forfeiture of certain mineral leases for violation thereof, see 19-8-27 NMSA 1978.

For forfeiture on failure to comply with coal lease, see 19-9-13 NMSA 1978.

For cancellation of oil and gas lease, see 19-10-20 NMSA 1978.

For forfeiture of timberlands purchase contract on failure to observe protective regulations, see 19-11-4 NMSA 1978.

For forfeiture of lease under Geothermal Resources Act, see 19-13-23 NMSA 1978.

### ANNOTATIONS

**Consent to sale.** — Where the lessee of state lands makes application for a sale of the land under lease, his application constitutes a consent to a sale to another party in event he is outbid at the sale held pursuant to his application therefor. 1949-50 Op. Att'y Gen. No. 49-5186.

## 19-7-36. [Assignment or relinquishment of lease; consent of commissioner required.]

With the consent of the commissioner any lessee may assign all his right, title and interest in his lease, or relinquish the same to the state, whereupon his lease shall be canceled. Any assignment or relinquishment without the written consent of the commissioner shall be null and void.

**History:** Laws 1912, ch. 82, § 19; Code 1915, § 5196; Laws 1915, ch. 73, § 3; C.S. 1929, § 132-119; 1941 Comp., § 8-835; 1953 Comp., § 7-8-38.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For assignment of purchase contracts, see 19-7-20 NMSA 1978.

For assignment of mineral lease, see 19-8-28 NMSA 1978.

For assignment of oil and gas lease, see 19-10-13 NMSA 1978.

For transferability of lease under Geothermal Resources Act, see 19-13-21 NMSA 1978.

### ANNOTATIONS

**Assignment of lease without approval of commissioner is void.** *Scharbauer v. Graham*, 1933-NMSC-043, 37 N.M. 449, 24 P.2d 288.

**Within discretion of commissioner.** — One who challenges discretion of commissioner in disapproving of assignment of lease must show a clear right. Such discretion may not be disturbed or controlled by the courts except in a plain case of abuse. *Raynolds v. Hinkle*, 1933-NMSC-060, 37 N.M. 493, 24 P.2d 738.

**Lease as collateral security.** — The owner and holder of a state grazing lease may assign his interest therein as collateral security. *American Mortgage Co. v. White*,



1930-NMSC-030, 34 N.M. 602, 287 P. 702, distinguished in *Arrow Gas Co. v. Lewis*, 1962-NMSC-145, 71 N.M. 232, 377 P.2d 655.

**Same not an encumbrance.** — An assignment of a state grazing lease as collateral security is not in violation of the provision of the Enabling Act prohibiting the mortgage or encumbrance of state lands granted therein. *American Mortgage Co. v. White*, 1930-NMSC-030, 34 N.M. 602, 287 P. 702.

**Commissioner necessary party to suit.** — To invoke the equitable jurisdiction of the court in a suit affecting rights of the state in school lands, the commissioner of public lands is a necessary and indispensable party. *Burguete v. Del Curto*, 1945-NMSC-025, 49 N.M. 292, 163 P.2d 257, distinguished in *Shelley v. Norris*, 1963-NMSC-193, 73 N.M. 148, 386 P.2d 243.

Suit to determine rights to the use of state school lands by one not a party to the lease and a stranger to the commissioner, under an agreement to which the state was not a party, where commissioner was not a party to the suit and suit did not grow out of a contest before the commissioner, cannot be maintained since such an adjudication would affect

rights of the state. *Burguete v. Del Curto*, 1945-NMSC-025, 49 N.M. 292, 163 P.2d 257, distinguished in *Shelley v. Norris*, 1963-NMSC-193, 73 N.M. 148, 386 P.2d 243.

In absence of commissioner of public lands as a party to the suit, supreme court will not approve a decree to modify a state land lease to show that a total stranger to the original lease has a half interest therein. *Burguete v. Del Curto*, 1945-NMSC-025, 49 N.M. 292, 163 P.2d 257, distinguished in *Shelley v. Norris*, 1963-NMSC-193, 73 N.M. 148, 386 P.2d 243.

**Relinquishment and consolidation.** — Practice of allowing relinquishment of a lessee's several existing leases on grazing or agricultural lands subject to the Enabling Act and permitting application for a new consolidated lease, with the net result being a lease of more than five years' duration without the opportunity for competitive bidding or adverse applications as provided by law, is beyond the discretion of the commissioner of public lands. 1969 Op. Att'y Gen. No. 69-67.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Liability of lessee who assigns lease for rent accruing subsequently to extension or renewal of term, 10 A.L.R.3d 818.

## 19-7-37. Assignment of grazing or agricultural lease or purchase contract as collateral; approval of commissioner; effect.

Any lease of state lands for grazing or agricultural purposes and any contract for the purchase of state lands may be assigned as collateral security, with the approval of the commissioner of public lands; and after such approval such assignment shall have the effect of giving the assignee a lien on any lease or purchase contract so assigned, or any renewal or renewals thereof by assignor and all rights of renewal of any such lease, together with the improvements thereon, to secure the indebtedness specified in such assignment and any further advances or expenditures authorized to be made by the assignee by the terms of such assignment; and after any such assignment shall be approved by the commissioner of public lands, and while same is in force and effect as hereinafter provided, no relinquishment or assignment of a lease or transfer of a state purchase contract, or portions thereof, embraced in such assignment shall be accepted or approved for filing respectively by the commissioner of public lands, unless the holder of such collateral assignment shall release in writing any collateral assignment held by him covering such lease or contract being transferred, assigned or relinquished or, in case of assignment only, unless the assignee agrees in writing to assume or take the lease or contract subject to the rights of any collateral assignee. The preference right of renewal of any lease held under collateral assignment shall be vested in the holder of such assignment, subject only to the right of renewal of the lessee at the date of expiration of said lease, and to all the provisions of law now in effect or hereinafter enacted; provided, however, that any renewal lease issued to subsequent collateral assignees, under the preference right of renewal provided for herein, shall be subject to the rights of the holders of the prior assignments of record in the state land office.

**History:** Laws 1933, ch. 126, § 1; 1937, ch. 51, § 1; 1939, ch. 48, § 1; 1953, ch. 69, § 3; 1941 Comp., § 8-836; 1953 Comp., § 7-8-39; Laws 1971, ch. 94, § 1.

**Cross references.** — For sale of state lands under deferred payment plan, see 19-7-9, 19-7-10 NMSA 1978.

For exception of existing instruments from approval, requirement, see 19-7-45 NMSA 1978.

For provision giving existing lessee preferential opportunity to meet highest rental offered by other applicant, see 19-7-49 NMSA 1978.

### ANNOTATIONS

**Assignment as collateral security.** — The owner and holder of a state grazing lease may assign his interest

therein as collateral security. *American Mortgage Co. v. White*, 1930-NMSC-030, 34 N.M. 602, 287 P. 702, distinguished in *Arrow Gas Co. v. Lewis*, 1962-NMSC-145, 71 N.M. 232, 377 P.2d 655.

**Assignment as collateral security.** — It is not a violation of law to assign a grazing lease obtained from the state land commissioner, as collateral security, so as to render the lease subject to cancellation. *Lusk v. First Nat'l Bank*, 1942-NMSC-056, 46 N.M. 445, 130 P.2d 1032.

**Foreclosure on contract assigned as collateral.** — An assignment of a contract for the purchase of state lands creates a lien on the contract itself rather than on the land covered by the contract; thus, a creditor who forecloses on a state land contract assigned as collateral for



a debt obtains only the right to a new purchase contract. *U.S. v. Agri Servs., Inc.*, 81 F.3d 1002 (10th Cir. 1996).

**Irregular assignment.** — Though this act prescribes the proper method and manner of making assignments of

grazing and agricultural leases, it does not follow that an assignment which is not made in strict compliance with its terms is subject to cancellation. *Lusk v. First Nat'l Bank*, 1942-NMSC-056, 46 N.M. 445, 130 P.2d 1032.

### 19-7-38. [Presenting assignment to commissioner; indexing; filing; public inspection.]

All such assignments shall be presented to the commissioner of public lands for his approval, and, after approval by the commissioner, shall be indexed in a book kept for that purpose and filed in a suitable place provided by the commissioner. The commissioner is authorized and directed to provide and install, as soon as possible after the passage of this act [19-7-37 to 19-7-45 NMSA 1978], a full and complete system for the indexing and filing in his office of such assignments, as is necessary for carrying out the provisions of this act, and such indexes and files shall be open for inspection by the public during business hours of the office of the commissioner of public lands, under such reasonable rules and regulations as may be prescribed by the commissioner.

**History:** Laws 1933, ch. 126, § 2; 1939, ch. 48, § 2; 1941 Comp., § 8-837; 1953 Comp., § 7-8-40.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-7-39. [Form of assignment; contents; acknowledgment; constructive notice; recording waived.]

Such assignments shall be executed on forms to be prescribed by the commissioner of public lands, which forms shall specify the number of the lease or purchase contract assigned, the description of the land embraced in such lease or purchase contract, the date of the expiration of the lease assigned, the name of the assignee and the amount of the indebtedness which the assignment is given to secure, and may provide for further advances by the assignee up to a specific amount. Such assignments shall be acknowledged by the assignor in the manner provided by law for the acknowledgment of conveyances affecting real estate, and, when filed in the office of the commissioner of public lands and approved by him, shall be constructive notice to all persons of the contents of such assignments from the date of such approval, and it shall not be necessary to record such instruments in the county where the lands affected thereby are located. Provided, that when more than one lease or purchase contract is assigned to secure the same indebtedness, any and all such leases or purchase contracts shall be assigned by separate instrument.

**History:** Laws 1933, ch. 126, § 3; 1935, ch. 47, § 1; 1937, ch. 51, § 2; 1941 Comp., § 8-838; 1953 Comp., § 7-8-41.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For recording in commissioner's office of oil and gas leases, etc., see 19-10-31 NMSA 1978.

For recording of instruments affecting real estate, and giving of constructive notice thereby generally, see 14-9-1, 14-9-2 NMSA 1978.

For recording of assignment made for benefit of creditors, see 56-9-10 NMSA 1978.

### 19-7-40. [Assignments not filed and approved; effect.]

Any such assignment not filed in the office of the commissioner of public lands and approved by him shall be void as to subsequent assignees, whether for collateral security or otherwise, and as to holders of subsequent relinquishments, without notice, as to judgment or attaching creditors, from the date of the entry of such judgment or levy of such attachment, as to trustees in bankruptcy, from the date of the adjudication in bankruptcy, as to receivers, from the date of filing of the order of appointment and as to assignees for the benefit of creditors, from the date of the recording of the assignment.

**History:** Laws 1933, ch. 126, § 4; 1941 Comp., § 8-839; 1953 Comp., § 7-8-42.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Intent of legislature.** — This section shows the clear intent of the legislature that the property interest in a lease of state lands be subject to the ordinary processes

and remedies of which a judgment creditor may avail himself. 1955-56 Op. Att'y Gen. No. 55-6337.

**Priorities.** — This section establishes the respective priorities of ordinary assignees and holders of relinquishments, on the one hand, and judgment creditors, attaching creditors, trustees in bankruptcy, receivers and assignees for the benefit of creditors on the other. 1955-56 Op. Att'y Gen. No. 55-6337.

### 19-7-41. [Foreclosure of assignments; rights of purchaser.]

The collateral assignments of record in the state land office upon grazing leases may be foreclosed in the manner provided by law for the foreclosure of chattel mortgages, and the collateral assignments of record in the state land office upon state purchase contracts may be foreclosed in the manner provided by law for the foreclosure of mortgages on real estate, and the purchaser at any sale under such foreclosure, if otherwise qualified to lease or purchase state land, as the case may be, on the filing with the commissioner of public lands of the transfer to him of any such lease or purchase contract, pursuant to any such foreclosure sale, and the payment of all delinquent payments on the lease or purchase contract so transferred, shall be entitled to a new lease or purchase contract on his compliance with all the conditions governing the lease or purchase of state lands, now or hereafter provided by law, or by regulation of the commissioner of public lands; provided, however, that in the event the collateral assignment foreclosed was subject to or inferior to a prior assignment, a purchaser at such foreclosure sale shall take such new lease or purchase contract subject to all prior assignments filed and approved in accordance with this act [19-7-37 to 19-7-45 NMSA 1978]. Any purchaser at such foreclosure sale shall also be entitled to the improvements on the lands covered by the lease or purchase contract purchased by him and to all rights of renewal of any such lease held by the original lessee; subject, however, to the rights of the holders of any prior assignments of record in the state land office.

**History:** Laws 1933, ch. 126, § 6; 1937, ch. 51, § 3; 1939, ch. 48, § 4; 1941 Comp., § 8-841; 1953 Comp., § 7-8-43.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For provision giving existing lessee preferential opportunity to meet highest rental offered by other applicant, see 19-7-49 NMSA 1978.

For execution and foreclosure sale, see 39-5-1 NMSA 1978 et seq.

#### ANNOTATIONS

**Foreclosure on contract assigned as collateral.** — An assignment of a contract for the purchase of state lands creates a lien on the contract itself rather than on the land covered by the contract; thus, a creditor who

forecloses on a state land contract assigned as collateral for a debt obtains only the right to a new purchase contract. *United States v. Agri Servs., Inc.*, 81 F.3d 1002 (10th Cir. 1996).

**Sale of lease.** — Execution sale of the interest of a lessee in state lands may be had, subject to approval by the land commissioner of the purchaser as lessee. 1955-56 Op. Att'y Gen. No. 55-6337.

**Transfer to purchaser.** — The transfer to purchaser of the lease pursuant to an execution sale should be filed with the land commissioner and upon approval of purchaser as a lessee, the commissioner should issue a new lease to the purchaser at sale in the same manner as provided for a purchaser under foreclosure of assignments of state-leased lands under this section. 1955-56 Op. Att'y Gen. No. 55-6337.

### 19-7-42. [Release of assignments; recording.]

Such assignments may be released by the execution by the assignee of a release in form to be prescribed by the commissioner, and any such release shall likewise be recorded in the books hereinabove prescribed.

**History:** Laws 1933, ch. 126, § 7; 1941 Comp., § 8-842; 1953 Comp., § 7-8-44.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.



### 19-7-43. [Conditions for approval; right of cancellation reserved; preference of state liens.]

No such assignment shall be approved by the commissioner of public lands until all delinquent payments on the lease or purchase contract so assigned have been paid; and nothing herein contained shall prevent the commissioner of public lands from canceling any lease or purchase contract so assigned because of the failure to make any payments due thereon, or for any noncompliance with the provisions of said lease or purchase contract. None of the provisions of this act [19-7-37 to 19-7-45 NMSA 1978] shall be held to give any assignee or purchaser any preference or priority over the lien or claim of the state on any lease or purchase contract so assigned, or the improvements thereon, as now or hereafter provided by law; and any such assignment and any rights acquired on any foreclosure thereof shall be subject to the lien and claim of the state on such lease or purchase contract and the improvements thereon.

**History:** Laws 1933, ch. 126, § 8; 1937, ch. 51, § 4; 1941 Comp., § 8-843; 1953 Comp., § 7-8-45.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For forfeiture of purchase contract for failure to comply therewith, see 19-7-19 NMSA 1978.

For state's first lien on improvements and crops on leased lands, see 19-7-34 NMSA 1978.

For forfeiture of lease upon failure to pay rent, see 19-7-34, 19-7-35 NMSA 1978.

For forfeiture procedure on violation of lease or other written instrument, see 19-7-50 NMSA 1978.

### 19-7-44. [Rules and regulations; filing and recording fee.]

The commissioner of public lands is authorized to make, publish and enforce all necessary and reasonable rules and regulations for carrying out the purposes and provisions of this act [19-7-37 to 19-7-45 NMSA 1978], and shall collect a uniform fee of one dollar [(\$1.00)] for the filing and recording of any instrument under the provisions hereof, which fees shall be covered into the maintenance fund of his office.

**History:** Laws 1933, ch. 126, § 9; 1935, ch. 47, § 2; 1941 Comp., § 8-844; 1953 Comp., § 7-8-46.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For state lands maintenance fund, see 19-1-11 NMSA 1978.

#### ANNOTATIONS

**Discretion of commissioner limited.** — While the commissioner of public lands has a great deal of discretionary authority in managing the public lands of the state, his discretion is limited by express provisions in the law. 1969 Op. Att'y Gen. No. 69-67.

No rights in public lands may be given or acquired contrary to law by circumvention, indirection or otherwise,

no matter how valid or well-intentioned the underlying reason may be. 1969 Op. Att'y Gen. No. 69-67.

**Practice not authorized.** — Practice of allowing relinquishment of a lessee's existing leases on grazing or agricultural lands subject to the Enabling Act and application for a new consolidated lease, the net result being a lease of more than five years' duration without the opportunity for competitive bidding or adverse applications as provided by law, is beyond the discretion of the commissioner of public lands. 1969 Op. Att'y Gen. No. 69-67.

**Rules have effect of law.** — Rules promulgated by the commissioner under this section when authorized by law and not contrary to it have the effect of law. 1969 Op. Att'y Gen. No. 69-67.

### 19-7-45. [Construction of act; prior assignments and mortgages.]

This act [19-7-37 to 19-7-45 NMSA 1978] shall not be construed to affect any assignment, mortgage or other instrument covering any purchase contract or lease of state lands for grazing or agricultural purposes or improvements thereon heretofore given for the purpose of securing any indebtedness and any such instrument or a certified copy thereof may be filed in the office of the commissioner of public lands and when so filed shall be constructive notice to all persons of the contents thereof and the lien created thereby may be foreclosed in accordance with the provisions of this act. Provided, however, the provisions of this act prescribing forms or requiring the approval of assignments by the commissioner of public lands shall not apply to such instruments.

**History:** Laws 1933, ch. 126, § 10; 1937, ch. 51, § 5; 1941 Comp., § 8-845; 1953 Comp., § 7-8-47.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For foreclosure of assignments, see 19-7-41 NMSA 1978.

### 19-7-46. [Satisfaction of debt for which assignment of grazing or agricultural lease or purchase contracts given as security; filing of release.]

When any lease debt or evidence of debt secured by an assignment for collateral security of grazing or agricultural leases of state lands or purchase contracts shall have been fully satisfied, it shall be the duty of the mortgagee, trustee or the assignee of such debt or evidence or [of] debt as the case may be to cause the full satisfaction thereof, to be entered of record in the office of the state commissioner of public lands.

**History:** 1941 Comp., § 8-836b, enacted by Laws 1953, ch. 69, § 1; 1953 Comp., § 7-8-48.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 73A C.J.S. Public Lands §§ 186, 197.

### 19-7-47. [Violation; penalty; civil liability.]

Any person who shall be guilty of violating the preceding section [19-7-46 NMSA 1978], upon conviction before any justice of the peace [magistrate court] or district court having jurisdiction of the same shall be punished by a fine of not less than ten [dollars] (\$10.00) nor more than twenty-five dollars (\$25.00), and shall be liable in a civil action for all costs of clearing the title to said property including a reasonable attorney's fee.

**History:** 1941 Comp., § 8-836c, enacted by Laws 1953, ch. 69, § 2; 1953 Comp., § 7-8-49.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The office of justice of the peace was abolished by 35-1-38 NMSA 1978, and the jurisdiction, powers and duties thereof transferred to the magistrate court.

### 19-7-48. [Existing collateral assignments ratified; application of act thereto.]

All existing collateral assignments heretofore filed and approved by the commissioner of public lands covering either state leases or state land purchase contracts are hereby ratified and the provisions of this act [19-7-37, 19-7-46 to 19-7-48 NMSA 1978] are hereby made applicable thereto.

**History:** 1941 Comp., § 8-836a, enacted by Laws 1953, ch. 69, § 4; 1953 Comp., § 7-8-50.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-7-49. [New grazing lease; time for filing application; prior lessee preferred.]

Every grazing lessee who desires a new lease on the same lands for a term not exceeding five years shall make and file with the commissioner his application for such new lease on or before August 1st next preceding the expiration of his existing lease; and any and all other applicants for a like lease on such land shall make and file with the commissioner their applications on or before September 1st next preceding the expiration date of such existing lease. If more than one such application to lease be filed as herein provided, one of which shall be that of the holder of the existing lease, the commissioner shall lease such land to the bona fide applicant offering the highest annual rental therefor, if to anyone; except that the commissioner, before so doing, if another bona fide applicant shall offer a higher rental than that offered by the holder of the existing lease, shall give written notice to the holder of the existing lease, immediately after September 1st next preceding the expiration of such lease, of the name and address of the applicant offering the highest annual rental and the amount of such offer, and if the holder of the existing lease, on or before September 30th next ensuing, shall meet such offer and has, in good faith, complied with all the requirements of his existing lease, the lease shall be awarded to him, if to anyone.



**History:** Laws 1937, ch. 42, § 2; 1941 Comp., § 8-846; 1953 Comp., § 7-8-51.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For preference in leasing to departments of state for purpose of erecting state buildings, see 19-7-27 NMSA 1978.

For preference to occupants of lands acquired by state, and to persons domiciled or paying taxes therein, see 19-7-53 NMSA 1978.

For lease preference rights of municipality, county or school district, see 19-7-56 NMSA 1978.

## ANNOTATIONS

**Condemnation of leased lands.** — Defendant lessees, in a condemnation suit by the federal government, holding grazing leases of state-owned tracts, have compensable interests therein, for which they should receive, upon distribution of the proceedings, the condemnation award for the lands they have leased from the state; furthermore, the leases of the state-owned tracts executed or renewed by the state after July 1, 1970, created in the lessee a property compensable in these proceedings. *United States v. 41,098.98 Acres of Land*, 548 F.2d 911 (10th Cir. 1977).

In a condemnation suit brought by the United States against state grazing lease held by appellees for a five-year term as provided in the New Mexico Enabling Act, and issued under statutory authority, with a preference right for renewal under this section, which for all practical purposes was an absolute right as against other applicants, the court approved a compensation formula including both the state-owned lands leased by the defendants as well as the fee lands of the defendants as one ownership unit. *United States v. 41,098.98 Acres of Land*, 548 F.2d 911 (10th Cir. 1977).

**Effect of renewal on mortgage.** — As between mortgagor and mortgagee, a renewal of a grazing lease was to be regarded as merely a continuation of the original lease, and the operation of this principle was not defeated by the fact that the lease assigned contained no covenant of renewal. *Scharbauer v. Graham*, 1933-NMSC-043, 37 N.M. 449, 24 P.2d 288 (case decided under former law).

**Effect of expiration during cancellation suit.** — Mere fact that lease expired prior to decision in the district court did not render moot the question presented by a contest seeking cancellation of the lease by reason of a sublease in violation of its terms, because of the preference right of the holder of the old lease to a new lease. *Lusk v. First Nat'l Bank*, 1942-NMSC-056, 46 N.M. 445, 130 P.2d 1032.

**Right of renewal.** — Preference right of renewal under former law referred to all leases issued by the public lands commissioner, including leases of five years and less which the commissioner could make without advertisement and sale at public auction; in case of conflicting rights, the preference was to the one holding the superior right in the judgment of the commissioner. *State ex rel. McElroy v. Vesely*, 1935-NMSC-096, 40 N.M. 19, 52 P.2d 1090 (decided under prior law).

**Part of lease.** — Former C.S. 1929, § 132-120, giving preference right of renewal, was a part of a state land lease. *State ex rel. McElroy v. Vesely*, 1935-NMSC-096, 40 N.M. 19, 52 P.2d 1090 (decided under prior law).

**But not absolute.** — Although former C.S. 1929, § 132-120 gave to good-faith lessee of state lands preferred right to renew lease, it was not the intent of the legislature to give an absolute right of renewal, which would run counter to the Enabling Act. *State ex rel. McElroy v. Vesely*, 1935-NMSC-096, 40 N.M. 19, 52 P.2d 1090, explained in *Ellison v. Ellison*, 1944-NMSC-012, 48 N.M. 80, 146 P.2d 173 (decided under prior law).

**Waiver of preference.** — Decedent's right to renewal of lease of state lands passed to administrator, who waived such right when he refused to accept renewal, knowing that lease assignment had been fraudulently obtained from decedent's heir; also, such refusal cut off the right of decedent's heirs to claim lease, either through preference or as beneficiaries under lease. *Hart v. Walker*, 1935-NMSC-089, 40 N.M. 1, 52 P.2d 123.

**Mandamus not available.** — Under former law, the lessee's right of renewal did not justify mandamus against the public lands commissioner, which right had to originate in the constitution or statutes; the Enabling Act, § 10, did not give the lessee absolute right. *State ex rel. McElroy v. Vesely*, 1935-NMSC-096, 40 N.M. 19, 52 P.2d 1090.

**Notice.** — Those who may wish to apply and bid for a lease on lands covered by an expiring lease are deprived of "notice" in the case of a consolidation of leases by relinquishment and reissuance. 1969 Op. Att'y Gen. No. 69-67.

The "notice" which is given is simply contained in the records of the land office showing that a five-year lease has been granted and, in the normal course, will expire under its terms at the end of that time. 1969 Op. Att'y Gen. No. 69-67.

**Law reviews.** — For note, "Administration of Grazing Lands in New Mexico: A Breach of Trust," see 15 Nat. Resources J. 581 (1975).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 73A C.J.S. Public Lands § 197.

## 19-7-50. [Violation of lease or instrument covering state lands; notice; forfeiture for noncompliance with demand.]

The violation of any of the terms, covenants or conditions of any lease or instrument in writing executed by the commissioner covering state lands, or the nonpayment by any lessee of such lands of rental when due, shall, at the option of the commissioner, work a forfeiture of any such lease or instrument in writing after thirty days' notice thereof to the lessee and the holders of any collateral assignments by registered mail, addressed to his or their last known post-office address of record in the state land office; provided, if within said thirty days the lessee or the holders of any collateral assignments shall comply with the demand made in any such notice, cancellation shall not be made.

**History:** Laws 1912, ch. 82, § 21; Code 1915, § 5198; Laws 1921, ch. 8, § 1; C.S. 1929, § 132-121; Laws 1939, ch. 64, § 1; 1941 Comp., § 8-847; 1953 Comp., § 7-8-52.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.



**Cross references.** — For forfeiture for failure to comply with purchase contract, *see* 19-7-19 NMSA 1978.

For forfeiture of lease for failure to pay rent, *see* 19-7-34 NMSA 1978.

For grounds of forfeiture of agricultural or grazing lease, *see* 19-7-35 NMSA 1978.

For forfeiture for defrauding state of royalties, *see* 19-8-1 NMSA 1978.

For forfeiture on failure to develop and operate mineral lands in workmanlike manner, *see* 19-8-13 NMSA 1978.

For forfeiture of certain mineral leases for violation thereof, *see* 19-8-27 NMSA 1978.

For forfeiture on failure to comply with coal lease, *see* 19-9-13 NMSA 1978.

For cancellation of oil and gas lease, *see* 19-10-20 NMSA 1978.

For forfeiture of timberlands purchase contract for failure to observe protective regulations, *see* 19-11-4 NMSA 1978.

For forfeiture of lease under Geothermal Resources Act, *see* 19-13-23 NMSA 1978.

### ANNOTATIONS

**Constitutionality.** — This section does not violate N.M. Const., art. IV, § 32, or art. XIII, § 2, as there is no obligation or liability of the purchaser owed to the state. Although the state agrees to sell the land, the purchaser does not expressly agree to buy it, but rather, he agrees to make the payments promptly and to pay the taxes; the only remedy expressly reserved by the state for default is cancellation at option of commissioner, with retention of all payments of principal and interest, as liquidated damages. *Vesely v. Ranch Realty Co.*, 1934-NMSC-067, 38 N.M. 480, 35 P.2d 297.

**Notice for benefit of lessee.** — Inasmuch as the 30 days' notice of cancellation of contract is for the benefit of the party whose rights the commissioner proposes to terminate, the succeeding commissioner cannot object to the lack of notice. *Vesely v. Ranch Realty Co.*, 1934-NMSC-067, 38 N.M. 480, 35 P.2d 297.

**Show cause notice inadequate.** — Notice to show cause why a lease should not be canceled was a notice of contest and not notice of forfeiture required by this section. *Commissioner of Pub. Lands v. Van Bruggen*, 1947-NMSC-009, 51 N.M. 108, 179 P.2d 528.

An offending lessee is entitled to a notice of a claimed violation of the terms of the lease, so he may meet the demand to cease within 30 days in which case no cause exists for cancellation, and where his only warning was an order to show cause why his lease should not be canceled, the notice was inadequate to permit cancellation. *Commissioner of Pub. Lands v. Van Bruggen*, 1947-NMSC-009, 51 N.M. 108, 179 P.2d 528.

**Options of commissioner upon default.** — Where lessee had defaulted on payment of notes, commissioner had option to look to lessee and endorsers for payment, and to the security of the lien on improvements, or cancel the lease. Commissioner may insert acceleration clause in lease. *Raynolds v. Hinkle*, 1933-NMSC-060, 37 N.M. 493, 24 P.2d 738.

**Grounds for transfer to creditor.** — A creditor of a lessee of state lands demanding transfer to him of the rights of such lessee in default of payment of rentals must show that lessee's default has become fixed as provided in this section. *American Mortg. Co. v. White*, 1930-NMSC-030, 34 N.M. 602, 287 P. 702, distinguished in *Arrow Gas Co. v. Lewis*, 1962-NMSC-145, 71 N.M. 232, 377 P.2d 655.

**Collateral security.** — It is not a violation of law to assign a grazing lease obtained from the state land commissioner, as collateral security, so as to render the lease subject to cancellation. *Lusk v. First Nat'l Bank*, 1942-NMSC-056, 46 N.M. 445, 130 P.2d 1032.

**Grounds for cancellation.** — Where grazing lease does not have clause providing for cancellation upon notice, except for violation of the conditions, covenants and terms of the lease or nonpayment of rental when due, the commissioner is without authority to cancel. 1943-44 Op. Att'y Gen. No. 44-4539.

## 19-7-51. [Improvement on grazing or agricultural lease; restrictions.]

Except by the express written consent of the commissioner, improvements upon leased state lands held under one lease shall be limited as follows: upon those leased for grazing purposes, fences only, at a cost not exceeding one hundred and fifty dollars (\$150) per mile, and necessary corrals, at a cost not exceeding two hundred dollars (\$200); upon those leased for agricultural purposes, fences at a cost not exceeding one hundred and fifty dollars (\$150) per mile for exterior boundaries and seventy-five dollars (\$75) per mile for inside cross-fences; barns, dwellings and all other buildings, at a total cost not exceeding six hundred dollars (\$600); wells and irrigation systems at a total cost not exceeding one thousand dollars (\$1,000); and for improvements to the land, such as orchards, plowed land, crops, etc., the amount allowed shall be only the amount added to the natural value of the land by such improvement, but in no case to exceed a total of ten dollars (\$10.00) per acre for lands actually so improved. For the purposes of this chapter fences and growing crops shall be considered as movable improvements, and all other improvements as permanent improvements.

**History:** Laws 1912, ch. 82, § 22; Code 1915, § 5199; C.S. 1929, § 132-122; 1941 Comp., § 8-848; 1953 Comp., § 7-8-53.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The words "this chapter" apparently refer to ch. 102 of the 1915 Code, §§ 5178 to 5290, the presently effective sections of which are compiled herein as 19-1-1, 19-1-2, 19-1-4 to 19-1-6, 19-1-9 to

19-1-16, 19-1-21, 19-2-1, 19-5-3 to 19-5-10, 19-6-1 to 19-6-7, 19-7-1, 19-7-7, 19-7-8, 19-7-11, 19-7-13, 19-7-19 to 19-7-22, 19-7-25, 19-7-27 to 19-7-30, 19-7-34, 19-7-36, 19-7-50 to 19-7-53, 19-7-57, 19-7-58, 19-7-64 to 19-7-67, 19-8-1 to 19-8-3, 19-8-10, 19-8-12, 19-8-13, 19-9-1 to 19-9-8, 19-11-10 NMSA 1978.

**Cross references.** — For compensation of owner of improvements by purchaser or subsequent lessee, *see* 19-7-14 to 19-7-18 NMSA 1978.



### ANNOTATIONS

**Law reviews.** — For note, "Administration of Grazing Lands in New Mexico: A Breach of Trust," see 15 Nat. Resources J. 581 (1975).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Implied duty of lessee to remove his property, debris, buildings, improvements and the like, 23 A.L.R.2d 655.

What constitutes improvements within provisions of lease permitting or prohibiting tenant's removal thereof at termination of lease, 30 A.L.R.3d 998.

## 19-7-52. Excessive permanent improvements become part of realty.

Twenty-five percent of all permanent improvements in excess of the amount specified in Section 19-7-51 NMSA 1978 shall be and remain a part of the real estate so offered for sale, except as provided in this and the preceding section.

**History:** Laws 1913, ch. 29, § 3; Code 1915, § 5259; C.S. 1929, § 132-200; 1941 Comp., § 8-851; 1953 Comp., § 7-8-56; Laws 1975, ch. 111, § 2.

**Compiler's notes.** — As enacted, this section ended "except as provided in this act," meaning Laws 1913, ch. 29, §§ 1 to 3. This was changed in the 1915 Code to "except as provided in this and the preceding sections," apparently meaning 5257 to 5259, 1915 Code. Sections 5257 and 5258, 1915 Code, were repealed by Laws 1963, ch. 237, § 6. Laws 1975, ch. 111, § 2, amended this section, substituting "except as provided in this and the preceding section" for "except as provided in this and the preceding sections," among other changes. Section 7-8-53, 1953 Comp., was the first section preceding this section in 1975

that had not been repealed. It is compiled herein as 19-7-51 NMSA 1978.

**Cross references.** — For compensation of owner of improvements by purchaser or subsequent lessee, see 19-7-14 to 19-7-18 NMSA 1978.

### ANNOTATIONS

**Law reviews.** — For note, "Administration of Grazing Lands in New Mexico: A Breach of Trust," see 15 Nat. Resources J. 581 (1975).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — What are improvements within lease provisions permitting or prohibiting tenant's removal thereof at termination of lease, 30 A.L.R.3d 998.

## 19-7-53. [Preferences in leasing; occupants of land acquired by state; persons or firms domiciled or paying taxes in state.]

Any person, association of persons or corporation authorized to transact business in the state, occupying any lands the title to which is acquired by the state by operation of law, shall have a preference right to lease same in accordance with the provisions of this chapter; provided application so to do is made within thirty days from and after the acquisition of such title. Persons, associations of persons or corporations having domicile or paying taxes in the state, applying to lease state lands, shall in all cases be given preference provided the rental or royalty offered to be paid be at least equal to that otherwise obtainable.

**History:** Laws 1912, ch. 82, § 23; Code 1915, § 5200; C.S. 1929, § 132-123; 1941 Comp., § 8-852; 1953 Comp., § 7-8-57.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The words "this chapter" apparently refer to ch. 102 of the 1915 Code, §§ 5178 to 5290, the presently effective sections of which are compiled herein as 19-1-1, 19-1-2, 19-1-4 to 19-1-6, 19-1-9 to 19-1-16, 19-1-21, 19-2-1, 19-5-3 to 19-5-10, 19-6-1 to 19-6-7, 19-7-1, 19-7-7, 19-7-8, 19-7-11, 19-7-13, 19-7-19 to 19-7-22, 19-7-25, 19-7-27 to 19-7-30, 19-7-34, 19-7-36, 19-7-50 to 19-7-53, 19-7-57, 19-7-58, 19-7-64 to 19-7-67, 19-8-1 to 19-8-3, 19-8-10, 19-8-12, 19-8-13, 19-9-1 to 19-9-8, 19-11-10 NMSA 1978.

**Cross references.** — For preference in leasing to departments of state for purpose of erecting state buildings, see 19-7-27 NMSA 1978.

For right of existing grazing lessee to meet higher rental offer of new lease applicant, see 19-7-49 NMSA 1978.

For lease preference rights of municipality, county or school district, see 19-7-56 NMSA 1978.

### ANNOTATIONS

**Section has no reference to renewal leases.** *State ex rel. McElroy v. Vesely*, 1935-NMSC-096, 40 N.M. 19, 52 P.2d 1090.

## 19-7-54. Municipalities leasing lands within five miles of limits; uses; term.

Wherever any lands belonging to the state or under the supervision of the commissioner are situate within five miles of any municipality and the municipality may have use for the state lands for airports, parks, swimming pools, fairgrounds, playgrounds, economic development or other municipal purposes, the municipality is authorized and empowered to lease the lands or so much

thereof as may be reasonably necessary for such purpose from the commissioner, and upon receipt of a request for such a lease, the commissioner is authorized and empowered to enter into such a lease for a term not exceeding forty years upon such reasonable terms and conditions as may be prescribed by the commissioner.

**History:** Laws 1929, ch. 53, § 1; C.S. 1929, § 132-601; 1941 Comp., § 8-853; 1953 Comp., § 7-8-58; 2020, ch. 21, § 1.

The 2020 amendment, effective July 1, 2020, provided that a municipality may lease certain state lands for purposes of economic development, and increased the term

for certain leases of state land entered into between a municipality and the state; and added the new section heading, after "playgrounds", added "economic development", and after "not exceeding", deleted "twenty-five" and added "forty".

## 19-7-55. Counties and school districts leasing state lands; uses; term.

A. Any county or school district within the state that may have use for any state lands for any purpose incidental to the powers of the county or school district shall have the right and power to lease the lands or so much thereof as may be reasonably necessary for such purpose from the commissioner, and upon receipt of a request for such a lease, the commissioner is authorized and empowered to enter into such a lease for a term not exceeding forty years upon such reasonable terms and conditions as may be prescribed by the commissioner.

B. In setting the terms and conditions of any lease to a school district, the commissioner shall, upon the request of the governing body of the school district, provide that the rental costs for the lease be paid from the school district's share of the current school fund established in Article 12, Section 4 of the constitution of New Mexico, or the common school current fund created in Section 19-1-17 NMSA 1978.

C. The necessary documentation to achieve this appropriation shall be submitted to the state treasurer by the commissioner. The appropriation made hereby is a continuing appropriation.

**History:** Laws 1929, ch. 53, § 2; C.S. 1929, § 132-602; 1941 Comp., § 8-854; 1953 Comp., § 7-8-59; Laws 1985 (1st S.S.), ch. 2, § 1; 2020, ch. 21, § 2.

The 2020 amendment, effective July 1, 2020, increased the term for certain leases of state land entered into between a county or school district and the state; added new subsection designations A through C, and in Subsection A, after "not exceeding", deleted "twenty-five" and added "forty".

The 1985 amendment, effective August 16, 1985, added the second and third paragraphs and, in the first paragraph, deleted "of New Mexico" following "state" and substituted "the county" for "said county" and "the lands" for "such lands" near the beginning, deleted "or purposes" following "purpose" and substituted "the commissioner, and the commissioner is authorized" for "the commissioner of public lands of the state of New Mexico, and said commissioner of public lands is hereby authorized" near the middle and deleted "of public lands" at the end.

## 19-7-56. [Preference right of municipality, county or school district; payment for prior improvements.]

Any such municipality, county or school district, shall at all times have a preference right to lease said state lands, and the commissioner of public lands shall prefer the application of said municipality, county or school district over any other application for lease upon the same land. Provided, nevertheless, that before any such lease is granted the lessee shall be required to pay the reasonable value of any improvements placed upon said state lands by a former lessee for the use of the owner of said improvements.

**History:** Laws 1929, ch. 53, § 3; C.S. 1929, § 132-603; 1941 Comp., § 8-855; 1953 Comp., § 7-8-60.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For compensation of owner of improvements by purchaser or subsequent lessee, see 19-7-14 to 19-7-18 NMSA 1978.

For preference in leasing to departments of state for purpose of erecting state buildings, see 19-7-27 NMSA 1978.

For right of existing grazing lessee to meet higher rental offer of new lease applicant, see 19-7-49 NMSA 1978.

For preference to occupants of lands acquired by state, and to persons domiciled or paying taxes therein, see 19-7-53 NMSA 1978.

## 19-7-57. Commissioner; powers; easements; rights of way.

The commissioner may grant rights of way and easements over, upon or across state lands for public highways, railroads, tramways, telegraph, telephone and power lines, irrigation works,



mining, logging and other purposes upon payment by the grantee of the price fixed by the commissioner, which shall not be less than the minimum price for the lands, used, as fixed by law. The commissioner may grant a right of way or easement over, upon or across state lands for oil, hazardous liquid and gas pipelines if the right-of-way grant or easement requires compliance with the Pipeline Safety Act, Section 70-3-11, et seq., NMSA 1978, and rules adopted pursuant to that act and provides for regulatory and agencies' access to records of compliance.

**History:** Laws 1912, ch. 82, § 53; Code 1915, § 5231; C.S. 1929, § 132-154; 1941 Comp., § 8-856; 1953 Comp., § 7-8-61; 2001, ch. 298, § 1.

**Cross references.** — For clause in grazing or agricultural lease reserving right to grant rights-of-way and easements for any of the purposes under this section, see 19-7-28 NMSA 1978.

For limitations on interference with roads or highways by rights-of-way through canyons, see 19-7-58 NMSA 1978.

For reservation of roadway over timbered and mountain lands, see 19-11-8 NMSA 1978.

For power of commissioner to grant an easement or right-of-way upon state lands for oil, hazardous liquid or gas pipelines, see 70-3-11 NMSA 1978.

**The 2001 amendment**, effective June 15, 2001, added the catchline and last sentence of the section.

#### ANNOTATIONS

**Incorporation into lease.** — This section becomes part of leases of state land for grazing, and the lease is charged with easement and servitude reserved in state. *Lea Cnty. Water Co. v. Reeves*, 1939-NMSC-020, 43 N.M. 221, 89 P.2d 607, explained in *Application of Dasburg*, 1941-NMSC-024, 45 N.M. 184, 113 P.2d 569.

**Lessee's rights limited.** — The rights of a lessee of grazing lands from state is limited by the provision for reasonable enjoyment by the lessor. *Lea Cnty. Water Co. v. Reeves*, 1939-NMSC-020, 43 N.M. 221, 89 P.2d 607.

**Section applies to state lands sold under deferred payment plan.** *State ex rel. Otto v. Field*, 1925-NMSC-019, 31 N.M. 120, 241 P. 1027.

**State may sell lands subject to easements and rights-of-way.** *State ex rel. Otto v. Field*, 1925-NMSC-019, 31 N.M. 120, 241 P. 1027.

**Commissioner could charge state for highway rights-of-way or easements** across lands which were granted and confirmed to New Mexico in trust for various state institutions and agencies by the Enabling Act when New Mexico was admitted to statehood and for sand and gravel removed from such lands for use solely in constructing public highways across the trust lands. *State ex rel. State Hwy. Comm'n v. Walker*, 1956-NMSC-080, 61 N.M. 374, 301 P.2d 317.

The general law that an agency of the state is not to be charged for the use of state property unless specific provision be made therefor is not applicable when dealing with lands granted in trust by the United States, under restrictions so exact they permit no license of construction or liberties of inference. *State ex rel. State Hwy. Comm'n v. Walker*, 1956-NMSC-080, 61 N.M. 374, 301 P.2d 317.

**Damage liability.** — Persons performing seismicographic work upon state land with consent of mineral

lease holders and commissioner of public land are liable for damages caused to holders of grazing leases on the land, since, under § 11 of the form lease found at 19-10-4.1 NMSA 1978, mineral lease holder would be liable for such damages. *Tidewater Associated Oil Co. v. Shipp*, 1954-NMSC-129, 59 N.M. 37, 278 P.2d 571.

**Repair to damaged road.** — Condition in a right-of-way permit for construction of flood retarding structures, which provided that "in crossing any right-of-way for a highway" the grantee would exercise due care so as not to interfere with same, speaks as of the time the crossing is made, not as of the time of grant; hence, grantee is responsible for reconstruction necessary to repair the county road, regardless of the fact that the road was constructed after the right-of-way was made specific by grant and filed for record. 1967-68 Op. Att'y Gen. No. 68-122.

**Reservation through sale notice.** — The authority of the commissioner of public lands to grant a right-of-way easement can be exercised through a reservation in the notice of public auction. 1967-68 Op. Att'y Gen. No. 68-122.

**Right-of-way for highway.** — In his discretion, the state land commissioner may give the state highway department a right-of-way over state lands for highway purposes. 1931-32 Op. Att'y Gen. No. 31-64.

**Right-of-way granted without advertising.** — Commissioner of public lands may grant in right-of-way of railroad company tract of land for stock pen, and execute deed without advertising and offering same at public auction. 1931-32 Op. Att'y Gen. No. 31-244.

**Easement taken without compensation.** — Rights-of-way across state lands for highway purposes for such lands were impressed with that easement when granted to the state in 1910, confirmed by act of congress (U.S. Rev. Stat., § 2477; U.S. Comp. Stat. 1916, § 4419). Such easement may be taken without compensation. 1921-22 Op. Att'y Gen. No. 22-3454.

**Grant to railroad within commissioner's discretion.** — It is within the discretion of the commissioner of public lands whether to grant a right-of-way across state lands to a railroad. 1921-22 Op. Att'y Gen. No. 21-2957.

**Railroad rights-of-way.** — The legislation on the subject of railroad rights-of-way over public lands having been uniform in provisions, the commissioner of public lands is authorized to grant a railroad right-of-way over public lands, under this section, although the railroad was incorporated under the 1905 act. 1914 Op. Att'y Gen. No. 14-1266.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63A Am. Jur. 2d Public Lands § 117.

Effect of provisions designating or referring to persons entitled to use right-of-way created by express grant, 20 A.L.R.2d 796.

73A C.J.S. Public Lands § 180.

### 19-7-58. [Rights-of-way; interference with roads or highways.]

The location of any right-of-way through any canyon, pass or defile shall not cause the disuse of any wagon [road] or other public highway now located therein, nor prevent the location through the same of any such wagon road or highway, where such road or highway may be necessary for the public accommodation; and where any change in the location of such wagon road is necessary to permit the use of such right-of-way or easement, the user of such right-of-way or



easement, shall before entering upon the ground occupied by such wagon road, cause the same to be reconstructed at his own expense in the most favorable location, and in as perfect a manner as the original road.

**History:** Laws 1912, ch. 82, § 54; Code 1915, § 5232; C.S. 1929, § 132-155; 1941 Comp., § 8-857; 1953 Comp., § 7-8-62.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For authorization to commissioner to grant rights-of-way and easements, see 19-7-57 NMSA 1978.

For reservation of roadway over timbered and mountain lands, see 19-11-8 NMSA 1978.

## 19-7-59. Repayment of money erroneously paid on lease or purchase contract after distribution.

A. The duties, responsibilities and activities of the commissioner of public lands and lessees of state trust land and minerals set out in this section shall be performed in a timely manner.

B. Money erroneously paid on account of a lease or sale of state lands, which money is not carried in a suspense fund but has been distributed to the proper income or permanent fund, shall be repaid in the manner prescribed in this section.

C. If the money erroneously paid was for royalty due under a lease, then, subject to a subsequent audit by the commissioner of public lands or the commissioner's agent, the lessee may either request a refund or may recoup the money by deducting an equivalent amount from subsequent royalty payments due for the same lease and any other lease with the same trust beneficiary; provided that if the amount erroneously paid pursuant to this subsection is greater than fifty thousand dollars (\$50,000) for a lease, no deduction from subsequent payments shall be made without the prior approval of the commissioner of public lands; and, provided further that, no initial claim for recoupment shall be made after six years from the date on which the initial royalty obligation became due.

D. If the amount of money erroneously paid is less than ten thousand dollars (\$10,000), then, after a claim for a refund has been filed pursuant to Section 19-7-60 NMSA 1978 and approved by the commissioner of public lands, no court action shall be necessary and a refund shall be made under Section 19-7-62 or 19-7-63 NMSA 1978.

E. All other money erroneously paid shall be refunded pursuant to the provisions of Sections 19-7-60 through 19-7-63 NMSA 1978.

**History:** Laws 1931, ch. 99, § 1; 1941 Comp., § 8-858; 1953 Comp., § 7-8-63; Laws 1979, ch. 234, § 1; 1989, ch. 11, § 1; 1994, ch. 102, § 1; 2007, ch. 61, § 1.

The 2007 amendment, effective July 1, 2007, added a new Subsection A to require the commissioner and lessees to perform acts in a timely manner; in Subsection C, required commissioner approval of deductions if an erroneous royalty payment under a lease is greater than \$50,000; limited actions for recoupment of erroneous royalty payments to six years; and Subsection D, eliminated the necessity of court action to recover erroneous royalty payments of less than \$10,000.

The 1994 amendment, effective May 18, 1994, inserted "and any other lease with the same trust beneficiary" and substituted "erroneously paid pursuant to this subsection" for "to be recouped under this paragraph" in Subsection B.

The 1989 amendment, effective June 16, 1989, deleted "to income fund" at the end of the catchline, designated the formerly undesignated provisions as Subsection A and made minor stylistic changes therein, and added Subsections B through D.

### ANNOTATIONS

**Error of fact essential.** — To authorize a refund under this section, there must be an error of fact. *Staplin v. Vesely*, 1937-NMSC-073, 41 N.M. 543, 72 P.2d 7.

**Allegation and proof.** — "Erroneous" payment must be alleged and proved to authorize a recovery under this section. *Staplin v. Vesely*, 1937-NMSC-073, 41 N.M. 543, 72 P.2d 7.

**Actual payment to commissioner required.** — Since the claimant had not actually paid money to the commissioner, it did not have a valid claim for refund because a payment attributed to the commissioner's benefit does not meet the requirements of this act. The act is clear in requiring that an overpayment must be erroneously made to the commissioner or to funds administered by the commissioner. In addition, the plain meaning of "refunds" from a governmental entity is "money received by the government or its officers which, for any cause, are to be refunded or restored to the parties paying them." *Anadarko Petroleum Corp. v. Baca*, 1994-NMSC-019, 117 N.M. 167, 870 P.2d 129.

**Money voluntarily paid with knowledge of facts cannot be recovered.** *Staplin v. Vesely*, 1937-NMSC-073, 41 N.M. 543, 72 P.2d 7.

**Advance payments.** — Laws 1945, ch. 111 (19-10-3, former 19-10-10 NMSA 1978) does not provide for refund of moneys paid in advance and land commissioner could not make such a refund in any event without a court order. 1947-48 Op. Atty Gen. No. 47-5056.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 73A C.J.S. Public Lands § 186.



### **19-7-60. Claim for refund; contents; time limit; notice of erroneous payment; limitation of action.**

A person claiming a refund under the provisions of Sections 19-7-59 through 19-7-63 NMSA 1978 shall file with the commissioner of public lands a written claim for refund, stating the amount claimed to have been erroneously paid and the reasons why such payment was erroneously made. All claims for refund of money shall be filed within ninety days after notice. If an erroneous payment of any money is discovered by the commissioner of public lands, notice of the discovery shall be given by the commissioner of public lands, as soon after the discovery as possible, by registered mail to the last recorded address of the person making the erroneous payment. A claim for a refund that is not filed with the commissioner of public lands within six years from the date the erroneous payment was made shall be forever barred; provided that if notice of an erroneous payment is given less than ninety days before the end of the six-year limitation, the period of time to file a claim shall be extended beyond the six-year limitation for the number of days necessary to provide ninety days to file the claim.

**History:** Laws 1931, ch. 99, § 2; 1941 Comp., § 8-859; 1953 Comp., § 7-8-64; Laws 1979, ch. 234, § 2; 2007, ch. 61, § 2.

The 2007 amendment, effective July 1, 2007, barred claims for refund of erroneous payments after six years from the date of payment, but extends the time to file a claim after the six-year limitation period up to 90 days if a notice of erroneous payment is given less than 90 days before the end of the six-year limitation.

#### **ANNOTATIONS**

**Limitations inapplicable.** — The statute on limitation of actions has no application to proceedings under Laws 1931, ch. 99 (Sections 19-7-59 to 19-7-63 NMSA 1978), and the commissioner of public lands should consider claims filed for refund of payments erroneously made regardless of time. 1931-32 Op. Att'y Gen. No. 32-506.

### **19-7-61. [Endorsement of claims; filing in district court of Santa Fe county; notice to claimant; procedure; judgment; appeal; costs.]**

Within sixty days after the filing of any application for refund, the commissioner of public lands shall investigate the facts and shall endorse thereon his approval or disapproval of said claim, in whole or in part, together with such other statement of facts as to him may seem advisable. The commissioner of public lands shall file each such claim, together with his endorsement as herein provided, in the district court of Santa Fe county, New Mexico. Such claim, when so filed, shall be considered as the institution of a proceeding for the determination of the validity of the claim for refund by each such claimant against the commissioner of public lands of the state of New Mexico. Upon the filing of any such claim in said district court, the commissioner of public lands shall notify the claimant, by ordinary mail, at his post-office address shown in the claim for refund, of the fact of the filing of said claim in the district court, and shall at the same time transmit to such claimant a copy of the endorsement of the commissioner on such claim. Within thirty days from the date of said notice, the claimant may file in the district court such additional statement of facts, under oath, relative to the validity of the claim for refund, as he may deem advisable, and shall serve a copy of any such statement so filed, on the commissioner of public lands. It shall be the duty of the district court of Santa Fe county to set a date for the hearing of all claims so filed and such hearing shall be governed by the Rules of Civil Procedure. The district court of Santa Fe county is hereby given jurisdiction to hear and determine all such claims for refund, and it shall make such determination as speedily as possible and without the intervention of jury. Said court shall make findings of fact and conclusions of law and shall set out in its judgment the amount, or amounts, which the claimant is entitled to have refunded to him, and the fund or funds to which the money ordered refunded was credited.

Appeal from any final determination in such cases may be taken to the supreme court of the state, as in ordinary civil action, by either the claimant or the commissioner of public lands, within twenty days from the date of the entry of the judgment from which such appeal is taken. No costs or fees shall be required for the filing of such claims in the district court, the entry of judgment thereon, or for the filing of any appeal in the supreme court of the state. In no event shall any costs of any nature

be taxed against the commissioner of public lands. When any judgment entered hereunder shall become final, a certified copy thereof shall be filed with the commissioner of public lands.

**History:** Laws 1931, ch. 99, § 3; 1941 Comp., § 8-860; 1953 Comp., § 7-8-65.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For rules governing how and when civil appeals may be taken, see Rules 12-201 to 12-203 NMRA.

## 19-7-62. Annual appropriation for refunds; payment from state lands maintenance fund.

There is appropriated annually out of the state lands maintenance fund created by Section 19-1-11 NMSA 1978 the sum of five hundred thousand dollars (\$500,000) or such part thereof as may be necessary for the purpose of making refunds of payments determined in the manner provided by Sections 19-7-59 through 19-7-63 NMSA 1978 to have been erroneously collected; provided, however, that any refund of money paid into any fund other than the state lands maintenance fund shall be made only out of that part of the state lands maintenance fund distributable to the fund into which such payment was erroneously made, under the provisions of Section 19-1-13 NMSA 1978.

**History:** Laws 1931, ch. 99, § 4; 1941 Comp., § 8-861; 1953 Comp., § 7-8-66; Laws 1979, ch. 234, § 3; 2007, ch. 61, § 3.

**The 2007 amendment,** effective July 1, 2007, increased the annual appropriation for refunds from \$200,000 to \$500,000.

## 19-7-63. Erroneous distribution to permanent fund.

Refunds shall be made hereunder, of any money erroneously distributed to any permanent fund, only out of that part of the state lands maintenance fund distributable to that beneficiary into whose permanent fund the erroneous distribution was made. Provided, however, in the event the fund distributable to a beneficiary for the current fiscal year is insufficient to pay an approved refund, a temporary loan may be made to that beneficiary from that part of the maintenance fund as represents receipts for fees and copies. Such loans are repayable from distributable funds allocated to the beneficiary for the following fiscal year.

**History:** 1978 Comp., § 19-7-63, enacted by Laws 1979, ch. 234, § 4.

**Repeals and reenactments.** — Laws 1979, ch. 234, § 4, repealed former 19-7-63 NMSA 1978, relating to the prohibition of refunds of money distributed to permanent

funds and the bar of claims for refund not filed within a certain time, and enacted a new section.

**Cross references.** — For time for filing claim for refund, see 19-7-60 NMSA 1978.

## 19-7-64. [Contesting rights to state lands; rules and regulations.]

Any person, association of persons or corporation claiming any right, title, interest or priority of claim, in or to any state lands, covered by any lease, contract, grant or any other instrument executed by the commissioner, shall have the right to initiate a contest before the commissioner who shall have the power to hear and determine same. The commissioner shall prescribe appropriate rules and regulations to govern the practice and procedure of such contests.

**History:** Laws 1912, ch. 82, § 69; Code 1915, § 5247; C.S. 1929, § 132-181; 1941 Comp., § 8-863; 1953 Comp., § 7-8-68.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For contest of application for patent to mine or mining claims, see 42-4-21 NMSA 1978.

### ANNOTATIONS

**Application of section.** — Where a controversy does not involve the legality of a state lease, the eligibility of the lessee thereunder, the matter of performance of the lease, reservations, if any, in the lease, or a matter of public policy requiring passage thereon by the commissioner of public lands, then a district court should have



jurisdiction to adjudicate the issues as between private litigants, liberally allowing intervention by the commissioner if any public land question is or could be involved in the case. *Swayze v. Bartlett*, 1954-NMSC-019, 58 N.M. 504, 273 P.2d 367.

**Right of contest.** — The legislature's provision of a right of contest provides not only an appropriate forum, but on these facts the last opportunity for review. The legislature's provision of a right of contest recognizes the commissioner's plenary authority over state lands and provides an administrative remedy for disputes. *Heimann v. Adeo*, 1996-NMSC-053, 122 N.M. 340, 924 P.2d 1352.

**Commissioner as indispensable party.** — Questions of renewals or of a new lease of state lands are peculiarly within the province of the commissioner, and in a case involving such question, the commissioner is an indispensable party. *Swayze v. Bartlett*, 1954-NMSC-019, 58 N.M. 504, 273 P.2d 367.

Suit to determine rights to the use of state school lands by one not a party to the lease and a stranger to the commissioner, under an agreement to which the state was not a party, where the commissioner was not a party to the suit and the suit did not grow out of a contest before the commissioner, cannot be maintained since such an adjudication would affect rights of the state. *Burguete v. Del Curto*, 1945-NMSC-025, 49 N.M. 292, 163 P.2d 257, distinguished in *Shelley v. Norris*, 1963-NMSC-193, 73 N.M. 148, 386 P.2d 243.

In absence of commissioner of public lands as a party to the suit, supreme court will not approve a decree to modify a state land lease to show that a total stranger to the original lease has a half interest therein. *Burguete v. Del Curto*, 1945-NMSC-025, 49 N.M. 292, 163 P.2d 257, distinguished in *Shelley v. Norris*, 1963-NMSC-193, 73 N.M. 148, 386 P.2d 243.

**Sovereign immunity.** — Commissioner of public lands is not amenable to suit involving claims by private litigants, and may plead a sovereign's immunity from litigation if he so desires. *Swayze v. Bartlett*, 1954-NMSC-019, 58 N.M. 504, 273 P.2d 367.

**Contest of lode location claim.** — The accepting of lode mining location notices for the purpose of filing same in the land office, sought by relator, will not interfere with the right of the applicant for placer prospecting permits to bring such action as he may think proper to have all questions as to any right, title, interest or priority of claim, in the lode location claims made by relator; and the refusal by respondent to accept for filing purposes the location notices tendered him by relator, as provided by law, precludes the relator of his right to institute a contest proceeding as is provided by this section. *State ex rel. Four Corners Exploration Co. v. Walker*, 1956-NMSC-010, 60 N.M. 459, 292 P.2d 329.

**Withdrawal of lease assignment.** — Where assignment of oil and gas lease is transmitted to commissioner of public lands for approval, and later withdrawn by assignor, assignees may contest their claim before the commissioner, under this section. *Davidson v. Enfield*, 1931-NMSC-045, 35 N.M. 580, 3 P.2d 979.

**Appeal of lease cancellation.** — Lessee whose lease was canceled for subleasing without consent of commissioner of public lands was entitled to appeal to district court. *Commissioner of Pub. Lands v. Van Bruggen*, 1947-NMSC-009, 51 N.M. 108, 179 P.2d 528.

**Judicial review.** — The commissioner of public lands has complete dominion or control of state lands, but the manner in which he exercises this control is subject to judicial review. *Burguete v. Del Curto*, 1945-NMSC-025, 49 N.M. 292, 163 P.2d 257.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 73A C.J.S. Public Lands § 185.

## 19-7-65. [Commissioner's power relative to oaths, witnesses and documents.]

In such contests, the commissioner shall have the same power as conferred by law upon referees relative to the administration of oaths, examination of witnesses and production of books, documents and other papers.

**History:** Laws 1912, ch. 82, § 70; Code 1915, § 5248; C.S. 1929, § 132-182; 1941 Comp., § 8-864; 1953 Comp., § 7-8-69.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For masters (including referees), see Rule 1-053 NMRA.

## 19-7-66. [Perjury in contest proceedings; penalty.]

Every person who shall knowingly and willfully swear falsely, concerning any material matter or thing, respecting which he shall be required to depose in any such contest, shall be deemed guilty of perjury, and upon conviction thereof shall be punished by imprisonment for not more than five years, nor less than two years.

**History:** Laws 1912, ch. 82, § 71; Code 1915, § 5249; C.S. 1929, § 132-183; 1941 Comp., § 8-865; 1953 Comp., § 7-8-70.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For false swearing in application to lease or purchase state lands, or appraisal of same, see 19-7-7 NMSA 1978.

For offense of perjury generally, see 30-25-1, 30-25-2 NMSA 1978.

## 19-7-67. Contest; commissioner; appeal to district court.

A person aggrieved by a decision of the commissioner may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**History:** Laws 1912, ch. 82, § 72; Code 1915, § 5250; C.S. 1929, § 132-184; 1941 Comp., § 8-866; 1953 Comp., § 7-8-71; Laws 1998, ch. 55, § 28; 1999, ch. 265, § 29.

**Cross references.** — For procedures governing administrative appeals to the district court, see Rule 1-074 NMRA.

**The 1999 amendment,** effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1".

**The 1998 amendment,** effective September 1, 1998, rewrote this section to the extent that a detailed comparison is impracticable.

### ANNOTATIONS

**Section does not violate any constitutional provision.** *Application of Dasburg*, 1941-NMSC-024, 45 N.M. 184, 113 P.2d 569.

**Approval of sureties on bond.** — The commissioner's duty to approve sureties on bond does not extend to the power of rejecting individual sureties and requiring one single, paid, corporate surety; such ruling is an abuse of his discretion. *State ex rel. Walker v. Hinkle*, 1933-NMSC-032, 37 N.M. 444, 24 P.2d 286.

**Lease cancellation appealable.** — Lessee whose lease was canceled for subleasing without consent of

commissioner of public lands was entitled to appeal to district court. *Commissioner of Pub. Lands v. Van Bruggen*, 1947-NMSC-009, 51 N.M. 108, 179 P.2d 528.

**Appeal of contract cancellation by trespasser.** — A railroad, which was not a party to a case before state land commissioner initiated by an order to show cause why a contract to purchase realty on which such railroad as a trespasser had made improvements should not be canceled, was not in position to urge a judgment in the supreme court directing cancellation of the contract, but could appeal to district court. *Application of Dasburg*, 1941-NMSC-024, 45 N.M. 184, 113 P.2d 569.

**Mandamus unavailable.** — This section provides an adequate remedy at law for anyone who is aggrieved by the action of the commissioner of public lands and, therefore, mandamus does not lie to compel the duties alleged to be due. *Andrews v. Walker*, 1955-NMSC-072, 60 N.M. 69, 287 P.2d 423.

**Unless right of appeal denied.** — The commissioner cannot deny the right of appeal granted herein without being amendable to mandamus. *State ex rel. Walker v. Hinkle*, 1933-NMSC-032, 37 N.M. 444, 24 P.2d 286.

## 19-7-68, 19-7-69. Repealed.

**Repeals.** — Laws 1999, ch. 265, § 96 repealed 19-7-68 and 19-7-69 NMSA 1978, as enacted by Laws 1921, ch. 82, §§ 73 and 74, relating to contest proceedings, effective

July 1, 1999. For provisions of former sections, see the 1998 NMSA 1978 on *NMOneSource.com*.

## ARTICLE 8

### Lease of Mineral Lands

Sec.

- 19-8-1. Concealment of returns; defrauding state of royalty; penalty.
- 19-8-2. Inspection of lessee's books by commissioner.
- 19-8-3. Lessee's preferential right to renew or purchase; notice to vacate when another purchases.
- 19-8-4. Leases for certain minerals; rentals; royalty.
- 19-8-5. Term of lease.
- 19-8-6. Salt lease statutes excepted.
- 19-8-7. Rules and regulations authorized.
- 19-8-8. Suspension of production; authorization by commissioner of public lands; causes; duration.
- 19-8-9. Suspension of production; authorization by commissioner of public lands; extension of primary term of lease; secondary term of lease not determined by.
- 19-8-10. Saline leases; royalties; record of sales; conditions.
- 19-8-11. Term of saline lease; extension.
- 19-8-12. Shale, clay, natural deposit or product lease; conditions; improvement mortgages void.
- 19-8-13. Mineral lands; development.
- 19-8-14. Issuance of mineral leases authorized; minerals not included.
- 19-8-15. Minerals, lessees, legal subdivision defined.
- 19-8-16. Validation of existing leases and permits; renewals of permits prohibited.

Sec.

- 19-8-17. Relinquishment of permits for conversion.
- 19-8-18. Term of leases.
- 19-8-19. Terms of leases; stipulation of conditions under statute; filing and recording.
- 19-8-19.1. Suspension of lease requirement; authorization by commissioner; causes; duration.
- 19-8-20. Leases; stipulation; rental.
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- 19-8-22. Royalty.
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- 19-8-28. Assignment of leases; form; approval; effect; lands in production.
- 19-8-29. Improvements removable upon termination of lease.
- 19-8-30. Area of lease.
- 19-8-31. Posting of open acreage; simultaneous applications.
- 19-8-32. Rules and regulations authorized.
- 19-8-33. Withholding of lands from lease authorized; lease by competitive bidding authorized.



### 19-8-1. [Concealment of returns; defrauding state of royalty; penalty.]

Any lessee of mineral lands under this chapter who shall conceal, or attempt to conceal any of such returns, or who shall in any manner defraud, or attempt to defraud, the state out of any such royalty shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than three years, or both; and his lease shall be forfeited in the manner hereinbefore provided in this chapter.

**History:** Laws 1912, ch. 82, § 37; Code 1915, § 5214; C.S. 1929, § 132-137; 1941 Comp., § 8-906; 1953 Comp., § 7-9-6.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The words "this chapter" apparently refer to ch. 102 of the 1915 Code, §§ 5178 to 5290, the presently effective sections of which are compiled herein as 19-1-1, 19-1-2, 19-1-4 to 19-1-6, 19-1-9 to 19-1-16, 19-1-21, 19-2-1, 19-5-3 to 19-5-10, 19-6-1 to 19-6-7, 19-7-1, 19-7-7, 19-7-8, 19-7-11, 19-7-13, 19-7-19 to 19-7-22, 19-7-25, 19-7-27 to 19-7-30, 19-7-34, 19-7-36, 19-7-50 to 19-7-53, 19-7-57, 19-7-58, 19-7-64 to 19-7-67, 19-8-1 to 19-8-3, 19-8-10, 19-8-12, 19-8-13, 19-9-1 to 19-9-8, 19-11-10 NMSA 1978.

**Cross references.** — For forfeiture of lease for failure to pay rent, see 19-7-34 NMSA 1978.

For grounds of forfeiture of grazing or agricultural leases, see 19-7-35 NMSA 1978.

For forfeiture procedure on violation of lease or other written instrument, see 19-7-50 NMSA 1978.

For forfeiture on failure to develop and operate mineral lands in workmanlike manner, see 19-8-13 NMSA 1978.

For forfeiture of certain mineral leases for violation thereof, see 19-8-27 NMSA 1978.

For lease of coal lands, see 19-9-9 NMSA 1978 et seq.

For forfeiture on failure to comply with terms of coal lease, see 19-9-13 NMSA 1978.

For lease of gas and oil lands, see 19-10-1 NMSA 1978 et seq.

For cancellation of oil and gas lease, see 19-10-20 NMSA 1978.

For forfeiture of lease under Geothermal Resources Act, see 19-13-23 NMSA 1978.

### 19-8-2. [Inspection of lessee's books by commissioner.]

The commissioner, or his representative, shall have the right to inspect all records or books of account pertaining to the mining, extraction, transportation, reduction and returns of all ores taken from such leased lands.

**History:** Laws 1912, ch. 82, § 38; Code 1915, § 5215; C.S. 1929, § 132-138; 1941 Comp., § 8-907; 1953 Comp., § 7-9-7.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Cotenant's accountability for minerals removed from property, basis of computation, 5 A.L.R.2d 1368.

### 19-8-3. [Lessee's preferential right to renew or purchase; notice to vacate when another purchases.]

Any lessee of such mineral lands, or the heirs, successors or assigns of such lessee, shall have a preferential right to a renewal lease, or to purchase during the life of such lease, provided all terms and conditions of the expiring lease shall have been fully performed. In case of purchase by another, one year's notice to vacate shall be given to the lessee.

**History:** Laws 1912, ch. 82, § 39; Code 1915, § 5216; C.S. 1929, § 132-139; 1941 Comp., § 8-908; 1953 Comp., § 7-9-8.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For right of owner of improvements on state lands to be compensated for same by purchaser or subsequent lessee, see 19-7-14 NMSA 1978.

#### ANNOTATIONS

**"Mineral lands".** — The term "mineral lands" means lands upon which metals or minerals have been discovered in rock, in place. *State ex rel. Otto v. Field*, 1925-NMSC-019, 31 N.M. 120, 241 P. 1027.

**Severance of surface rights.** — Commissioner of public lands may sell some estate in the lands independent of the minerals. *State ex rel. Otto v. Field*, 1925-NMSC-019, 31 N.M. 120, 241 P. 1027.

**Quiet title action against state.** — Action to quiet title and remove cloud thereon, commenced by the holder of a contract of purchase of state lands, whereby it is sought to set aside and annul the reservation of minerals contained therein, is an action against the state. *American Trust & Sav. Bank v. Scobee*, 1924-NMSC-022, 29 N.M. 436, 224 P. 788.

## 19-8-4. Leases for certain minerals; rentals; royalty.

The commissioner is authorized to issue leases for the development, exploration and production of potassium, sodium, phosphorus and other minerals of similar occurrence and their salts and compounds, including chlorides, sulphates, carbonates, borates, silicates, nitrates and any and all other salts and compounds of the minerals on any lands of the state upon such terms and conditions as he may deem to be for the best interests of the state and conformable to Sections 19-8-4 through 19-8-7 NMSA 1978. The minimum first year's rental for such leases shall be one hundred dollars (\$100), and in all cases there shall be reserved to the state a royalty to be established by regulation issued under the provisions of Section 19-8-7 NMSA 1978. The commissioner may amend any lease in existence on the effective date of this amendment to reflect any regulation in effect at the time of the amendment to the lease.

**History:** Laws 1929, ch. 140, § 1; C.S. 1929, § 111-501; 1941 Comp., § 8-909; 1953 Comp., § 7-9-9; Laws 1984, ch. 13, § 1.

**Compiler's notes.** — The reference to "effective date of this amendment" in the last sentence refers to the effective date of Laws 1984, ch. 13, § 1, which was May 17, 1984.

**The 1984 amendment,** effective May 17, 1984, added the section heading, substituted "The commissioner is authorized" for "That the commissioner of public lands be and he is hereby authorized," "the minerals on any lands of the state" for "the said minerals, of any lands of the state of New Mexico" and "Sections 19-8-4 through 19-8-7 NMSA 1978" for "this act" in the first sentence, transposed "dollars" and "(\$100)" and substituted "to be established

by regulation issued under the provisions of Section 19-8-7 NMSA 1978" for "of not less than five (5%) percent of the amount or value of minerals produced, such royalty to be computed upon the value of said minerals delivered at the nearest or most accessible railroad shipping point" in the second sentence and added the third sentence.

### ANNOTATIONS

**Royalties.** — Mineral content of state lands is to be disposed of only on lease, from which state is to derive royalties. *State ex rel. Otto v. Field*, 1925-NMSC-019, 31 N.M. 120, 241 P. 1027.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Mines and Minerals §§ 121 et seq., 142 et seq.

## 19-8-5. [Term of lease.]

Leases under this act [19-8-4 to 19-8-7 NMSA 1978] may be made for a term of ten years or less and as long thereafter as said minerals, or any of them, in paying quantities shall be produced from the leased lands.

**History:** Laws 1929, ch. 140, § 2; C.S. 1929, § 111-502; 1941 Comp., § 8-910; 1953 Comp., § 7-9-10.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 19-8-6. [Salt lease statutes excepted.]

There is expressly excepted from the provisions of this act [19-8-4 to 19-8-7 NMSA 1978], chloride of sodium, usually called and known as common salt, and this act shall not be construed as modifying, altering, repealing or in any wise changing the existing statutes relating to the leasing of state lands for the production of chloride of sodium, or common salt.

**History:** Laws 1929, ch. 140, § 3; C.S. 1929, § 111-503; 1941 Comp., § 8-911; 1953 Comp., § 7-9-11.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For saline leases, see 19-8-10, 19-8-11 NMSA 1978.

## 19-8-7. [Rules and regulations authorized.]

The commissioner of public lands shall prescribe and promulgate from time to time all necessary rules and regulations for carrying out the provisions hereof.

**History:** Laws 1929, ch. 140, § 4; C.S. 1929, § 111-504; 1941 Comp., § 8-912; 1953 Comp., § 7-9-12.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For State Rules Act, see Chapter 14, Article 4 NMSA 1978.



### 19-8-8. [Suspension of production; authorization by commissioner of public lands; causes; duration.]

In all cases where production of potassium, sodium, phosphorus and other minerals of similar occurrence, and their salts and compounds has been obtained by the lessee in paying quantities upon lands covered by any valid lease heretofore or hereafter issued by the commissioner of public lands under the provisions of Sections 19-8-4 to 19-8-7 NMSA 1978, the commissioner of public lands may authorize a suspension of production on such lease during either the primary, or fixed term, or during the secondary, or indeterminable term, of such lease for such period as may be fixed by him, from time to time, where:

A. temporary conditions exist, with regard to the leased land then being mined, which would operate to prevent the mining of the maximum minable ore in keeping with safe mining practices;

B. separate parts of the lands covered by the lease are so situated with respect to other lands owned or leased by the lessee that lessee should be allowed a reasonable time to reach and mine the various parts of the lands covered by the lease in keeping with an orderly mining program and with a view to the proper development and mining of the entire area of which the various parts of the lands covered by the lease and other lands are an integral part; or

C. marketing conditions are such that the lease cannot be mined and operated except at a loss.

No suspension authorized by the terms of this act [19-8-8, 19-8-9 NMSA 1978] shall be for a period of more than five years and in no event shall any suspension of production under any lease be for a period longer than ten years from the date on which the term of the lease would have expired in the absence of suspension of production.

**History:** 1953 Comp., § 7-9-12.1, enacted by Laws 1959, ch. 178, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-8-9. [Suspension of production; authorization by commissioner of public lands; extension of primary term of lease; secondary term of lease not determined by.]

Provided the lessee complies with all other terms and conditions of the lease, a suspension of production authorized by the commissioner of public lands shall:

A. if it occurs during the fixed or primary term of such lease, extend the term of such lease for a period of time equal to the period of such suspension; or

B. if it occurs during the indeterminable or secondary term of such lease, prevent the lease from determining in accordance with the limitation of such lease.

**History:** 1953 Comp., § 7-9-12.2, enacted by Laws 1959, ch. 178, § 2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-8-10. [Saline leases; royalties; record of sales; conditions.]

The commissioner may execute leases for the extraction of salt from the saline lands and lakes belonging to the state. Such leases shall provide for a royalty on all salt extracted therefrom of not less than ten percent of the actual sale price at the place of extraction. Said royalties shall be paid quarterly and accurate record shall be kept of all sales made. All leases made hereunder shall contain such conditions and shall provide for the cancellation of the lease by the commissioners for the breach thereof.

**History:** Laws 1912, ch. 82, § 41; Code 1915, § 5219; Laws 1923, ch. 99, § 1; C.S. 1929, § 132-142; Laws 1939, ch. 81, § 1; 1941, ch. 16, § 1; 1941 Comp., § 8-913; 1953 Comp., § 7-9-13.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For exception of statutes relating to leasing of state lands for the production of common salt from the provisions of 19-8-4 to 19-8-7 NMSA 1978, see 19-8-6 NMSA 1978.

### 19-8-11. [Term of saline lease; extension.]

Leases under this act [19-8-10, 19-8-11 NMSA 1978] may be made for a term of ten years or less and as long thereafter as said salt in paying quantities shall be produced from the leased lands; provided that as to any saline leases existing at the effective date of this act the commissioner of public lands may in his discretion extend the term of any such leases for an additional term of five years and as long thereafter as salt is being produced in paying quantities from the leased lands.

**History:** Laws 1941, ch. 16, § 2; 1941 Comp., § 8-914; 1953 Comp., § 7-9-14.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-8-12. [Shale, clay, natural deposit or product lease; conditions; improvement mortgages void.]

The commissioner may also execute leases for the mining, extraction or disposition of shale, clay or other natural deposits in or upon, or products of, state lands, not otherwise provided for in this chapter, upon such terms and conditions as he may deem for the best interests of the state, not repugnant to law. Any mortgage upon improvements on any such lands so leased shall be void.

**History:** Laws 1912, ch. 82, § 42; Code 1915, § 5220; C.S. 1929, § 132-143; 1941 Comp., § 8-915; 1953 Comp., § 7-9-15.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The words "this chapter" apparently refer to ch. 102 of the 1915 Code, §§ 5178 to 5290, the presently effective sections of which are compiled herein as 19-1-1, 19-1-2, 19-1-4 to 19-1-6, 19-1-9 to 19-1-16, 19-1-21, 19-2-1, 19-5-3 to 19-5-10, 19-6-1 to 19-6-7, 19-7-1, 19-7-7, 19-7-8, 19-7-11, 19-7-13, 19-7-19 to 19-7-22, 19-7-25, 19-7-27 to 19-7-30, 19-7-34, 19-7-36, 19-7-50 to 19-7-53, 19-7-57, 19-7-58, 19-7-64 to 19-7-67, 19-8-1 to 19-8-3, 19-8-10, 19-8-12, 19-8-13, 19-9-1 to 19-9-8, 19-11-10 NMSA 1978.

#### ANNOTATIONS

**Program for removal of certain firewood from state trust lands authorized.** — The commissioner is authorized under this section to implement a fee lease program for the removal of dead and down firewood from state trust lands. 1980 Op. Att'y Gen. No. 80-13.

**Removal of dead and down firewood would benefit land and would be in the best interest of the state.** 1980 Op. Att'y Gen. No. 80-13.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Clay, sand or gravel as "minerals" within lease, 95 A.L.R.2d 843.

### 19-8-13. [Mineral lands; development.]

All lands under lease for extraction of coal or other deposits, shall be developed and operated in a workmanlike manner and with a view to development of the whole area tributary to the shafts, drifts, tunnels or other openings made, and failure of the lessee or his assigns to observe this provision shall be cause for cancellation and forfeiture of the lease thereon in the manner hereinbefore provided in this chapter.

**History:** Laws 1912, ch. 82, § 43; Code 1915, § 5221; C.S. 1929, § 132-144; 1941 Comp., § 8-916; 1953 Comp., § 7-9-16.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The words "this chapter" apparently refer to ch. 102 of the 1915 Code, §§ 5178 to 5290, the presently effective sections of which are compiled herein as 19-1-1, 19-1-2, 19-1-4 to 19-1-6, 19-1-9 to 19-1-16, 19-1-21, 19-2-1, 19-5-3 to 19-5-10, 19-6-1 to 19-6-7, 19-7-1, 19-7-7, 19-7-8, 19-7-11, 19-7-13, 19-7-19 to 19-7-22, 19-7-25, 19-7-27 to 19-7-30, 19-7-34, 19-7-36, 19-7-50 to 19-7-53, 19-7-57, 19-7-58, 19-7-64 to 19-7-67, 19-8-1 to 19-8-3, 19-8-10, 19-8-12, 19-8-13, 19-9-1 to 19-9-8, 19-11-10 NMSA 1978.

**Cross references.** — For forfeiture of lease for failure to pay rent, *see* 19-7-34 NMSA 1978.

For grounds of forfeiture of grazing or agricultural lease, *see* 19-7-35 NMSA 1978.

For forfeiture procedure on violation of lease or other written instrument, *see* 19-7-50 NMSA 1978.

For forfeiture for defrauding the state of royalties, *see* 19-8-1 NMSA 1978.

For forfeiture of coal lease on failure to comply with terms thereof, *see* 19-9-13 NMSA 1978.

For cancellation of oil and gas lease, *see* 19-10-20 NMSA 1978.

For forfeiture of lease under the Geothermal Resources Act, *see* 19-13-23 NMSA 1978.



## 19-8-14. Issuance of mineral leases authorized; minerals not included.

The commissioner of public lands, hereinafter referred to as the "commissioner," is hereby authorized to execute and issue in the name of the state of New Mexico, as lessor, leases for the sole and exclusive purpose of prospecting, exploration and mining of all minerals other than common salt, oil and gas, coal, shale, clay, gravel, building stone and building materials, potassium, sodium, phosphorus and other minerals of similar occurrence, and their salts and compounds upon or from any public lands over which the commissioner has jurisdiction, direction, control, care and disposition under the constitution and laws of the state of New Mexico, such leases to be issued upon such terms and conditions as the commissioner may deem to be to the best interests of the state of New Mexico and not inconsistent with the provisions of this act [19-8-14 to 19-8-18, 19-8-21 to 19-8-33 NMSA 1978].

**History:** 1953 Comp., § 7-9-17, enacted by Laws 1955, ch. 53, § 1.

**Cross references.** — For reservation of mineral lands of state from sale, see 19-7-25 NMSA 1978.

### ANNOTATIONS

**Prospecting of state lands.** — Section 5209, 1915 Code, which authorized leasing of state lands for prospecting or development of lodes or deposits of metals or minerals, assumed that the lands to be so prospected were not known to be mineral lands. *State ex rel. Otto v. Field*, 1925-NMSC-019, 31 N.M. 120, 241 P. 1027.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Mistake as to existence, practicability of removal or amount of minerals as ground for relief from lease, 163 A.L.R. 878.

Rights of tenants for years and remaindermen inter se in royalties or rents under coal or other mineral lease, 18 A.L.R.2d 98.

Right of mineral lessee to deposit top soil, waste minerals and like upon lessor's additional land not being mined, 26 A.L.R.2d 1453.

Construction and effect of provision in mineral lease excusing payment of minimum rent or royalty, 28 A.L.R.2d 1013.

Oil and gas as "minerals" within lease, 37 A.L.R.2d 1440.

Clay, sand or gravel as "minerals" within deed, lease or license, 95 A.L.R.2d 843.

58 C.J.S. Mines and Minerals, § 129.

## 19-8-15. Minerals, lessees, legal subdivision defined.

The term "minerals" as used in this act [19-8-14 to 19-8-18, 19-8-21 to 19-8-33 NMSA 1978] shall be construed to include all mineral deposits, whether the same be lode, placer or otherwise, and unless otherwise specifically indicated the term "lessee" as used in this act shall be construed to include an assignee under an assignment approved pursuant to Section 13 [19-8-28 NMSA 1978] of this act. The term "legal subdivision" as used in this act shall be construed in its ordinary sense, as used and recognized by the general land office of the United States and the state land office of the state of New Mexico.

**History:** 1953 Comp., § 7-9-18, enacted by Laws 1955, ch. 53, § 2.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Oil and gas as "minerals" within deed, lease or license, 37 A.L.R.2d 1440.

Clay, sand or gravel as "minerals" within lease, 95 A.L.R.2d 843.

## 19-8-16. Validation of existing leases and permits; renewals of permits prohibited.

All prospecting permits and leases issued prior to the effective date of this act which have not expired, or which have not been canceled legally for nonperformance, are hereby declared to be valid and existing contracts with the state of New Mexico according to their terms and provisions, and the commissioner is hereby directed to accept and recognize all such permits and leases according to their terms and provisions. Provided, further, that no such existing prospecting permits shall be extended, renewed or otherwise prolonged or enlarged as to length of term.

**History:** 1953 Comp., § 7-9-19, enacted by Laws 1955, ch. 53, § 3.

## 19-8-17. Relinquishment of permits for conversion.

Any legal owner and holder of any placer prospecting permit issued by the commissioner prior to the effective date of this act, if not in default of any of the provisions thereof, may relinquish the same to the state and, upon application filed at the time of filing such relinquishment, the commissioner shall issue a lease in accordance with the provisions of this act [19-8-14 to 19-8-18, 19-8-21 to 19-8-33 NMSA 1978].

**History:** 1953 Comp., § 7-9-20, enacted by Laws 1955, ch. 53, § 4.

## 19-8-18. Term of leases.

All leases issued under the provisions of Sections 19-8-14 through 19-8-33 NMSA 1978 shall be for a primary term of three years and as long thereafter as any mineral or minerals in paying quantities be produced or mined from the lands, subject to the continued payment of annual rentals.

If lessee shall fail to discover and produce minerals in paying quantities during the primary term of the lease, the lessee may continue the lease in full force and effect for an additional or secondary term of two years and as long thereafter as any mineral or minerals in paying quantities be produced or mined from the leased land, by paying each year in advance ten times the rental provided in the primary term.

Provided, however, if the lessee shall fail to discover and produce minerals in paying quantities during the secondary term of the lease, the lessee of record or the record owner of an approved assignment may continue the lease, as to the portion held by him, in full force and effect for an additional or tertiary term of five years and so long thereafter as any mineral or minerals in paying quantities by [be] produced or mined from the leased land, by paying each year in advance three dollars (\$3.00) per acre per year as rental.

If the lessee shall fail to discover and produce minerals in paying quantities during the tertiary term of the lease, the lessee of record or the record owner of an approved assignment may continue the lease, as to the portion held by him, in full force and effect for an additional or quarternary [quaternary] term of five years and so long thereafter as any mineral or minerals in paying quantities be produced or mined from the leased land, by paying each year in advance of the lease anniversary date ten dollars (\$10.00) per acre per year as rental, plus a sum as advance royalty computed as follows:

- for the 11th year, ten dollars (\$10.00) per acre per year;
- for the 12th year, twenty dollars (\$20.00) per acre per year;
- for the 13th year, thirty dollars (\$30.00) per acre per year;
- for the 14th year, forty dollars (\$40.00) per acre per year; and
- for the 15th year, fifty dollars (\$50.00) per acre per year. Provided, however, upon the commencing of the production of minerals in paying quantities, the principal sum so paid as advance royalty for the lease year in which the mineral is produced and the advance royalty paid for the two previous years shall be credited against the royalty payable hereunder to the lessor.

**History:** 1953 Comp., § 7-9-21, enacted by Laws 1955, ch. 53, § 5; 1959, ch. 42, § 1; 1977, ch. 147, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Termination:** rights of lessee to minerals extracted during the lease but remaining on the premises after its termination, 51 A.L.R.2d 1121.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Relief against forfeiture of lease for nonpayment of rent, 31 A.L.R.2d 321.



## **19-8-19. [Terms of leases; stipulation of conditions under statute; filing and recording.]**

The record owners or owner of any mineral lease or approved assignment thereof heretofore issued by the commissioner and maintained in good standing may enter into a stipulation with the commissioner of public lands making the terms and conditions of this act [19-8-18, 19-8-19 NMSA 1978] a part of any such existing lease, the same as if said provisions had been a part of said lease when issued. The commissioner may charge a fee not to exceed ten dollars (\$10.00) for the filing and recording of such stipulation.

Provided, further, that if for any reason beyond the control of the lessee production of minerals in paying quantities shall cease after the secondary term has expired, the producing lessee may, with the written permission of the commissioner, continue said lease in operation and effect from year to year for an additional period not to exceed three (3) years by continued payment in advance of annual rentals at the rate provided in the secondary term of the lease.

**History:** 1953 Comp., § 7-9-21.1, enacted by Laws 1959, ch. 42, § 2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For subsequent provisions dealing with terms of leases, stipulation of conditions under statute and filing and recording, see 19-8-20 NMSA 1978.

### **19-8-19.1. Suspension of lease requirement; authorization by commissioner; causes; duration.**

A. In all cases where the lessee of a valid lease issued under the provisions of Sections 19-8-14 through 19-8-33 NMSA 1978, or the record owner of an approved assignment of such lease, provides to the commissioner of public lands proof of discovery on such lease of an ore body containing valuable mineral deposits deemed to be of merchantable quality and quantity, the commissioner of public lands upon proper application by the lessee or the record owner and after notice and hearing shall authorize a suspension of the lease during either the primary, secondary, tertiary, quaternary or indeterminable terms of such lease for such period as may be fixed by him if the commissioner is satisfied that:

(1) marketing conditions beyond the control of the lessee are such that the lease cannot be mined and the ore marketed except at a loss; or

(2) temporary conditions exist beyond the control of the lessee, with regard to the leased land then being mined, which would operate to prevent the mining of the maximum minable ore in keeping with safe mining practices.

B. A suspension authorized by the commissioner pursuant to the provisions of Subsection A of this section shall take effect as of the date of the commissioner's decision and shall suspend the lease for the period of such suspension, but in no event shall any single suspension be for a period longer than five years.

C. All obligations of the lessee under a lease suspended pursuant to the provisions of this section shall be suspended, including the payment of rentals and advance royalties; provided, however, that the lessee shall pay an annual rental of sixty dollars (\$60.00) per acre per year for each year of suspension.

D. A suspension authorized by the commissioner pursuant to this section shall not subject the suspended lease to the provisions of Section 19-8-20 NMSA 1978.

**History:** 1978 Comp., § 19-8-19.1, enacted by Laws 1983, ch. 3, § 1.

### **19-8-20. Leases; stipulation; rental.**

The record owners or owner of any mineral lease or approved assignment thereof heretofore issued by the commissioner, which lease has not expired by its own terms, which has not been canceled by the commissioner and which has otherwise been maintained in good standing, may

enter into a stipulation with the commissioner of public lands making the terms and conditions of Sections 19-8-14 through 19-8-33 NMSA 1978 a part of any such existing lease, the same as if said provisions had been a part of said lease when issued. In such case, the basic royalty payable to the lessor on production thereafter obtained from the stipulated lease or portion thereof shall be at the rate set in new leases then being issued by the lessor. The commissioner may charge a fee not to exceed ten dollars (\$10.00) for the filing and recording of such stipulation. If production in paying quantities be had during any of the aforesaid set terms and thereafter ceases before all of the set terms would have expired, the lease shall be deemed to be a nonproducing lease from that date and lessee shall have the unexpired portion of said set term and any subsequent terms within which to resume production in paying quantities. When such production is resumed, the term of the lease shall continue for so long thereafter as minerals in paying quantities be produced or mined from the leased land. In such cases, the rental rate for the lease or the portion thereof, shall be the rental provided in the term in which such production is resumed; the new rental shall be payable on the anniversary date next following the date production is resumed.

Provided, further, that if for any reason beyond the control of the lessee production of minerals in paying quantities shall cease after all of the set terms have expired, the producing lessee may, with the written permission of the commissioner, continue said lease in operation and effect from year to year for an additional period not to exceed three years by continued payment in advance of annual rentals at the rate provided in the final term of the lease.

**History:** 1953 Comp., § 7-9-21.2, enacted by Laws 1977, ch. 147, § 2.

**Cross references.** — For antecedent provisions dealing with terms of leases, stipulation of conditions under statute and filing and recording, see 19-8-19 NMSA 1978.

## 19-8-21. Rentals.

All leases issued by the commissioner shall provide for an annual rental to be paid by the lessee in advance, the amount thereof to be fixed by the commissioner, but in no case shall the same be less than five cents (5¢) per acre for the primary term nor less than fifty cents (50¢) per acre for the secondary term; provided that the annual rental for any one lease shall not be less than ten dollars (\$10.00).

**History:** 1953 Comp., § 7-9-22, enacted by Laws 1955, ch. 53, § 6.

**Cross references.** — For interest on delinquent payments of rental, see 19-1-3 NMSA 1978.

## ANNOTATIONS

**Law reviews.** — For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M. L. Rev. 69 (1976-77).

## 19-8-22. Royalty.

In addition to the annual rental, lessee shall be required to pay to the commissioner a royalty of not less than two percent (2%) of the gross returns from the smelter, mill, reduction process or other sale, less reasonable transportation and smelting or reduction charges, if any, of all ores or materials mined and extracted from the land. In addition, lessee shall pay to the commissioner as royalty not less than two percent (2%) of any and all premiums and bonuses received in connection with the discovery, production or marketing. Provided that on deposits of rare earths, precious stones or semi-precious stones, and on uranium, thorium, plutonium or any other materials which have been or may hereafter be determined by the atomic energy commission to be peculiarly essential to the production of fissionable materials, lessee shall pay a royalty to be agreed upon by the lessee and the commissioner, but not less than five percent (5%) of the gross returns from the smelter, mill, reduction process or other sale, less reasonable transportation and smelting or reduction charges, if any, of all ores or materials mined and extracted from the land. In addition, lessee shall pay to the commissioner as royalty not less than five percent (5%) of any and all premiums and bonuses received in connection with the discovery, production or marketing of such ores or materials.



Accounting for all royalties shall be made on the twentieth (20th) day of the month following the month of sale or receipt of premium or bonus.

**History:** 1953 Comp., § 7-9-23, enacted by Laws 1955, ch. 53, § 7.

**Compiler's notes.** — Under former 72-6-7, 1953 Comp., relating to valuation of mineral interests for tax purposes, where a sub-lessee was the producing operator and paid royalties to the state, he and not the original lessee should be allowed royalty-payment deductions.

#### ANNOTATIONS

**Law reviews.** — For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M. L. Rev. 69 (1976-77).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Real or personal property, solid mineral royalty as, 68 A.L.R.2d 728.

Payment of stipulated minimum royalties or annual rental under solid mineral lease as precluding lessor's claim of forfeiture or abandonment, 87 A.L.R.2d 1076.

### 19-8-23. Covenants to market and develop.

All leases issued under the provisions of this act [19-8-14 to 19-8-18, 19-8-21 to 19-8-33 NMSA 1978] shall contain provisions requiring the lessees to market the mineral or minerals within a reasonable time after production is had. In addition, said leases shall contain provisions requiring the lessees to use reasonable diligence, after production is had, in prospecting for and developing all commercial deposits of mineral or minerals.

The commissioner may cancel leases for violation of such marketing and developing provisions only after notice and in the manner as provided in Section 12 [19-8-27 NMSA 1978] of this act, and in all cases of controversy arising out of such cancellation the lessee shall have the burden of proof by a preponderance of the evidence that further development is not warranted, or is unreasonable, or that a market is not available, as the case may be.

**History:** 1953 Comp., § 7-9-24, enacted by Laws 1955, ch. 53, § 8.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Marketing: duty of lessee or assignee of solid mineral lease as regards marketing of mineral products, 77 A.L.R.2d 1058.

### 19-8-24. Bonds.

Before any lessee of minerals shall commence development or operations upon the lands, such lessee shall execute and file with the commissioner a good and sufficient bond or undertaking in an amount to be fixed by the said commissioner, but not less than five thousand dollars (\$5,000), in favor of the state of New Mexico, for the benefit of any surface lessee, patentee or contract purchaser, to secure the payment for such damage to the livestock, water, crops or other tangible improvements on such lands as may be suffered by reason of development, use and occupation of such lands by the said mining lessee. Provided in lieu thereof any lessee owning one or more mining leases may file a blanket bond in an amount to be fixed by the commissioner, but not less than ten thousand dollars (\$10,000), covering all leases then owned or thereafter acquired by him.

Provided, further, that if any such surface lessee, patentee or contract purchaser shall file with the commissioner a waiver duly executed and acknowledged by him of his right to require such bond, such development, occupation and use of the lands by a mineral lessee may be permitted without the bond herein required.

In addition, lessee may be required to furnish a bond in a reasonable amount to be set by the commissioner to guarantee payment of royalties to become due under the lease.

**History:** 1953 Comp., § 7-9-25, enacted by Laws 1955, ch. 53, § 9; 1957, ch. 42, § 1.

**Cross references.** — For bond required of mineral lessee of lands sold on deferred payment plan with reservation of minerals, see 19-10-26 NMSA 1978.

For bond filed by person leasing state lands for geothermal resource development, see 19-13-18 NMSA 1978.

## 19-8-25. Inspection of records; reports.

The commissioner or his representative shall have the right to inspect all records, books or accounts pertaining to the mining, extraction, transportation and returns of ores taken from such leased lands, and at the request of the commissioner the lessee shall furnish such reports, samples, logs, assays or cores within reasonable bounds as he may deem to be necessary to the proper administration of the lands under lease.

**History:** 1953 Comp., § 7-9-26, enacted by Laws 1955, ch. 53, § 10.

## 19-8-26. Relinquishment of leases.

With the consent of the commissioner, any lease issued under the provisions of this act [19-8-14 to 19-8-18, 19-8-21 to 19-8-33 NMSA 1978] may be relinquished in whole or in part to the state of New Mexico; provided, however, the commissioner shall not approve any relinquishment of an undivided interest therein nor less than a legal subdivision.

**History:** 1953 Comp., § 7-9-27, enacted by Laws 1955, ch. 53, § 11.

**Cross references.** — For relinquishment of lease of state lands with written consent of commissioner, *see* 19-7-36 NMSA 1978.

For relinquishment of lease issued under Geothermal Resources Act, *see* 19-13-8 NMSA 1978.

## 19-8-27. Violation of lease; notice; forfeiture for noncompliance with demand.

The commissioner is authorized to cancel any lease issued under the provisions of this act [19-8-14 to 19-8-18, 19-8-21 to 19-8-33 NMSA 1978] for nonpayment of rentals, for nonpayment of royalties or for violation of any of the terms, covenants or conditions thereof, but before any such cancellation shall be made, the commissioner must mail to the lessee or assignee, by registered or certified mail, addressed to the post-office address of the lessee or assignee as shown by the records of the office of the commissioner, a notice of intention to cancel the lease, specifying the default for which the lease is subject to cancellation. No proof of receipt of notice shall be necessary, and thirty days after the mailing the commissioner may enter cancellation unless the lessee shall have sooner remedied the default.

**History:** 1953 Comp., § 7-9-28, enacted by Laws 1955, ch. 53, § 12; 1971, ch. 97, § 1.

**Cross references.** — For forfeiture of lease for failure to pay rent, *see* 19-7-34 NMSA 1978.

For grounds of forfeiture of agricultural or grazing lease, *see* 19-7-35 NMSA 1978.

For forfeiture procedure on violation of lease or other written instrument, *see* 19-7-50 NMSA 1978.

For forfeiture for defrauding state of royalties, *see* 19-8-1 NMSA 1978.

For forfeiture on failure to develop and operate mineral lands in a workmanlike manner, *see* 19-8-13 NMSA 1978.

For forfeiture of coal lease for failure to comply with terms thereof, *see* 19-9-13 NMSA 1978.

For cancellation of oil and gas lease, *see* 19-10-20 NMSA 1978.

For forfeiture of lease under Geothermal Resources Act, *see* 19-13-23 NMSA 1978.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Mistake, accident, inadvertence, etc., as ground for relief from termination or forfeiture of oil or gas lease for failure to complete well, start drilling or pay rent on time, 5 A.L.R.2d 993.

Relief against forfeiture of lease for nonpayment of rent, 31 A.L.R.2d 321.

Payment of stipulated minimum royalties or annual rental under solid mineral lease as precluding lessor's claim of forfeiture or abandonment, 87 A.L.R.2d 1076.

## 19-8-28. Assignment of leases; form; approval; effect; lands in production.

All leases issued under the provisions of this act [19-8-14 to 19-8-18, 19-8-21 to 19-8-33 NMSA 1978] shall be assignable in whole or in part; provided, however, that no assignment of an undivided



interest in the lease or any part thereof, or any assignment of less than a legal subdivision, shall be recognized or approved by the commissioner. The assignments provided for herein shall be executed and acknowledged in the manner prescribed for conveyance of real estate in this state and shall be filed in triplicate in the office of the commissioner, who shall retain two (2) copies of the said assignment in his office as a public record and shall record one (1) of same in permanent form in his office as a public record and shall return one (1) of the duplicate copies to the person entitled thereto. The approval of the commissioner shall be noted upon all copies of the said assignment. The commissioner shall prescribe the form to be used for such assignments and shall fix a reasonable fee for the filing, recording and approval of same. The commissioner shall have the right to refuse approval of any assignment not executed in proper form or by the proper person or persons, or when the lease is not in good standing as to the assigned tracts, or when litigation is pending affecting the lease or the interest of any person therein. Upon approval by the commissioner of an assignment the assignor shall stand relieved from all obligations to the state with respect to the lands embraced in the assignment and the state shall likewise be relieved from all obligations to the assignor as to such tract or tracts, and thereupon the assignee shall succeed to all of the rights and privileges of the assignor with respect to such tracts and shall be held to have assumed all of the duties and obligations of the assignor to the state as to such tracts. Provided, however, the record owner of any mineral lease may enter into any contract for the development of the leasehold premises or any portion thereof, or may create overriding royalties or obligations payable out of production, or enter into any other agreements with respect to the development of the leasehold premises or disposition of the production therefrom, and it shall not be necessary for any such contracts, agreements or other instruments to be approved by the commissioner of public lands; but nothing herein contained shall relieve the record title owner of such lease from complying with any of the terms or provisions thereof, and the commissioner shall look solely and only to such record owner for compliance therewith, and in any controversy respecting any such contracts, agreements or other instruments entered into by such lessee with other persons the state of New Mexico or the commissioner of public lands shall not be a necessary party. All such contracts and other instruments may be filed either in the office of the commissioner of public lands or recorded in the office of the county clerk of the county where the lands are situated, and the filing or recording thereof shall constitute notice to all the world of the existence and contents of the instruments so filed or recorded. The commissioner may prescribe a reasonable fee for the filing of such instruments in the office of the commissioner of public lands. The production of minerals upon any lands embraced in any mineral lease shall continue such lease as to all of the lands embraced therein for as long thereafter as any mineral or minerals in paying quantities are being produced in accordance with the provisions thereof, regardless of any assignment of all or a portion of the lease which may have been made prior or subsequent to the production.

**History:** 1953 Comp., § 7-9-29, enacted by Laws 1955, ch. 53, § 13.

**Cross references.** — For assignment or relinquishment of lease of state lands, see 19-7-36 NMSA 1978.

For assignment of oil and gas leases, see 19-10-13 NMSA 1978.

For transferability of lease under Geothermal Resources Act, see 19-13-21 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Liability of lessee who assigns lease for rent accruing subsequently to extension or renewal of term, 10 A.L.R.3d 818.

### 19-8-29. Improvements removable upon termination of lease.

Upon termination of any lease issued under the provisions of this act [19-8-14 to 19-8-18, 19-8-21 to 19-8-33 NMSA 1978] by reason of forfeiture, surrender, expiration of term or for any other reason, lessee may remove all improvements and equipment as can be removed without material injury to the premises; provided, however, that all rents and royalties have been paid and that such removal is accomplished within two years from the termination date or before such earlier date as the commissioner may set upon thirty (30) days' written notice to the lessee. All improvements and equipment remaining upon the premises after the removal date as set in accordance with this section shall be forfeited to the state of New Mexico without compensation.

**History:** 1953 Comp., § 7-9-30, enacted by Laws 1955, ch. 53, § 14.

**Cross references.** — For right, in general, of owner of improvements on state lands to be compensated for same by purchaser or subsequent lessee, *see* 19-7-14 NMSA 1978.

For payment for value of improvements by purchaser or subsequent oil and gas lessee to owner thereof, *see* 19-10-28 NMSA 1978.

For oil and gas lessee's right to remove certain improvements upon cancellation or forfeiture of lease, *see* 19-10-29 NMSA 1978.

For removal by lessee under Geothermal Resources Act of removable improvements, and forfeiture of others without compensation, *see* 19-13-24 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — What constitutes improvements, alterations or additions within lease provisions permitting or prohibiting tenant's removal thereof at termination of lease, 30 A.L.R.3d 998.

### 19-8-30. Area of lease.

Leases issued under the provisions of this act [19-8-14 to 19-8-18, 19-8-21 to 19-8-33 NMSA 1978] shall cover a specified area conforming to a legal subdivision or subdivisions and shall not exceed sixteen (16) subdivisions, being 640 [six hundred and forty acres] more or less, all of which shall be contiguous; provided, however, that leases issued in exchange for existing permits as provided by Section Four [19-8-17 NMSA 1978] of this act need not be contiguous if all legal subdivisions be situate and lie within the same township and range.

**History:** 1953 Comp., § 7-9-31, enacted by Laws 1955, ch. 53, § 15.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-8-31. Posting of open acreage; simultaneous applications.

When newly acquired acreage is posted to the tract books, or when other acreage is designated upon the tract books to be open acreage after having been previously leased or after having been withdrawn from leasing by the commissioner, all applications for mineral lease filed thereon within three (3) land office work days after such posting or designation shall be considered as simultaneous applications.

**History:** 1953 Comp., § 7-9-32, enacted by Laws 1955, ch. 53, § 16.

### 19-8-32. Rules and regulations authorized.

The commissioner shall be, and he is hereby, authorized and empowered to adopt such uniform and reasonable rules and regulations as he may deem necessary to carry out the provisions of this act [19-8-14 to 19-8-18, 19-8-21 to 19-8-33 NMSA 1978] and not inconsistent therewith, said rules to be posted in a conspicuous place in the state land office for a period of at least ten consecutive days.

**History:** 1953 Comp., § 7-9-33, enacted by Laws 1955, ch. 53, § 17.

**Cross references.** — For State Rules Act, *see* Chapter 14, Article 4 NMSA 1978.

### 19-8-33. Withholding of lands from lease authorized; lease by competitive bidding authorized.

Nothing contained in this act [19-8-14 to 19-8-18, 19-8-21 to 19-8-33 NMSA 1978] shall be construed as requiring the commissioner to offer any tract or tracts of land for lease, but the commissioner shall have power to withhold any tract or tracts from leasing for said mineral purposes, if, in his opinion, the best interests of the state would be served by so doing, and nothing contained in this act shall be construed as prohibiting the commissioner from rejecting any application at any time prior to approval and offering acreage embraced therein for lease upon competitive bidding by sealed bids or at public auction to the bidder offering the highest bonus in addition to the annual rentals as set by the commissioner. Provided, however, that notice of such public sale shall be



given by posting in a conspicuous place in the state land office, not less than ten (10) days before the date of sale, a notice of same, specifying the day and hour when, and the place where, the sale will be held, giving a description of the lands in each tract to be offered for lease. The notice shall also state whether the sale shall be conducted through sealed bids or at public auction and any other such information as the commissioner may deem necessary.

Where two or more sealed bids are received making the same offer on the same tract, the commissioner shall award the lease thereon in accordance with such regulations as he may prescribe.

**History:** 1953 Comp., § 7-9-34, enacted by Laws 1955, ch. 53, § 18.

**Cross references.** — For publication of legal notice, see 14-11-1 NMSA 1978 et seq.

**Severability.** — Laws 1955, ch. 53, § 19, provided for the severability of the act if any provision thereof is held invalid.

## ARTICLE 9

### Lease of Coal Lands

Sec.

19-9-1 to 19-9-8. Repealed.

19-9-9. Coal leases; authorization; competitive bids.

19-9-10. Coal leases; provisions.

19-9-11. Authority to enter; inspect books; prior lien.

19-9-12. Performance bond.

Sec.

19-9-13. Forfeiture for noncompliance.

19-9-14. Relinquishment.

19-9-15. Rules and regulations authorized.

19-9-16. Existing lessees; right to a new lease.

#### 19-9-1 to 19-9-8. Repealed.

**Repeals.** — Laws 1989, ch. 200, § 9 repealed 19-9-1 to 19-9-8 NMSA 1978, as enacted by Laws 1912, ch. 82, §§ 24 to 31, relating to lease of coal lands, effective July 1, 1989.

For comparable provisions, see 19-9-9 to 19-9-16 NMSA 1978.

#### 19-9-9. Coal leases; authorization; competitive bids.

The commissioner of public lands may execute and issue leases for the exploration, development and production of coal from state trust lands. Leases shall be issued only to the highest bidder either by sealed bid or at public auction; provided, however, the commissioner may in his discretion withhold any tract from leasing and may reject all bids offered for any tract if he determines that withholding or rejection is in the best interest of the trust beneficiaries.

**History:** Laws 1989, ch. 200, § 1.

**Cross references.** — For lease of mineral lands, see 19-8-1 NMSA 1978.

For lease of oil and gas lands, see 19-10-1 NMSA 1978.

For reservation by state in mineral lease of purchase rights, see 19-14-1 NMSA 1978.

For sale and lease of lands generally, see 19-7-1 NMSA 1978 et seq.

For reservation of mineral deposits in agricultural and grazing leases, see 19-7-28 NMSA 1978.

#### 19-9-10. Coal leases; provisions.

Any coal lease issued by the commissioner of public lands shall:

A. provide for a primary term of five years;

B. provide that, if, at the end of the primary term, the lessee has submitted a mine plan to the commissioner of public lands for approval delineating how and when the leased land will be developed and has either incorporated the leased land with adjacent land into a logical mining unit which can be developed and operated as a single operation or has shown to the satisfaction of the commissioner that the adjacent land is federal land which has not been available for coal leasing but that the lessee has incurred substantial costs in developing the leased land, then the coal lease shall not expire at the end of the primary term but shall continue for a secondary term of an additional five years;

C. provide that, if, at the end of the secondary term, the lessee is producing coal at an average annual rate of either one percent of the estimated recoverable reserves from the leased lands or

one percent of the estimated recoverable reserves from the logical mining unit, then the lease shall not expire but shall continue as long as the one percent average production is maintained over any consecutive three year period;

D. provide that, in lieu of any actual production requirement, expiration of the lease may be prevented by payment of an advance royalty equal to an estimated royalty obligation as contemplated by the approved mine plan and commercial production criteria. Any credit later taken for advance royalties against actual production royalties due shall not exceed fifty percent of the total royalty due and the lease shall not be extended for more than ten years by payment of advance royalties;

E. provide for a royalty of twelve and one-half percent of the proceeds received from the sale of all surface-mined coal or, at the option of the commissioner, the market value of the surface-mined coal and eight percent of the proceeds received from the sale of all underground-mined coal or, at the option of the commissioner, the market value of the underground-mined coal. The royalty rate may be reduced by the commissioner upon a showing that the leases for the nonstate lands in the same logical mining unit provide for a lower rate or that the leased lands will be bypassed and not mined without a rate reduction;

F. provide for an annual rental rate of five dollars (\$5.00) per acre of the leased lands, to be paid throughout the effective period of the lease;

G. provide that, except for small incidental quantities which may be vented or flared to achieve access to the coal, any coalbed methane gas is excluded and reserved from the coal lease. A coal lessee may engage in in situ coal gasification provided that such gasification does not disturb or diminish commercial quantities of coalbed methane gas; and

H. contain other provisions prescribed by regulation of the commissioner.

**History:** Laws 1989, ch. 200, § 2.

### **19-9-11. Authority to enter; inspect books; prior lien.**

The commissioner of public lands or his authorized representative shall have the right to enter any leased lands for the purpose of measuring the cubical contents of every opening from which coal has been extracted and to otherwise inspect the leased lands to ensure that proper royalties have been paid. The commissioner or his representative shall have the right to inspect all records, books or accounts pertaining to the mining, extraction, transportation and returns of coal produced from the leased lands and, at the request of the commissioner, the lessee shall furnish reports, samples, logs, assays or cores within reasonable bounds as the commissioner may determine to be necessary to the proper administration of the lands under lease. The value of any unpaid royalty shall become a prior lien upon the production from the leased lands and the improvements situated thereon.

**History:** Laws 1989, ch. 200, § 3.

### **19-9-12. Performance bond.**

Before commencing operations or development upon leased lands, a lessee shall execute and file with the commissioner of public lands a good and sufficient bond or other appropriate surety in an amount to be fixed by the commissioner to:

A. guarantee the performance of all covenants and obligations under the coal lease, including the obligation to pay royalties;

B. ensure that all aspects of mining operations and reclamation operations are conducted in conformity with the approved mining plan; and

C. ensure compensation for damage to the surface or surface improvements in the absence of an agreement between the coal lessee and any surface owner.



The commissioner, in his discretion, may allow a bond filed with the mining and minerals division of the energy, minerals and natural resources department pursuant to the Surface Mining Act [Chapter 69, Article 25A NMSA 1978] to satisfy the requirements of this section.

**History:** Laws 1989, ch. 200, § 4.

### **19-9-13. Forfeiture for noncompliance.**

The commissioner of public lands may cancel any coal lease for nonpayment of rentals, for nonpayment of royalties or for noncompliance with any of the terms or covenants of the lease, but before the cancellation is made, the commissioner shall mail to the lessee by registered or certified mail a notice of intention to cancel the lease, specifying the default for which the lease is subject to cancellation. If the lessee does not pay the rentals or royalties or begin to substantially remedy the other default within thirty days after mailing the notice of intention to cancel the commissioner may cancel the lease.

**History:** Laws 1989, ch. 200, § 5.

### **19-9-14. Relinquishment.**

With the consent of the commissioner of public lands any coal lease may be relinquished in whole or in part provided that the commissioner shall not approve any relinquishment of an undivided interest in any coal lease nor less than a legal subdivision.

**History:** Laws 1989, ch. 200, § 6.

### **19-9-15. Rules and regulations authorized.**

After notice to all existing coal lessees and other interested parties the commissioner may adopt rules and regulations as he deems necessary to carry out the provisions of this act [19-9-9 to 19-9-16 NMSA 1978]. The inadvertent failure to notify any coal lessee or other interested party shall not invalidate a rule or regulation.

**History:** Laws 1989, ch. 200, § 7.

### **19-9-16. Existing lessees; right to a new lease.**

Notwithstanding any provision of this act [19-9-9 to 19-9-16 NMSA 1978] requiring competitive bidding, the owner of any coal lease that is issued by the commissioner of public lands before the effective date of this section and maintained in good standing according to the terms and conditions of the coal lease and all applicable statutes and regulations shall, upon the expiration of the coal lease and in accordance with regulations prescribed by the commissioner, be entitled to a new lease for the leased lands. The terms and provisions of the new lease shall be consistent with the requirements of this act and any regulations of the commissioner.

**History:** Laws 1989, ch. 200, § 8.

## **ARTICLE 10**

### **Lease of Oil and Gas Lands**

Sec.

19-10-1. Issuance of leases authorized; lands subject; carbon dioxide leases exempted.

Sec.

19-10-2. Definitions.

19-10-3. Classification of state lands for oil and gas leasing.

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| <p>Sec.</p> <p>19-10-4. Authorization to lease; lease provisions.</p> <p>19-10-4.1. Exploratory form of lease; nonrestricted; regular restricted or premium restricted lands.</p> <p>19-10-4.2. Discovery form of lease; regular restricted or premium restricted lands.</p> <p>19-10-4.3. Development form of lease; premium restricted land.</p> <p>19-10-5. Existing leases; stipulation.</p> <p>19-10-5.1. Amendment of lease to lower royalty rate for oil wells under certain conditions.</p> <p>19-10-6. Shut-in oil wells; conditions.</p> <p>19-10-7. Exploratory form of lease; different term of years.</p> <p>19-10-8. Extension of terms of leases.</p> <p>19-10-9. Existing leases; stipulation to bring helium gas within terms.</p> <p>19-10-10. Repealed.</p> <p>19-10-11. Statement with royalty payment; inspection of books; state's lien for unpaid royalty; log; specimen of drill cuttings.</p> <p>19-10-12. New lease or extension where no discovery made; preference right; conditions.</p> <p>19-10-13. 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## 19-10-1. [Issuance of leases authorized; lands subject; carbon dioxide leases exempted.]

The commissioner of public lands hereinafter referred to as the "commissioner" is hereby authorized to execute and issue in the name of the state of New Mexico, as lessor, leases for the exploration, development and production of oil and natural gas, from any lands belonging to the state of New Mexico, or held in trust by the state under grants from the United States of America, and including lands which have been or may hereafter be sold by the state with reservations of minerals in the land, such leases to be issued upon such terms and conditions as the commissioner may deem to be for the best interests of the state, and not inconsistent with the provisions of Chapter 125, of the Session Laws of 1929 [19-10-1, 19-10-12 to 19-10-25 NMSA 1978], and amendments thereto, provided that this act [19-10-1, 19-10-2 NMSA 1978] shall be effective only as to such leases issued subsequent to the effective date of this act; and, provided further, that nothing in this act shall affect or disturb valid existing rights as to any carbon dioxide lease heretofore issued under the provisions of Chapter 177, of the New Mexico Session Laws of 1937.

**History:** Laws 1929, ch. 125, § 1; C.S. 1929, § 132-401; Laws 1931, ch. 18, § 1; 1941, ch. 137, § 2; 1941 Comp., § 8-1101; 1953 Comp., § 7-11-1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — Laws 1937, ch. 177, referred to in this section, was repealed by Laws 1941, ch. 137, § 3.

**Cross references.** — For reservation from sale of saline, mineral and oil and gas lands known to contain such, and authorization of lease of same, see 19-7-25 NMSA 1978.

For reservation of mineral deposits in grazing and agricultural leases, see 19-7-28 NMSA 1978.

For lease of mineral lands, see 19-8-1 NMSA 1978 et seq.

For lease of coal lands, see 19-9-9 NMSA 1978 et seq.

For reservation by state in mineral lease of purchase rights, see 19-14-1 NMSA 1978.

### ANNOTATIONS

**Form of lease.** — Commissioner of public lands under Laws 1929, ch. 125, § 1, could adopt such form as he desired for oil and gas leases. *Atlantic Oil Producing Co. v. Crile*, 1930-NMSC-040, 34 N.M. 650, 287 P. 696.

Commissioner of public lands could insert in oil and gas leases matters of substance not inconsistent with the provisions of the act. *Atlantic Oil Producing Co. v. Crile*, 1930-NMSC-040, 34 N.M. 650, 287 P. 696.

**Public policy to promote production.** — It is the public policy as shown by the oil and gas leasing laws to promote development and production of oil and gas and it was not contemplated by the legislature that a lessee be deprived of his right to develop fully a well begun in good faith merely because he was attempting to determine the extent of the production possible at a depth less than he contemplated drilling in order to test the productivity of the area. 1953-54 Op. Att'y Gen. No. 53-5650.

**Commissioner's leasing authority not exclusive.** — This section does not grant the commissioner of public lands the exclusive authority to issue all oil and gas leases on any lands owned by the state. 1980 Op. Att'y Gen. No. 80-10.

**Royalty provision.** — Commissioner may advertise, offer and lease oil and gas lands upon a basis of the state receiving more than one-eighth royalty from the highest and best bidder as he may deem for the best interests of the state. 1945-46 Op. Att'y Gen. No. 45-4750.

**Law reviews.** — For student article, "Preventing the Extinction of Candidate Species: The Lesser Prairie-Chicken in New Mexico", see 49 Nat. Resources J. 525 (2009).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 38 Am. Jur. 2d Gas and Oil § 283.

Right of co-lessor in community oil or gas lease to lessen production and royalties under such lease by operations on land not covered thereby or released therefrom, 167 A.L.R. 1225.

Rights and remedies of owner or lessee of oil or gas land or mineral or royalty interests therein, in respect of waste of oil or gas through operations on other lands, 4 A.L.R. 2d 198.

What constitutes oil or gas "royalty" or "royalties" within language of conveyance, exception, reservation, devise or assignment, 4 A.L.R. 2d 492.

Mistake, accident, inadvertence, etc., as ground for relief from termination or forfeiture of oil and gas lease for failure to complete well, commence drilling, or pay rental, strictly on time, 5 A.L.R. 2d 993.

Abandonment of oil or gas lease by parol declaration, 13 A.L.R. 2d 951.

Rights of tenants for years and remaindermen inter se in royalties or rent, under oil or gas lease, 18 A.L.R. 2d 98.

Liability for injury to property occasioned by oil, water, or the like flowing from well, 19 A.L.R. 2d 1025.

Surface owners' right of access to solid mineral seam or vein conveyed to another, or through the space left by its removal to reach underlying oil or gas, 25 A.L.R. 2d 1250.

Right of mineral lessee to deposit top soil, waste materials and the like upon lessor's additional land not being mined, 26 A.L.R. 2d 1453.

Construction and effect of provision in mineral lease excluding payment of minimum rent or royalty, 28 A.L.R. 2d 1013.

Prohibiting or regulating removal or exploitation of oil and gas, minerals, soil or other natural products within municipal limits, 10 A.L.R. 3d 1226.

Gas and oil lease force majeure provisions: construction and effect, 46 A.L.R. 4th 976.

Duty of oil or gas lessee to restore surface of leased premises upon termination of operations, 62 A.L.R. 4th 1153.

58 C.J.S. Mines and Minerals § 129.

## 19-10-2. Definitions.

The words "natural gas," as used in Sections 19-10-1 through 19-10-52 NMSA 1978 shall be construed to cover and include carbon dioxide gas and helium gas as well as gas of the hydrocarbon kind.

**History:** Laws 1941, ch. 137, § 1; 1941 Comp., § 8-1102; 1953 Comp., § 7-11-2; Laws 1963, ch. 151, § 1.

### ANNOTATIONS

**Meaning of "gas".** — "Gas" as used in the oil and gas lease form signifies "natural gas" as defined in this section and includes carbon dioxide, but not hydrogen or nitrogen. 1945-46 Op. Atty Gen. No. 4681.

## 19-10-3. Classification of state lands for oil and gas leasing.

A. For the purpose of issuing oil and gas leases thereon, all state lands under the jurisdiction of the commissioner shall be classified as either nonrestricted or restricted. Those lands placed within a restricted district pursuant to Section 19-10-16 NMSA 1978 shall be classified as restricted lands. All other lands owned by the state under the jurisdiction of the commissioner shall be classified as nonrestricted lands. Before leasing any tract of restricted land, it shall be further categorized as either regular or premium based upon the following factors relating to the tract:

- (1) oil and gas trends;
- (2) oil and gas traps;
- (3) reservoir volume and recovery rating;
- (4) lease bonus rating; and
- (5) exploration and activity.

A percentage of zero percent to twenty percent shall be allocated to each factor. If the total percentages of all factors for a tract of land to be leased is less than seventy-five percent, the tract shall be categorized as regular. If the total percentage of all factors for a tract of land to be leased is seventy-five percent or more, the tract shall be categorized as premium.

B. After notice and hearing, the commissioner shall promulgate regulations specifying criteria to be used in categorizing tracts pursuant to Subsection A of this section.

**History:** 1978 Comp., § 19-10-3, enacted by Laws 1985, ch. 195, § 1.

**Repeals and reenactments.** — Laws 1985, ch. 195, § 1, repealed former 19-10-3 NMSA 1978, as amended by

Laws 1972, ch. 70, § 1, relating to the term and form of an oil and gas lease, and enacted a new section. For present comparable provisions, see 19-10-4.1, 19-10-4.2 and 19-10-4.3 NMSA 1978.

## 19-10-4. Authorization to lease; lease provisions.

In issuing oil and gas leases, the commissioner shall:

A. use the exploratory lease form as set forth in Section 19-10-4.1 NMSA 1978 for oil and gas leases of tracts classified as nonrestricted lands under Section 19-10-3 NMSA 1978;

B. use the discovery lease form as set forth in Section 19-10-4.2 NMSA 1978 or the exploratory lease form for oil and gas leases of tracts classified as restricted lands and categorized as regular under Section 19-10-3 NMSA 1978; and

C. use the development lease form as set forth in Section 19-10-4.3 NMSA 1978, the discovery lease form or the exploratory lease form for oil and gas leases of tracts classified as restricted lands and categorized as premium under Section 19-10-3 NMSA 1978; provided that in using the development lease form for a tract receiving less than ninety total percentage points under Section 19-10-3 NMSA 1978, the royalty rate shall not exceed three-sixteenths.

**History:** 1978 Comp., § 19-10-4, enacted by Laws 1985, ch. 195, § 2.

**Repeals and reenactments.** — Laws 1985, ch. 195, § 2, repealed former 19-10-4 NMSA 1978, as enacted by Laws 1977, ch. 298, § 1, relating to the term and form of

an oil and gas lease notwithstanding the provisions of 19-10-3 NMSA 1978, and enacted a new section. For present comparable provisions, see 19-10-4.1, 19-10-4.2, and 19-10-4.3 NMSA 1978.



### 19-10-4.1. Exploratory form of lease; nonrestricted; regular restricted or premium restricted lands.

The following form is designated as the "Exploratory Form". It shall be used for all oil and gas leases on lands classified as nonrestricted lands. At the discretion of the commissioner, it may be used for lands classified as restricted, whether categorized as regular or premium:

"Lease No. \_\_\_\_\_ Application No. \_\_\_\_\_"

#### OIL AND GAS LEASE

##### (Exploratory Form)

This agreement, dated \_\_\_\_\_, 19\_\_\_\_, between the state of New Mexico, acting by and through its commissioner of public lands, hereinafter called the "lessor", and \_\_\_\_\_, whose address is \_\_\_\_\_, hereinafter called the "lessee",

Witnesseth:

Whereas, the lessee has filed in the office of the commissioner of public lands an application for an oil and gas lease covering the lands hereinafter described and has tendered therewith the required first payment; and

Whereas, all of the requirements of law relative to the application and tender have been duly complied with;

Therefore, in consideration of the premises as well as the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), the same being the amount of the tender above mentioned, and the further sum of \$ \_\_\_\_\_ filing fee, and of the covenants and agreements hereinafter contained, the lessor does hereby grant, demise, lease and let unto the said lessee, exclusively, for the sole and only purpose of exploration, development and production of oil or gas (including carbon dioxide and helium), or both thereon and therefrom with the right to own all oil and gas so produced and saved therefrom and not reserved as royalty by the lessor under the terms of this lease, together with rights-of-way, easements and servitudes for pipelines, telephone lines, tanks, power houses, stations, gasoline plants and fixtures for producing, treating and caring for such products, and housing and boarding employees, and any and all rights and privileges necessary, incident to or convenient for the economical operation of said land, for oil and gas, with right for such purposes to the free use of oil, gas, casing-head gas or water from said lands, but not from lessor's water wells, and with the rights of removing either during or after the term hereof, all and any improvements placed or erected on the premises by the lessee, including the right to pull all casing, subject, however, to the covenants and conditions hereinafter set out, the following described land situated in the county of \_\_\_\_\_, state of New Mexico, and more particularly described as follows:

Line	Subdivision	Sec.	Twp.	Rge.	Acres	Institution
1						
2						
3						
4						
5						
6						
7						

Said lands having been awarded to lessee and designated as Tract No. \_\_\_\_\_ at a public sale held by the commissioner of public lands on \_\_\_\_\_, 19\_\_\_\_. (To be filled in only where lands are offered at public sale.)

To have and to hold said land, and all the rights and privileges granted hereunder, to and unto the lessee for a primary term of five years from the date hereof, and as long thereafter as oil and gas, or either of them, is produced in paying quantities from said land by lessee, subject to all of the terms and conditions as hereinafter set forth.

In consideration of the premises the parties covenant and agree as follows:

1. Subject to the free use without royalty, as hereinbefore provided, the lessee shall pay the lessor as royalty one-eighth part of the oil produced and saved from the leased premises or the cash value thereof, at the option of the lessor, such value to be the price prevailing the day oil is run into a pipeline, if the oil be run into a pipeline, or into storage tanks, if the oil is stored.

2. Subject to the free use without royalty, as hereinbefore provided, at the option of the lessor at any time and from time to time, the lessee shall pay the lessor as royalty one-eighth part of the gas produced and saved from the leased premises, including casing-head gas. Unless said option is exercised by lessor, the lessee shall pay the lessor as royalty one-eighth of the cash value of the gas, including casing-head gas, produced and saved from the leased premises and marketed or utilized, such value to be equal to the net proceeds derived from the sale of such gas in the field; provided, however, the cash value for royalty purposes of carbon dioxide gas and of hydrocarbon gas delivered to a gasoline plant for extraction of liquid hydrocarbons shall be equal to the net proceeds derived from the sale of such gas, including any liquid hydrocarbons recovered therefrom.

Notwithstanding the foregoing provisions, the lessor may require the payment of royalty for all or any part of the gas produced and saved under this lease and marketed or utilized at a price per m.c.f. equal to the maximum price being paid for gas of like kind and quality and under like conditions in the same field or area or may reduce the royalty value of any such gas (to any amount not less than the net proceeds of sale thereof, in the field) if the commissioner of public lands shall determine such action to be necessary to the successful operation of the lands for oil or gas purposes or to encouragement of the greatest ultimate recovery of oil or gas or to the promotion of conservation of oil or gas or in the public interest.

This lease shall not expire at the end of either the primary or secondary term hereof if there is a well capable of producing gas in paying quantities located upon some part of the lands embraced herein, or upon lands pooled or communitized herewith, where such well is shut-in due to the inability of the lessee to obtain a pipeline connection or to market the gas therefrom and if the lessee timely pays an annual royalty on or before the annual rental paying date next ensuing after the expiration of ninety days from the date said well was shut-in and on or before said rental date thereafter. The payment of said annual royalty shall be considered for all purposes the same as if gas were being produced in paying quantities and upon the commencement of marketing of gas from said well or wells the royalty paid for the lease year in which the gas is first marketed shall be credited upon the royalty payable hereunder to the lessor for such year. The provisions of this section shall also apply where gas is being marketed from said leasehold premises and through no fault of the lessee, the pipeline connection or market is lost or ceases, in which case this lease shall not expire so long as said annual royalty is paid as herein provided. The amount of any annual royalty payable under this section shall equal twice the annual rental due by the lessee under the terms of this lease but not less than three hundred twenty dollars (\$320) per well per year; provided, however, that any such annual royalty for any year beginning on or after fifteen years from the date hereof shall equal four times the annual rental due by the lessee under the terms of this lease but not less than two thousand dollars (\$2,000) per well per year; and provided further that no annual royalty shall be payable under this section if equivalent amounts are timely paid pursuant to another lease issued by lessor and if such other lease includes lands communitized with lands granted hereunder for the purpose of prorationally sharing in the shut-in well. Notwithstanding the provisions of this section to the contrary, this lease shall not be continued after ten years from the date hereof for any period of more than ten years by the payment of said annual royalty unless, for good cause shown, the commissioner of public lands, in his discretion, grants such a continuance.

3. Lessee agrees to make full settlement on the twentieth day of each month for all royalties due the lessor for the preceding month, under this lease, and to permit the lessor or its agents, at



all reasonable hours, to examine lessee's books relating to the production and disposition of oil and gas produced. Lessee further agrees to submit to lessor annually upon forms furnished by lessor, verified reports showing lessee's operations for the preceding year.

4. An annual rental at the rate of \$ \_\_\_\_\_ per acre shall become due and payable to the lessor by the lessee upon each acre of the land above described and then claimed by such lessee, and the same shall be due and payable in advance to the lessor on the successive anniversary dates of this lease, but the annual rental on any assignment shall in no event be less than forty dollars (\$40.00).

In the event the lessee shall elect to surrender any or all of said acreage, he shall deliver to the lessor a duly executed release thereof and in event said lease has been recorded then he shall upon request furnish and deliver to the lessor a certified copy of a duly recorded release.

5. The lessee may at any time by paying to the lessor all amounts then due as provided herein and the further sum of forty dollars (\$40.00), surrender and cancel this lease insofar as the same covers all or any portion of the lands herein leased and be relieved from further obligations or liability hereunder, in the manner as hereinbefore provided. Provided, this surrender clause and the option herein reserved to the lessee shall cease and become absolutely inoperative immediately and concurrently with the institution of any suit in any court of law or equity by the lessee, lessor or any assignee, to enforce this lease, or any of its terms expressed or implied.

6. All payments due hereunder shall be made on or before the day such payment is due, at the office of the commissioner of public lands in Santa Fe, New Mexico.

7. The lessee with the consent of the lessor shall have the rights to assign this lease in whole or in part. Provided, however, that no assignment of an undivided interest in the lease or in any part thereof nor any assignment of less than a legal subdivision shall be recognized or approved by the lessor. Upon approval in writing by the lessor of an assignment, the assignor shall stand relieved from all obligations to the lessor with respect to the lands embraced in the assignment and the lessor shall likewise be relieved from all obligations to the assignor as to such tracts, and the assignee shall succeed to all of the rights and privileges of the assignor with respect to such tracts and shall be held to have assumed all of the duties and obligations of the assignor to the lessor as to such tracts.

8. In the event a well or wells producing oil or gas in paying quantities should be brought in on adjacent land which is draining the leased premises, lessee shall drill such offset well or wells as a reasonably prudent operator would drill under the same or similar circumstances, provided that no such offset well shall be required if compensatory royalties are paid pursuant to an agreement between the lessor and the lessee.

9. The lessee agrees to notify the lessor of the location of each well before commencing drilling thereon, to keep a complete and accurate log of each well drilled and to furnish a copy thereof, verified by some person having actual knowledge of the facts, to the lessor upon the completion of any well, and to furnish the log of any unfinished well at any time when requested to do so by the lessor.

If any lands embraced in this lease shall be included in any deed or contract of purchase outstanding and subsisting issued pursuant to any sale made of the surface of such lands prior to the date of this lease, it is agreed and understood that no drilling operation shall be commenced on any such lands so sold unless and until the lessee shall have filed a good and sufficient bond with the lessor as required by law, to secure the payment for such damage to the livestock, range, water, crops or tangible improvements on such lands as may be suffered by the purchaser holding such deed or contract of purchase, or his successors, by reason of the developments, use and occupation of such lands by such lessee. Provided, however, that no such bond shall be required if such purchaser shall waive the right to require such bond to be given in the manner provided by law.

10. In drilling wells all water-bearing strata shall be noted in the log, and the lessor reserves the right to require that all or any part of the casing shall be left in any nonproductive well when lessor deems it to the interest of the beneficiaries of the lands granted hereunder to maintain said well or wells for water. For such casing so left in wells the lessor shall pay to the lessee the reasonable value thereof.

11. Lessee shall be liable and agree to pay for all damages to the range, livestock, growing crops or improvements caused by lessee's operations on said lands. When requested by the lessor the lessee shall bury pipelines below plow depth.

12. The lessee shall not remove any machinery or fixtures placed on said premises, nor draw the casing from any well unless and until all payments and obligations due the lessor under the



terms of this agreement shall have been paid or satisfied. The lessee's right to remove the casing is subject to the provision of Paragraph 10 above.

13. Upon failure or default of the lessee to comply with any of the provisions or covenants hereof, the lessor is hereby authorized to cancel this lease and such cancellation shall extend to and include all rights hereunder as to the whole of the tract so claimed, or possessed by the lessee, but shall not extend to, nor affect the rights of any other lessee or assignee claiming any portion of the lands upon which no default has been made; provided, however, that before any such cancellation shall be made, the lessor shall mail to the lessee so defaulting, by registered or certified mail, addressed to the post-office address of such lessee as shown by the records of the state land office, a notice of intention of cancellation specifying the default for which cancellation is to be made, and if within thirty days from the date of mailing said notice the said lessee shall remedy the default specified in said notice, cancellation shall not be made.

14. If the lessee shall have failed to make discovery of oil or gas in paying quantities during the primary term hereof or if such discovery shall have been made and production shall have ceased for any reason, the lessee may continue this lease in full force and effect for an additional term of five years and as long thereafter as oil and gas in paying quantities or either of them is produced from the leased premises by paying each year in advance, as herein provided, double the rental provided herein for the primary term, or the highest rental prevailing at the commencement of the secondary term in any rental district, or districts in which the lands, or any part thereof, may be situated, if it be greater than double the rental provided for the primary term; provided, however, such rental shall be paid within the time provided by Section 13 hereof. If oil or gas in paying quantities should be discovered during the secondary term hereof but production should cease during said secondary term, this lease shall continue for the remainder of said secondary term of five years so long as said rental is paid and if oil or gas in paying quantities is being produced at the end of the secondary term of five years so long thereafter as oil and gas in paying quantities or either of them is produced from the leased premises.

15. If this lease shall have been maintained in accordance with the provisions hereof and if at the expiration of the secondary term provided for herein oil or gas is not being produced on said land but lessee is then engaged in bona fide drilling or reworking operations thereon, this lease shall remain in full force and effect so long as such operations are diligently prosecuted and, if they result in the production of oil or gas, so long thereafter as oil and gas in paying quantities, or either of them, is produced from said land; provided, however, such operations extending beyond the secondary term shall be approved by the lessor upon written application filed with the lessor on or before the expiration of said secondary term, and a report of the status of all of such operations shall be made by the lessee to the lessor every thirty days and a cessation of such operations for more than twenty consecutive days shall be considered as an abandonment of such operations and this lease shall thereupon terminate.

If during the drilling or reworking of any well under this section, lessee loses or junks the hole or well and after diligent efforts in good faith is unable to complete said operations, then within twenty days after the abandonment of said operations, lessee may commence another well within three hundred thirty feet of the lost or junked hole or well and drill the same with due diligence.

Operations commenced and continued as herein provided shall extend this lease as to all lands as to which the same is in full force and effect as of the time said drilling operations are commenced; provided, however, this lease shall be subject to cancellation in accordance with Paragraph 13 hereof for failure to pay rentals or file reports which may become due while operations are being conducted hereunder.

16. Should production of oil and gas or either of them in paying quantities be obtained while this lease is in force and effect and should thereafter cease from any cause after the expiration of ten years from the date hereof this lease shall not terminate if lessee commences additional drilling or reworking operations within sixty days after the cessation of such production and shall remain in full force and effect so long as such operations are prosecuted in good faith with no cessation of more than twenty consecutive days, and if such operations result in the production of oil or gas in paying quantities, so long thereafter as oil or gas in paying quantities is produced from said land; provided, however, written notice of intention to commence such operations shall be filed with the lessor within thirty days after the cessation of such production, and a report of the status



of such operations shall be made by the lessee to the lessor every thirty days, and the cessation of such operations for more than twenty consecutive days shall be considered as an abandonment of such operations and this lease shall thereupon terminate.

17. Lessees, including their heirs, assigns, agents and contractors shall at their own expense fully comply with all laws, regulations, rules, ordinances and requirements of the city, county, state, federal authorities and agencies, in all matters and things affecting the premises and operations thereon which may be enacted or promulgated under the governmental police powers pertaining to public health and welfare, including but not limited to conservation, sanitation, aesthetics, pollution, cultural properties, fire and ecology. Such agencies are not to be deemed third party beneficiaries hereunder, however, this clause is enforceable by the lessor in any manner provided in this lease or by law.

18. Should lessor desire to exercise its rights to take in-kind its royalty share of oil, gas or associated substances or purchase all or any part of the oil, gas or associated substances produced from the lands covered by this lease, the lessee hereby irrevocably consents to the lessor exercising its right. Such consent is a consent to the termination of any supplier/purchaser relationship between the lessor and the lessee deemed to exist under federal regulations. Lessee further agrees that it will require any purchaser of oil, gas or associated substances to likewise waive any such rights.

19. Lessor reserves a continuing option to purchase at any time and from time to time, at the market price prevailing in the area on the date of purchase, all or any part of the minerals (oil and gas) that will be produced from the lands covered by this lease.

20. Lessor reserves the right to execute leases for geothermal resource development and operation thereon; the right to sell or dispose of the geothermal resources of such lands; and the right to grant rights of way and easements for these purposes.

21. All terms of this agreement shall extend to and bind the heirs, executors, administrators, successors and assigns of the parties hereto.

In witness whereof, the party of the first part has hereunto signed and caused its name to be signed by its commissioner of public lands thereunto duly authorized, with the seal of his office affixed, and the lessee has signed this agreement the day and year first above written.

#### STATE OF NEW MEXICO

By \_\_\_\_\_

Commissioner of Public Lands, Lessor  
\_\_\_\_\_(Seal)"

\_\_\_\_\_  
Lessee

**History:** 1978 Comp., § 19-10-4.1, enacted by Laws 1985, ch. 195, § 3.

**Cross references.** — For commissioner of public lands, see 19-1-1 NMSA 1978.

#### ANNOTATIONS

**Net proceeds royalty obligation.** — The net proceeds royalty obligations contained in the 1931 (Laws 1930, ch. 18, § 2) and 1947 (Laws 1947, ch. 200, § 1) lease forms are unambiguous as a matter of law and lessees under such leases are entitled to recover some post-production costs associated with making gas marketable. *ConocoPhillips Co. v. Lyons*, 2013-NMSC-009, 299 P.3d 844.

**Free use clause.** — Under the free use clauses contained in the 1931 (Laws 1930, ch. 18, § 2) and 1947 (Laws 1947, ch. 200, § 1) lease forms, lessees are entitled to the free use of field and plant fuel so long as the fuel is used in the operation of the lease. Field and plant fuels are not subject to royalty payments because they are post-production costs that lessees remit to post-production service providers for the development and production of the leased premises and are neither sold nor saved by lessees. *ConocoPhillips Co. v. Lyons*, 2013-NMSC-009, 299 P.3d 844.

**Drip condensate.** — The royalty obligations contained in the 1931 (Laws 1930, ch. 18, § 2) and 1947 (Laws 1947,

ch. 200, § 1) lease forms are limited by their respective free use clauses and do not require royalties to be paid on lessees' use of drip condensate to the extent that lessees do not derive proceeds from such use. Lessees are only obligated to pay royalties on the use of drip condensate to the extent that lessees receive proceeds from such use. *ConocoPhillips Co. v. Lyons*, 2013-NMSC-009, 299 P.3d 844.

**Deduction of costs of post-production services provided by lessees' affiliates.** — Under the 1931 (Laws 1930, ch. 18, § 2) and 1947 (Laws 1947, ch. 200, § 1) lease forms, in calculating lessee's royalty obligations, the deduction of costs of post-production services that are provided by lessees' affiliates must be reasonable. *ConocoPhillips Co. v. Lyons*, 2013-NMSC-009, 299 P.3d 844.

**Maximum price provision.** — The maximum price provision contained in the 1947 (Laws 1947, ch. 200, § 1) lease form does not affect lessees' ability to deduct post-production costs. It provides the commissioner with the authority to require that lessees deduct their post-production expenses from the maximum price being paid for gas of like kind and quality in the same field or area. *ConocoPhillips Co. v. Lyons*, 2013-NMSC-009, 299 P.3d 844.

**Rulemaking authority of commissioner limited.** — The commissioner has no authority to promulgate rules



or regulations inconsistent with legislative enactments governing mineral leases on public lands. *Harvey E. Yates Co. v. Powell*, 98 F.3d 1222 (10th Cir. 1996).

The commissioner exceeded his authority and usurped a legislative function in promulgating the definition of "proceeds" in a rule so that it would require state lessees to pay royalties even when gas was not extracted from the leased premises. *Harvey E. Yates Co. v. Powell*, 98 F.3d 1222 (10th Cir. 1996).

**Effect of production in portion of premises on rights of partial assignee.** — Where oil and gas lease from commissioner of public lands provided that if oil and gas were produced in paying quantities within 10-year period, which time had been allowed lessee to produce oil and gas, lease might be continued in force as long as oil or gas should be produced, and portion of lease was assigned, assignee succeeded to all rights of original lessee, and on producing oil in portion of lease not covered by assignment, assignee had right to continue lease in force, subject to implied covenant to perform the development work. *State ex rel. Shell Petroleum Corp. v. Worden*, 1940-NMSC-038, 44 N.M. 400, 103 P.2d 124.

**Liability for damages.** — Persons performing seismicographic work upon state land with consent of mineral lease holders and commissioner of public lands are liable for damages caused to holders of grazing leases on the land, since, under Subdivision 11 of form lease found in this section, mineral lease holder would be liable for such damages. *Tidewater Associated Oil Co. v. Shipp*, 1954-NMSC-129, 59 N.M. 37, 278 P.2d 571.

Under the terms of the lease in this section the mineral lessee may be liable for damages without regard to negligence. *Dean v. Paladin Exploration Co.*, 2003-NMCA-049, 133 N.M. 491, 64 P.3d 518.

**Notice of intent to cancel lease by certified mail.** — The commissioner of public lands fulfills the statutory requirement for notice to terminate a lessee's interest in an oil and gas lease when he sends a notice of intent to cancel by certified mail. *Abbott v. Armijo*, 1983-NMSC-065, 100 N.M. 190, 668 P.2d 306.

**Limitation on royalties on cash settlements of contract disputes between lessees and purchasers.** —

Under a statutory lease, the state was not entitled to royalties on cash payments made in settlement of take-or-pay disputes between lessees and gas purchasers, except for the proceeds obtained by the lessees from the sale of gas at the bought-down price and a commensurate portion of the proceeds attributable to price reductions applicable to future production under the renegotiated sales agreement as production occurs. *Harvey E. Yates Co. v. Powell*, 98 F.3d 1222 (10th Cir. 1996).

**Public policy.** — It is the public policy as shown by the oil and gas leasing laws to promote development and production of oil and gas and it was not contemplated by the legislature that a lessee be deprived of his right to develop fully a well begun in good faith merely because he was attempting to determine the extent of the production possible at a depth less than he contemplated drilling in order to test the productivity of the area. 1953-54 Op. Att'y Gen. No. 53-5650.

**Use of form not required of other state agencies.** — The form for leasing oil and gas lands belonging to agencies other than the office of the commissioner of public lands need not comply with the terms and conditions of this section, even where such leases are offered through the facilities of the commissioner as an accommodation to another state agency. 1980 Op. Att'y Gen. No. 80-10.

**Production on part benefits whole.** — If production has been obtained in a unit area the production inures to the benefit of all tracts contained in the unit area; under the form oil and gas lease all of the tracts contained in a lease are perpetuated for as long after the term of the lease as oil or gas in paying quantities is produced from said land by the lessee. 1953-54 Op. Att'y Gen. No. 53-5708.

**Drilling on part benefits whole.** — The commencement of drilling on any part of a unit area prior to the expiration of the secondary term would extend the secondary term on all tracts included in the unit area and would be considered the same as though a well had been commenced on each tract in such unit area. 1953-54 Op. Att'y Gen. No. 53-5708.

**Expiration of lease prior to drilling.** — Drilling operations may not be made upon a second well in the event the approved operation is completed without production where the drilling operations have not been begun on the second well prior to the expiration date of the second term. 1953-54 Op. Att'y Gen. No. 53-5650.

**Purpose of extension.** — Extension of lease beyond its secondary term is for such period of time as required to conclude bona fide drilling in which lessee was engaged at expiration of the secondary term at which time lease terminates if oil or gas are not found, but if this drilling operation results in production, then the lease is continued for as long as oil and gas, or either of them, is produced from said land in paying quantities. 1949-50 Op. Att'y Gen. No. 49-5230.

**Application for continuation.** — Under Subdivision 16 (now 15) a lessee may make application in writing before expiration of the secondary term for a continuation of the term if engaged in bona fide drilling or reworking operations. 1949-50 Op. Att'y Gen. No. 49-5230.

**Surrender of lease and reapplication.** — Once a lessee has surrendered his lease as provided for under Subdivision 5, the commissioner may refuse to accept an application for a new lease made by the same party. 1945-46 Op. Att'y Gen. No. 45-4659.

**Rental on assignment of lease.** — Annual rental to be charged assignee of oil and gas lease is same as that of original lessee, and for secondary term the rental is double that of primary term. 1937-38 Op. Att'y Gen. No. 37-1597.

**Commissioner may insert covenant compelling reasonable development** of the leased premises for oil and gas. 1941-42 Op. Att'y Gen. No. 41-3835.

**Law reviews.** — For note, "State Regulation of Oil and Gas Pools on State, Federal, Indian and Fee Lands," see 2 Nat. Resources J. 355 (1962).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 38 Am. Jur. 2d Gas and Oil § 283.

Implied duty of oil and gas lessee to protect against drainage, 18 A.L.R.4th 14.

Remedy for breach of implied duty of oil and gas lessee to protect against drainage, 18 A.L.R.4th 147.

Production on one tract as extending term on other tract where one mineral lease conveys oil or gas rights in separate tracts for as long as oil or gas is produced, 35 A.L.R.4th 1167.

Construction and application of "Mother Hubbard" or "cover-all" clause in gas and oil lease or deed, 80 A.L.R.4th 205.

Oil and gas; rights of royalty owners to take-or-pay settlements, 57 A.L.R.5th 753.



## 19-10-4.2. Discovery form of lease; regular restricted or premium restricted lands.

The following form is designated as the "Discovery Form". It may be used by the commissioner for oil and gas leases on lands classified as restricted lands, whether categorized as regular or premium:

"Lease No. \_\_\_\_\_ Application No. \_\_\_\_\_

### OIL AND GAS LEASE (Discovery Form)

This agreement, dated \_\_\_\_\_, 19\_\_\_\_, between the state of New Mexico, acting by and through its commissioner of public lands, hereinafter called the "lessor", and \_\_\_\_\_, whose address is \_\_\_\_\_, hereinafter called the "lessee",

Witnesseth:

Whereas, the lessee has filed in the office of the commissioner of public lands an application for an oil and gas lease covering the lands hereinafter described and has tendered therewith the required first payment; and

Whereas, all of the requirements of law relative to the application and tender have been duly complied with;

Therefore, in consideration of the premises as well as the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), the same being the amount of the tender above mentioned, and the further sum of \$ \_\_\_\_\_ filing fee, and of the covenants and agreements hereinafter contained, the lessor does hereby grant, demise, lease and let unto the said lessee, exclusively, for the sole and only purpose of exploration, development and production of oil or gas (including carbon dioxide and helium), or both thereon and therefrom with the right to own all oil and gas so produced and saved therefrom and not reserved as royalty by the lessor under the terms of this lease, together with rights-of-way, easements and servitudes for pipelines, telephone lines, tanks, power houses, stations, gasoline plants and fixtures for producing, treating and caring for such products, and housing and boarding employees, and any and all rights and privileges necessary, incident to or convenient for the economical operation of said land, for oil and gas, with right for such purposes to the free use of oil, gas, casing-head gas or water from said lands, but not from lessor's water wells, and with the rights of removing either during or after the term hereof, all and any improvements placed or erected on the premises by the lessee, including the right to pull all casing, subject, however, to the covenants and conditions hereinafter set out, the following described land situated in the county of \_\_\_\_\_, state of New Mexico, and more particularly described as follows:

Line	Subdivision	Sec.	Twp.	Rge.	Acres	Institution
1						
2						
3						
4						
5						
6						
7						

Said lands having been awarded to lessee and designated as Tract No. \_\_\_\_\_ at a public sale held by the commissioner of public lands on \_\_\_\_\_, 19\_\_.

To have and to hold said land, and all the rights and privileges granted hereunder, to and unto the lessee for a primary term of five years from the date hereof, and as long thereafter as oil and gas, or either of them, is produced in paying quantities from said land by lessee, subject to all of the terms and conditions as hereinafter set forth.

In consideration of the premises the parties covenant and agree as follows:

1. Subject to the free use without royalty, as hereinbefore provided, the lessee shall pay the lessor as royalty one-sixth part of the oil produced and saved from the leased premises or the cash value thereof, at the option of the lessor, such value to be the price prevailing the day oil is run into the pipeline, if the oil be run into a pipeline, or into storage tanks, if the oil is stored.

2. Subject to the free use without royalty, as hereinbefore provided, at the option of the lessor at any time and from time to time, the lessee shall pay the lessor as royalty one-sixth, part of the gas produced and saved from the leased premises, including casing-head gas. Unless said option is exercised by lessor, the lessee shall pay the lessor as royalty one-sixth of the cash value of the gas, including casing-head gas, produced and saved from the leased premises and marketed or utilized, such value to be equal to the net proceeds derived from the sale of such gas in the field; provided, however, the cash value for royalty purposes of carbon dioxide gas and of hydrocarbon gas delivered to a gasoline plant for extraction of liquid hydrocarbons shall be equal to the net proceeds derived from the sale of such gas, including any liquid hydrocarbons recovered therefrom.

Notwithstanding the foregoing provisions, the lessor may require the payment of royalty for all or any part of the gas produced and saved under this lease and marketed or utilized at a price per m.c.f. equal to the maximum price being paid for gas of like kind and quality and under like conditions in the same field or area or may reduce the royalty value of any such gas (to any amount not less than the net proceeds of sale thereof, in the field) if the commissioner of public lands shall determine such action to be necessary to the successful operation of the lands for oil or gas purposes or to encouragement of the greatest ultimate recovery of oil or gas or to the promotion or conservation of oil or gas or in the public interest.

This lease shall not expire at the end of the primary term hereof if there is a well capable of producing gas in paying quantities located upon some part of the lands embraced herein, or upon lands pooled or communitized herewith, where such well is shut-in due to the inability of the lessee to obtain a pipeline connection or to market the gas therefrom, and if the lessee timely pays an annual royalty on or before the annual rental paying date next ensuing after the expiration of ninety days from the date said well was shut-in and on or before said rental date thereafter. The payment of said annual royalty shall be considered for all purposes the same as if gas were being produced in paying quantities and upon the commencement of marketing of gas from said well or wells the royalty paid for the lease year in which the gas is first marketed shall be credited upon the royalty payable hereunder to the lessor for such year. The provisions of this section shall also apply where gas is being marketed from said leasehold premises and through no fault of the lessee, the pipeline connection or market is lost or ceases, in which case this lease shall not expire so long as said annual royalty is paid as herein provided. The amount of any annual royalty payable under this section shall equal twice the annual rental due by the lessee under the terms of this lease but not less than three hundred twenty dollars (\$320) per well per year; provided, however, that any such annual royalty for any year beginning on or after ten years from the date hereof shall equal four times the annual rental due by the lessee under the terms of this lease but not less than two thousand dollars (\$2,000) per well per year; provided further, that no annual royalty shall be payable under this section if equivalent amounts are timely paid pursuant to another lease issued by lessor and if such other lease includes lands communitized with lands granted hereunder for the purpose of prorationally sharing in the shut-in well. Notwithstanding the provisions of this section to the contrary, this lease shall not be continued after five years from the date hereof for any period of more than ten years by the payment of said annual royalty unless, for good cause shown, the commissioner of public lands, in his discretion, grants such a continuance.

3. Lessee agrees to make full settlement on the twentieth day of each month for all royalties due the lessor for the preceding month, under this lease, and to permit the lessor or its agents, at



all reasonable hours, to examine lessee's books relating to the production and disposition of oil and gas produced. Lessee further agrees to submit to lessor annually upon forms furnished by lessor, verified reports showing lessee's operations for the preceding year.

4. An annual rental at the rate of \$ \_\_\_\_\_ per acre shall become due and payable to the lessor by the lessee upon each acre of the land above described and then claimed by such lessee and the same shall be due and payable in advance to the lessor on the successive anniversary dates of this lease, but the annual rental on any assignment shall in no event be less than forty dollars (\$40.00).

In the event the lessee shall elect to surrender any or all of said acreage, he shall deliver to the lessor a duly executed release thereof and in event said lease has been recorded then he shall upon request furnish and deliver to the lessor a certified copy of a duly recorded release.

5. The lessee may at any time by paying to the lessor all amounts then due as provided herein and the further sum of forty dollars (\$40.00), surrender and cancel this lease insofar as the same covers all or any portion of the lands herein leased and be relieved from further obligations or liability hereunder, in the manner as hereinbefore provided. Provided, this surrender clause and the option herein reserved to the lessee shall cease and become absolutely inoperative immediately and concurrently with the institution of any suit in any court of law or equity by the lessee, lessor or any assignee, to enforce this lease, or any of its terms expressed or implied.

6. All payments due hereunder shall be made on or before the day such payment is due, at the office of the commissioner of public lands in Santa Fe, New Mexico.

7. The lessee with the consent of the lessor shall have the rights to assign this lease in whole or in part. Provided, however, that no assignment of an undivided interest in the lease or in any part thereof nor any assignment of less than a legal subdivision shall be recognized or approved by the lessor. Upon approval in writing by the lessor of an assignment, the assignor shall stand relieved from all obligations to the lessor with respect to the lands embraced in the assignment and the lessor shall likewise be relieved from all obligations to the assignor as to such tracts, and the assignee shall succeed to all of the rights and privileges of the assignor with respect to such tracts and shall be held to have assumed all of the duties and obligations of the assignor to the lessor as to such tracts.

8. In the event a well or wells producing oil or gas in paying quantities should be brought in on adjacent land which is draining the leased premises, lessee shall drill such offset well or wells as a reasonably prudent operator would drill under the same or similar circumstances, provided that no such offset well shall be required if compensatory royalties are paid pursuant to an agreement between the lessor and the lessee.

9. The lessee agrees to notify the lessor of the location of each well before commencing drilling thereon, to keep a complete and accurate log of each well drilled and to furnish a copy thereof, verified by some person having actual knowledge of the facts, to the lessor upon the completion of any well, and to furnish the log of any unfinished well at any time when requested to do so by the lessor.

If any lands embraced in this lease shall be included in any deed or contract of purchase outstanding and subsisting issued pursuant to any sale made of the surface of such lands prior to the date of this lease, it is agreed and understood that no drilling operation shall be commenced on any such lands so sold unless and until the lessee shall have filed a good and sufficient bond with the lessor as required by law, to secure the payment for such damage to the livestock, range, water, crops or tangible improvements on such lands as may be suffered by the purchaser holding such deed or contract of purchase, or his successors, by reason of the developments, use and occupation of such lands by such lessee. Provided, however, that no such bond shall be required if such purchaser shall waive the right to require such bond to be given in the manner provided by law.

10. In drilling wells all water-bearing strata shall be noted in the log, and the lessor reserves the right to require that all or any part of the casing shall be left in any nonproductive well when lessor deems it to the interest of the beneficiaries of the lands granted hereunder to maintain said well or wells for water. For such casing so left in wells the lessor shall pay to the lessee the reasonable value thereof.

11. Lessee shall be liable and agree to pay for all damages to the range, livestock, growing crops or improvements caused by lessee's operations on said lands. When requested by the lessor the lessee shall bury pipelines below plow depth.

12. The lessee shall not remove any machinery or fixtures placed on said premises, nor draw the casing from any well unless and until all payments and obligations due the lessor under the



terms of this agreement shall have been paid or satisfied. The lessee's right to remove the casing is subject to the provision of Paragraph 10 above.

13. Upon failure or default of the lessee to comply with any of the provisions or covenants hereof, the lessor is hereby authorized to cancel this lease and such cancellation shall extend to and include all rights hereunder as to the whole of the tract so claimed, or possessed by the lessee, but shall not extend to, nor affect the rights of any other lessee or assignee claiming any portion of the lands upon which no default has been made; provided, however, that before any such cancellation shall be made, the lessor shall mail to the lessee so defaulting, by registered or certified mail, addressed to the post office address of such lessee as shown by the records of the state land office, a notice of intention of cancellation specifying the default for which cancellation is to be made, and if within thirty days from the date of mailing said notice the said lessee shall remedy the default specified in said notice, cancellation shall not be made.

14. If this lease shall have been maintained in accordance with the provisions hereof and if at the expiration of the primary term provided for herein oil or gas is not being produced on said land but lessee is then engaged in bona fide drilling or reworking operations thereon, this lease shall remain in full force and effect so long as such operations are diligently prosecuted and, if they result in the production of oil or gas, so long thereafter as oil and gas in paying quantities, or either of them, is produced from said land; provided, however, such operations extending beyond the primary term shall be approved by the lessor upon written application filed with the lessor on or before the expiration of said term, and a report of the status of all of such operations shall be made by the lessee to the lessor every thirty days and a cessation of such operations for more than twenty consecutive days shall be considered as an abandonment of such operations and this lease shall thereupon terminate.

If during the drilling or reworking of any well under this section, lessee loses or junks the hole or well and after diligent efforts in good faith is unable to complete said operations, then within twenty days after the abandonment of said operations, lessee may commence another well within three hundred thirty feet of the lost or junked hole or well and drill the same with due diligence.

Operations commenced and continued as herein provided shall extend this lease as to all lands as to which the same is in full force and effect as of the time said drilling operations are commenced; provided, however, this lease shall be subject to cancellation in accordance with Paragraph 13 hereof for failure to pay rentals or file reports which may become due while operations are being conducted hereunder.

15. Should production of oil and gas or either of them in paying quantities be obtained while this lease is in force and effect and should thereafter cease from any cause after the expiration of five years from the date hereof this lease shall not terminate if lessee commences additional drilling or reworking operations within sixty days after the cessation of such production and shall remain in full force and effect so long as such operations are prosecuted in good faith with no cessation of more than twenty consecutive days, and if such operations result in the production of oil or gas in paying quantities, so long thereafter as oil or gas in paying quantities is produced from said land; provided, however, written notice of intention to commence such operations shall be filed with the lessor within thirty days after the cessation of such production, and a report of the status of such operations shall be made by the lessee to the lessor every thirty days, and the cessation of such operations for more than twenty consecutive days shall be considered as an abandonment of such operations and this lease shall thereupon terminate.

16. Lessees, including their heirs, assigns, agents and contractors shall at their own expense fully comply with all laws, regulations, rules, ordinances and requirements of the city, county, state, federal authorities and agencies, in all matters and things affecting the premises and operations thereon which may be enacted or promulgated under the governmental police powers pertaining to public health and welfare, including but not limited to conservation, sanitation, aesthetics, pollution, cultural properties, fire and ecology. Such agencies are not to be deemed third party beneficiaries hereunder, however, this clause is enforceable by the lessor in any manner provided in this lease or by law.

17. Should lessor desire to exercise its rights to take in-kind its royalty share of oil, gas or associated substances or purchase all or any part of the oil, gas or associated substances produced from the lands covered by this lease, the lessee hereby irrevocably consents to the lessor exercising its right. Such consent is a consent to the termination of any supplier/purchaser relationship between



the lessor and the lessee deemed to exist under federal regulations. Lessee further agrees that it will require any purchaser of oil, gas or associated substances to likewise waive any such rights.

18. Lessor reserves a continuing option to purchase at any time and from time to time, at the market price prevailing in the area on the date of purchase, all or any part of the minerals (oil and gas) that will be produced from the lands covered by this lease.

19. Lessor reserves the right to execute leases for geothermal resource development and operation thereon; the right to sell or dispose of the geothermal resources of such lands; and the right to grant rights of way and easements for these purposes.

20. All terms of this agreement shall extend to and bind the heirs, executors, administrators, successors and assigns of the parties hereto.

In witness whereof, the party of the first part has hereunto signed and caused its name to be signed by its commissioner of public lands thereunto duly authorized, with the seal of his office affixed, and the lessee has signed this agreement the day and year first above written.

#### STATE OF NEW MEXICO

By \_\_\_\_\_  
Commissioner of Public Lands, Lessor  
\_\_\_\_\_  
(Seal)"."  
Lessee

**History:** 1978 Comp., § 19-10-4.2, enacted by Laws 1985, ch. 195, § 4.

**Cross references.** — For commissioner of public lands, see 19-1-1 NMSA 1978.

#### ANNOTATIONS

**Net proceeds royalty obligation.** — The net proceeds royalty obligations contained in the 1931 (Laws 1930, ch. 18, § 2) and 1947 (Laws 1947, ch. 200, § 1) lease forms are unambiguous as a matter of law and lessees under such leases are entitled to recover some post-production costs associated with making gas marketable. *ConocoPhillips Co. v. Lyons*, 2013-NMSC-009, 299 P.3d 844.

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— The commissioner of public lands fulfills the statutory requirement for notice to terminate a lessee's interest in an oil and gas lease when he sends a notice of intent to cancel by certified mail. *Abbott v. Armijo*, 1983-NMSC-065, 100 N.M. 190, 668 P.2d 306.

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**Liability for damages.** — Persons performing seismicographic work upon state land with consent of mineral lease holders and commissioner of public lands are liable for damages caused to holders of grazing leases on the land, since, under Subdivision 11 of form lease found in this section, mineral lease holder would be liable for such damages. *Tidewater Associated Oil Co. v. Shipp*, 1954-NMSC-129, 59 N.M. 37, 278 P.2d 571.

**Use of form not required of other state agencies.** — The form for leasing oil and gas lands belonging to agencies other than the office of the commissioner of public lands need not comply with the terms and conditions of this section, even where such leases are offered through the facilities of the commissioner as an accommodation to another state agency. 1980 Op. Att'y Gen. No. 80-10.

**Public policy.** — It is the public policy as shown by the oil and gas leasing laws to promote development and production of oil and gas and it was not contemplated by the legislature that a lessee be deprived of his right to develop fully a well begun in good faith merely because he was attempting to determine the extent of the production possible at a depth less than he contemplated drilling in order to test the productivity of the area. 1953-54 Op. Att'y Gen. No. 53-5650.

**Production on part benefits whole.** — If production has been obtained in a unit area the production inures to the benefit of all tracts contained in the unit area; under the form oil and gas lease all of the tracts contained in a lease are perpetuated for as long after the term of the lease



as oil or gas in paying quantities is produced from said land by the lessee. 1953-54 Op. Att'y Gen. No. 53-5708.

**Drilling on part benefits whole.** — The commencement of drilling on any part of a unit area prior to the expiration of the secondary term would extend the secondary term on all tracts included in the unit area and would be considered the same as though a well had been commenced on each tract in such unit area. 1953-54 Op. Att'y Gen. No. 53-5708.

**Expiration of lease prior to drilling.** — Drilling operations may not be made upon a second well in the event the approved operation is completed without production where the drilling operations have not been begun on the second well prior to the expiration date of the second term. 1953-54 Op. Att'y Gen. No. 53-5650.

**Purpose of extension.** — Extension of lease beyond its secondary term is for such period of time as required to conclude bona fide drilling in which lessee was engaged at expiration of the secondary term at which time lease terminates if oil or gas are not found, but if this drilling operation results in production, then the lease is continued for as long as oil and gas, or either of them, is produced from said land in paying quantities. 1949-50 Op. Att'y Gen. No. 49-5230.

**Application for continuation.** — Under Subdivision 16 (now 14) a lessee may make application in writing before expiration of the secondary term for a continuation of the term if engaged in bona fide drilling or reworking operations. 1949-50 Op. Att'y Gen. No. 49-5230.

**Surrender of lease and reapplication.** — Once a lessee has surrendered his lease as provided for under Subdivision 5, the commissioner may refuse to accept an application for a new lease made by the same party. 1945-46 Op. Att'y Gen. No. 45-4659.

**Commissioner may insert covenant compelling reasonable development** of the leased premises for oil and gas. 1941-42 Op. Att'y Gen. No. 41-3835.

**Rental on assignment of lease.** — Annual rental to be charged assignee of oil and gas lease is same as that of original lessee, and for secondary term the rental is double that of primary term. 1937-38 Op. Att'y Gen. No. 37-1597.

**Law reviews.** — For note, "State Regulation of Oil and Gas Pools on State, Federal, Indian and Fee Lands," see 2 Nat. Resources J. 355 (1962).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 38 Am. Jur. 2d Gas and Oil § 283.

Implied duty of oil and gas lessee to protect against drainage, 18 A.L.R.4th 14.

Remedy for breach of implied duty of oil and gas lessee to protect against drainage, 18 A.L.R.4th 147.

Production on one tract as extending term on other tract where one mineral lease conveys oil or gas rights in separate tracts for as long as oil or gas is produced, 35 A.L.R.4th 1167.

Construction and application of "Mother Hubbard" or "cover-all" clause in gas and oil lease or deed, 80 A.L.R.4th 205.

### 19-10-4.3. Development form of lease; premium restricted land.

The following form is designed as the "Development Form." It may be used by the commissioner for oil and gas leases on lands classified as restricted lands and categorized as Premium:

"Lease No. ....

Application No. ....

#### OIL AND GAS LEASE

##### (Development Form)

This agreement, dated ....., 19 .., between the state of New Mexico, acting by and through its commissioner of public lands, hereinafter called the "lessor", and ....., whose address is ....., hereinafter called the "lessee",

Witneseth:

Whereas, the lessee has filed in the office of the commissioner of public lands an application for an oil and gas lease covering the lands hereinafter described and has tendered therewith the required first payment; and

Whereas, all of the requirements of law relative to the application and tender have been duly complied with;

Therefore, in consideration of the premises as well as the sum of ..... dollars (\$ .....), the same being the amount of the tender above mentioned, and the further sum of \$ ..... filing fee, and of the covenants and agreements hereinafter contained, the lessor does hereby grant, demise, lease and let unto the said lessee, exclusively, for the sole and only purpose of exploration, development and production of oil or gas (including carbon dioxide and helium), or both thereon and therefrom with the right to own all oil and gas so produced and saved therefrom and not reserved as royalty by the lessor under the terms of this lease, together with rights-of-way, easements and servitudes for pipelines, telephone lines, tanks, power houses, stations, gasoline plants and fixtures for producing, treating and caring for such products and housing and boarding employees and any and all rights and privileges necessary, incident to or convenient for the economical operation of said land, for oil and gas, with right for such purposes to the free use of oil, gas, casing-head gas or water from said lands, but not from lessor's water wells, and with the rights of removing



either during or after the term hereof, all and any improvements placed or erected on the premises by the lessee, including the right to pull all casing, subject, however, to the covenants and conditions hereinafter set out, the following described land situated in the county of ....., state of New Mexico, and more particularly described as follows:

Line	Subdivision	Sec.	Twp.	Rge.	Acres	Institution
1						
2						
3						
4						
5						
6						
7						

Said lands having been awarded to lessee and designated as Tract No. .... at a public sale held by the commissioner of public lands on ....., 19...

To have and to hold said land, and all the rights and privileges granted hereunder, to and unto the lessee for a primary term of five years from the date hereof, and as long thereafter as oil and gas, or either of them, is produced in paying quantities from said land by lessee, subject to all of the terms and conditions as hereinafter set forth.

In consideration of the premises, the parties covenant and agree as follows:

1. Subject to the free use without royalty, as hereinbefore provided, the lessee shall pay the lessor as royalty ..... (not less than three-sixteenths nor more than one-fifth) part of the oil produced and saved from the leased premises or the cash value thereof, at the option of the lessor, such value to be the price prevailing the day oil is run into a pipeline, if the oil be run into a pipeline, or into storage tanks, if the oil is stored.

2. Subject to the free use without royalty, as hereinbefore provided, at the option of the lessor at any time and from time to time, the lessee shall pay the lessor as royalty ..... (not less than three-sixteenths nor more than one-fifth) part of the gas produced and saved from the leased premises, including casing-head gas. Unless said option is exercised by lessor, the lessee shall pay the lessor as royalty ..... (not less than three-sixteenths nor more than one-fifth) of the cash value of the gas, including casing-head gas, produced and saved from the leased premises and marketed or utilized, such value to be equal to the net proceeds derived from the sale of such gas in the field; provided, however, the cash value for royalty purposes of carbon dioxide gas and of hydrocarbon gas delivered to a gasoline plant for extraction of liquid hydrocarbons shall be equal to the net proceeds derived from the sale of such gas, including any liquid hydrocarbons recovered therefrom.

Notwithstanding the foregoing provisions, the lessor may require the payment of royalty for all or any part of the gas produced and saved under this lease and marketed or utilized at a price per m.c.f. equal to the maximum price being paid for gas of like kind and quality and under like conditions in the same field or area or may reduce the royalty value of any such gas (to any amount not less than the net proceeds of sale thereof, in the field) if the commissioner of public lands shall determine such action to be necessary to the successful operation of the lands for oil or gas purposes or to encouragement or [of] the greatest ultimate recovery of oil or gas or to the promotion or conservation of oil or gas or in the public interest.

This lease shall not expire at the end of the primary term hereof if there is a well capable of producing gas in paying quantities located upon some part of the lands embraced herein, or upon

lands pooled or communitized herewith, where such well is shut-in due to the inability of the lessee to obtain a pipeline connection or to market the gas therefrom, and if the lessee timely pays an annual royalty on or before the annual rental paying date next ensuing after the expiration of ninety days from the date said well was shut-in and on or before said rental date thereafter. The payment of said annual royalty shall be considered for all purposes the same as if gas were being produced in paying quantities and upon the commencement of marketing of gas from said well or wells the royalty paid for the lease year in which the gas is first marketed shall be credited upon the royalty payable hereunder to the lessor for such year. The provisions of this section shall also apply where gas is being marketed from said leasehold premises and through no fault of the lessee, the pipeline connection or market is lost or ceases, in which case this lease shall not expire so long as said annual royalty is paid as herein provided. The amount of any annual royalty payable under this section shall equal twice the annual rental due by the lessee under the terms of this lease but not less than three hundred twenty dollars (\$320) per well per year; provided, however, that any such annual royalty for any month beginning on or after ten years from the date hereof shall equal four times the annual rental due by the lessee under the terms of this lease but not less than two thousand dollars (\$2,000) per well per year; provided further, that no annual royalty shall be payable under this section if equivalent amounts are timely paid pursuant to another lease issued by lessor and if such other lease includes lands communitized with lands granted hereunder for the purpose of prorationally sharing in the shut-in well. Notwithstanding the provisions of this section to the contrary, this lease shall not be continued after five years from the date hereof for any period of more than ten years by the payment of said annual royalty unless, for good cause shown, the commissioner of public lands, in his discretion, grants such a continuance.

3. Lessee agrees to make full settlement on the twentieth day of each month for all royalties due the lessor for the preceding month, under this lease, and to permit the lessor or its agents, at all reasonable hours, to examine lessee's books relating to the production and disposition of oil and gas produced. Lessee further agrees to submit to lessor annually upon forms furnished by lessor, verified reports showing lessee's operations for the preceding year.

4. An annual rental at the rate of \$ ..... per acre shall become due and payable to the lessor by the lessee, upon each acre of the land above described and then claimed by such lessee and the same shall be due and payable in advance to the lessor on the successive anniversary dates of this lease, but the annual rental on any assignment shall in no event be less than forty dollars (\$40.00).

In the event the lessee shall elect to surrender any or all of said acreage, he shall deliver to the lessor a duly executed release thereof and in event said lease has been recorded then he shall upon request furnish and deliver to the lessor a certified copy of a duly recorded release.

5. The lessee may at any time by paying to the lessor all amounts then due as provided herein and the further sum of forty dollars (\$40.00), surrender and cancel this lease insofar as the same covers all or any portion of the lands herein leased and be relieved from further obligations or liability hereunder, in the manner as hereinbefore provided. Provided, this surrender clause and the option herein reserved to the lessee shall cease and become absolutely inoperative immediately and concurrently with the institution of any suit in any court of law or equity by the lessee, lessor or any assignee, to enforce this lease, or any of its terms expressed or implied.

6. All payments due hereunder shall be made on or before the day such payment is due, at the office of the commissioner of public lands in Santa Fe, New Mexico.

7. The lessee with the consent of the lessor shall have the rights to assign this lease in whole or in part. Provided, however, that no assignment of an undivided interest in the lease or in any part thereof nor any assignment of less than a legal subdivision shall be recognized or approved by the lessor. Upon approval in writing by the lessor of an assignment, the assignor shall stand relieved from all obligations to the lessor with respect to the lands embraced in the assignment and the lessor shall likewise be relieved from all obligations to the assignor as to such tracts, and the assignee shall succeed to all of the rights and privileges of the assignor with respect to such tracts and shall be held to have assumed all of the duties and obligations of the assignor to the lessor as to such tracts.

8. In the event a well or wells producing oil or gas in paying quantities should be brought in on adjacent land which is draining the leased premises, lessee shall drill such offset well or wells as a reasonably prudent operator would drill under the same or similar circumstances, provided that



no such offset well shall be required if compensatory royalties are paid pursuant to an agreement between the lessor and the lessee.

9. The lessee agrees to notify the lessor of the location of each well before commencing drilling thereon, to keep a complete and accurate log of each well drilled and to furnish a copy thereof, verified by some person having actual knowledge of the facts, to the lessor upon the completion of any well, and to furnish the log of any unfinished well at any time when requested to do so by the lessor.

If any lands embraced in this lease shall be included in any deed or contract of purchase outstanding and subsisting issued pursuant to any sale made of the surface of such lands prior to the date of this lease, it is agreed and understood that no drilling operation shall be commenced on any such lands so sold unless and until the lessee shall have filed a good and sufficient bond with the lessor as required by law, to secure the payment for such damage to the livestock, range, water, crops or tangible improvements on such lands as may be suffered by the purchaser holding such deed or contract of purchase, or his successors, by reason of the developments, use and occupation of such lands by such lessee. Provided, however, that no such bond shall be required if such purchaser shall waive the right to require such bond to be given in the manner provided by law.

10. In drilling wells, all water-bearing strata shall be noted in the log, and the lessor reserves the right to require that all or any part of the casing shall be left in any nonproductive well when lessor deems it to the interest of the beneficiaries of the lands granted hereunder to maintain said well or wells for water. For such casing so left in wells the lessor shall pay to the lessee the reasonable value thereof.

11. Lessee shall be liable and agree to pay for all damages to the range, livestock, growing crops or improvements caused by lessee's operations on said lands. When requested by the lessor the lessee shall bury pipelines below plow depth.

12. The lessee shall not remove any machinery or fixtures placed on said premises, nor draw the casing from any well unless and until all payments and obligations due the lessor under the terms of this agreement shall have been paid or satisfied. The lessee's right to remove the casing is subject to the provision of Paragraph 10 above.

13. Upon failure or default of the lessee to comply with any of the provisions or covenants hereof, the lessor is hereby authorized to cancel this lease and such cancellation shall extend to and include all rights hereunder as to the whole of the tract so claimed, or possessed by the lessee, but shall not extend to, nor affect the rights of any other lessee or assignee claiming any portion of the lands upon which no default has been made; provided, however, that before any such cancellation shall be made, the lessor shall mail to the lessee, so defaulting, by registered or certified mail, addressed to the post office address of such lessee as shown by the records of the state land office, a notice of intention of cancellation specifying the default for which cancellation is to be made, and if within thirty days from the date of mailing said notice the said lessee shall remedy the default specified in said notice, cancellation shall not be made.

14. If this lease shall have been maintained in accordance with the provisions hereof and if at the expiration of the primary term provided for herein oil or gas is not being produced on said land but lessee is then engaged in bona fide drilling or reworking operations thereon, this lease shall remain in full force and effect so long as such operations are diligently prosecuted and, if they result in the production of oil or gas, so long thereafter as oil and gas in paying quantities, or either of them, is produced from said land; provided, however, such operations extending beyond the primary term shall be approved by the lessor upon written application filed with the lessor on or before the expiration of said term, and a report of the status of all of such operations shall be made by the lessee to the lessor every thirty days and a cessation of such operations for more than twenty consecutive days shall be considered as an abandonment of such operations and this lease shall thereupon terminate.

If during the drilling or reworking of any well under this section, lessee loses or junks the hole or well and after diligent efforts in good faith is unable to complete said operations, then within twenty days after the abandonment of said operations, lessee may commence another well within three hundred thirty feet of the lost or junked hole or well and drill the same with due diligence.

Operations commenced and continued as herein provided shall extend this lease as to all lands as to which the same is in full force and effect as of the time said drilling operations are commenced; provided, however, this lease shall be subject to cancellation in accordance with Paragraph



13 hereof for failure to pay rentals or file reports which may become due while operations are being conducted hereunder.

15. Should production of oil and gas or either of them in paying quantities be obtained while this lease is in force and effect and should thereafter cease from any cause after the expiration of five years from the date hereof, this lease shall not terminate if lessee commences additional drilling or reworking operations within sixty days after the cessation of such production and shall remain in full force and effect so long as such operations are prosecuted in good faith with no cessation of more than twenty consecutive days, and if such operations result in the production of oil or gas in paying quantities, so long thereafter as oil or gas in paying quantities is produced from said land; provided, however, written notice of intention to commence such operations shall be filed with the lessor within thirty days after the cessation of such production, and a report of the status of such operations shall be made by the lessee to the lessor every thirty days, and the cessation of such operations for more than twenty consecutive days shall be considered as an abandonment of such operations and this lease shall thereupon terminate.

16. Lessees, including their heirs, assigns, agents and contractors shall at their own expense fully comply with all laws, regulations, rules, ordinances and requirements of the city, county, state, federal authorities and agencies, in all matters and things affecting the premises and operations thereon which may be enacted or promulgated under the governmental police powers pertaining to public health and welfare, including but not limited to conservation, sanitation, aesthetics, pollution, cultural properties, fire and ecology. Such agencies are not to be deemed third party beneficiaries hereunder, however this clause is enforceable by the lessor in any manner provided in this lease or by law.

17. Should lessor desire to exercise its rights to take in-kind its royalty share of oil, gas or associated substances or purchase all or any part of the oil, gas or associated substances produced from the lands covered by this lease, the lessee hereby irrevocably consents to the lessor exercising its right. Such consent is a consent to the termination of any supplier/purchaser relationship between the lessor and the lessee deemed to exist under federal regulations. Lessee further agrees that it will require any purchaser of oil, gas or associated substances to likewise waive any such rights.

18. Lessor reserves a continuing option to purchase at any time and from time to time, at the market price prevailing in the area on the date of purchase, all or any part of the minerals (oil and gas) that will be produced from the lands covered by this lease.

19. Lessor reserves the right to execute leases for geothermal resource development and operation thereon; the right to sell or dispose of the geothermal resources of such lands; and the right to grant rights-of-way and easements for these purposes.

20. All terms of this agreement shall extend to and bind the heirs, executors, administrators, successors and assigns of the parties hereto.

In witness whereof, the party of the first part has hereunto signed and caused its name to be signed by its commissioner of public lands thereunto duly authorized, with the seal of his office affixed, and the lessee has signed this agreement the day and year first above written.

#### STATE OF NEW MEXICO

By .....  
Commissioner of Public Lands, Lessor  
.....(Seal)."  
Lessee

**History:** 1978 Comp., § 19-10-4.3, enacted by Laws 1985, ch. 195, § 5.

**Cross references.** — For commissioner of public lands, see 19-1-1 NMSA 1978.

#### ANNOTATIONS

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**Use of form not required of other state agencies.** — The form for leasing oil and gas lands belonging to agencies other than the office of the commissioner of public lands need not comply with the terms and conditions of this section, even where such leases are offered through

the facilities of the commissioner as an accommodation to another state agency. 1980 Op. Att'y Gen. No. 80-10.

**Surrender of lease and reapplication.** — Once a lessee has surrendered his lease as provided for under Subdivision 5, the commissioner may refuse to accept an application for a new lease made by the same party. 1945-46 Op. Att'y Gen. No. 45-4659.

**Rental on assignment of lease.** — Annual rental to be charged assignee of oil and gas lease is same as that of original lessee, and for secondary term the rental is double that of primary term. 1937-38 Op. Att'y Gen. No. 37-1597.

**Production on part benefits whole.** — If production has been obtained in a unit area the production inures to the benefit of all tracts contained in the unit area; under the form oil and gas lease all of the tracts contained in a lease are perpetuated for as long after the term of the lease as oil or gas in paying quantities is produced from said land by the lessee. 1953-54 Op. Att'y Gen. No. 53-5708.

**As does drilling on part.** — The commencement of drilling on any part of a unit area prior to the expiration of the secondary term would extend the secondary term on all tracts included in the unit area and would be considered the same as though a well had been commenced on each tract in such unit area. 1953-54 Op. Att'y Gen. No. 53-5708.

**Expiration of lease prior to drilling.** — Drilling operations may not be made upon a second well in the event the approved operation is completed without production where the drilling operations have not been begun on the second well prior to the expiration date of the second term. 1953-54 Op. Att'y Gen. No. 53-5650.

**Purpose of extension.** — Extension of lease beyond its secondary term is for such period of time as required to conclude bona fide drilling in which lessee was engaged at expiration of the secondary term at which time lease terminates if oil or gas are not found, but if this drilling operation results in production, then the lease is continued for as long as oil and gas, or either of them, is produced from said land in paying quantities. 1949-50 Op. Att'y Gen. No. 49-5230.

**Application for continuation.** — Under Subdivision 16 (now 14) a lessee may make application in writing before expiration of the secondary term for a continuation of the term if engaged in bona fide drilling or reworking operations. 1949-50 Op. Att'y Gen. No. 49-5230.

**Commissioner may insert covenant compelling reasonable development** of the leased premises for oil and gas. 1941-42 Op. Att'y Gen. No. 41-3835.

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Remedy for breach of implied duty of oil and gas lessee to protect against drainage, 18 A.L.R.4th 147.

Production on one tract as extending term on other tract where one mineral lease conveys oil or gas rights in separate tracts for as long as oil or gas is produced, 35 A.L.R.4th 1167.

Construction and application of "Mother Hubbard" or "cover-all" clause in gas and oil lease or deed, 80 A.L.R.4th 205.

## 19-10-5. Existing leases; stipulation.

A. The owners of any oil and gas lease issued by the commissioner of public lands before the effective date of this section, other than a five year lease, and maintained in good standing according to the terms and conditions thereof and all applicable statutes and regulations, may, in accordance



with regulations prescribed by the commissioner, enter into a stipulation making the terms and conditions of the lease form prescribed by Section 19-10-4.1 NMSA 1978, a part of any such existing lease, the same as if the lease form had been the original; provided, however, that no such stipulation shall be effective or binding on any of the parties until each and every working interest owner and record owner of the original lease or approved assignment thereof has signed the stipulation.

B. The owners of any five year oil and gas lease issued by the commissioner of public lands before the effective date of this section and maintained in good standing according to the terms and conditions thereof and all applicable statutes and regulations, may, in accordance with regulations prescribed by the commissioner, enter into a stipulation making the terms and conditions of the lease form prescribed by Section 19-10-4.2 NMSA 1978 a part of any such existing lease, the same as if the lease form had been the original; provided, however, that no such stipulation shall be effective or binding on any of the parties until each and every working interest owner and record owner of the original lease or approved assignment has signed the stipulation.

**History:** 1978 Comp., § 19-10-5, enacted by Laws 1985, ch. 195, § 6.

**Effective dates.** — The effective date of Laws 1985, ch. 195, § 6 was June 14, 1985.

**Repeals and reenactments.** — Laws 1985, ch. 195, § 6, repealed former 19-10-5 NMSA 1978, as enacted by Laws 1967, ch. 189, § 2, and enacted a new section.

### **19-10-5.1. Amendment of lease to lower royalty rate for oil wells under certain conditions.**

A. The record owner of an oil and gas lease issued by the commissioner of public lands whose lease is maintained in good standing according to the terms and conditions of the lease and all applicable statutes and regulations may apply to the commissioner for an amendment to the lease for the purpose of changing the royalty rate on oil produced from a specified oil well.

B. An application for a change in royalty rate shall be on a form prescribed by the commissioner of public lands and shall be accompanied by an application fee. The application shall:

(1) show that an oil well has produced oil attributable to the lease premises and:

(a) if the production is from formations shallower than five thousand feet, has produced less than an average of three barrels of oil per day during the preceding twelve months and has not averaged over five barrels of oil per day for any month during the preceding twelve months; or

(b) if the production is from formations five thousand feet deep or deeper, has produced less than an average of six barrels of oil per day during the preceding twelve months and has not averaged over ten barrels of oil per day for any month during the preceding twelve months; and

(2) include a statement that to the best of the applicant's knowledge and experience the well is not capable of sustained production over the production limits specified in Paragraph (1) of this subsection.

C. Upon receipt of an application, the commissioner of public lands shall review the information submitted as well as other independent information obtainable by the commissioner and shall agree to amend the lease to a lower royalty rate for oil produced from the oil well if, in his sole discretion, he finds that:

(1) the operator has taken reasonable steps to minimize his costs of operating the oil well;

(2) the oil well will likely be plugged and abandoned in the near future, with a resulting loss of reserves, if operating costs are not reduced further;

(3) the oil well will produce for a longer period, and the amount of oil produced will ultimately be larger, if the royalty rate is lowered; and

(4) a lower royalty rate will actually maximize revenue to the trust beneficiaries.

D. Any lower royalty rate agreed to under this section shall be equal to five percent and shall be valid for a period of three years, after which time the record owner of the oil and gas lease issued by the commissioner of public lands may submit a request for extension.

E. The commissioner of public lands may promulgate regulations necessary to implement the provisions of this section.



F. The commissioner of public lands shall provide a cost-benefit analysis of the provisions of this section by December 1 of each year to the legislature and the governor.

**History:** Laws 1994, ch. 105, § 1; 1999, ch. 65, § 1.

The 1999 amendment, effective June 18, 1999, in Subsection B substituted "has produced oil" for "the production from which is" in Paragraph (1), added the Subparagraph (1)(a) designation, and added "if the production is from formations shallower than five thousand feet" at

the beginning, deleted former Paragraph (2), which read "reserve data and production decline curves for the oil well", and added Subparagraph (1)(b) and Paragraph (2); in Subsection D, substituted "three years" for "two years" and "a request for extension" for "another application pursuant to this section"; and made minor stylistic changes.

### 19-10-6. Shut-in oil wells; conditions.

A. If, after notice and public hearing, the commissioner finds that because of a severe reduction in the price of oil the beneficiaries of state trust lands are ultimately better served if oil wells are allowed to be temporarily shut in rather than produced at a low price, he may promulgate a regulation which allows such wells to be shut in.

B. Any regulation promulgated under Subsection A of this section shall automatically expire two years from its effective date unless it is either extended by the commissioner after a subsequent notice and public hearing or terminated sooner by a subsequent regulation of the commissioner after finding that the price of oil is no longer severely reduced; provided, that any such termination shall not be effective until thirty days after the commissioner has by certified mail sent notice of the prospective termination to each lessee whose lease is being extended by the operation of this section.

C. Any oil and gas lease issued by the commissioner of public lands and maintained in good standing according to the terms and conditions thereof and all applicable statutes and regulations shall not expire if:

- (1) there is, currently in effect, a regulation promulgated under Subsection A of this section;
- (2) there is a well capable of producing oil located upon some part of the lands included in the lease and such well is shut in because of the severe reduction in the price of oil;
- (3) the lessee timely notifies the commissioner in writing within thirty days of the date the well is first shut in; and

(4) the lessee timely pays an annual shut-in royalty within ninety days from the date the well was first shut in and thereafter before each anniversary of the date the well was first shut in. The amount of the shut-in royalty shall be twice the annual rental due by the lessee under the terms of the lease but not less than three hundred twenty dollars (\$320) per well per year. If the other requirements of this subsection are satisfied, the timely payment of the shut-in royalty shall be considered for all purposes the same as if oil were being produced in paying quantities until the next anniversary of the date the well was first shut in.

**History:** 1978 Comp., § 19-10-6, enacted by Laws 1987, ch. 173, § 1.

**Compiler's notes.** — Laws 1985, ch. 195, § 9 repealed former 19-10-6 NMSA 1978, as enacted by Laws 1972, ch.

70, § 2, relating to the applicability of the lease form in 19-10-3 NMSA 1978, effective June 14, 1985.

### 19-10-7. Exploratory form of lease; different term of years.

A. When issuing an oil and gas lease on the exploratory lease form, if the conditions of the tract subject to the lease are such that a different term of years for the lease is warranted, the commissioner in his discretion may issue the lease for a primary term of five years with no secondary term.

B. Any deviations from the lease form set forth in Section 19-10-4.1 NMSA 1978 pursuant to Subsection A of this section shall be specified in the notice of the lease sale as required under Section 19-10-17 NMSA 1978.

**History:** 1978 Comp., § 19-10-7, enacted by Laws 1987, ch. 173, § 2.

**Repeals.** — Laws 1985, ch. 195, § 9 repealed former 19-10-7 NMSA 1978, as enacted by Laws 1977, ch. 298, § 2,

relating to the applicability of the lease form in 19-10-4 NMSA 1978, effective June 14, 1985.

### 19-10-8. [Extension of terms of leases.]

In all cases where public lands under the jurisdiction of the commissioner of public lands are under lease for oil and gas and are concurrently leased for other minerals, and exploration or development operations under the oil and gas lease are incompatible with the exploration or mining operations under the mining lease and will result in waste of either oil and gas or minerals unless operations under the oil and gas lease are temporarily suspended, the commissioner of public lands may, from time to time, as to all or part of the lands, by legal subdivisions, waive compliance with the express or implied exploratory, drilling, development or production requirements, or may extend the term of the oil and gas lease for a period of time sufficient to permit the removal of the minerals and for subsidence of the ground if necessary.

Provided, however, no waiver or extension of term of the lease shall be for more than five years at any one time and shall be effective only upon written order of the commissioner of public lands. Provided, further, the order shall specify the oil and gas and mineral lease numbers and the legal subdivision affected and shall not be effective until posted on the official land office bulletin board for a period of at least fifteen days.

**History:** 1953 Comp., § 7-11-3.2, enacted by Laws 1961, ch. 93, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-10-9. [Existing leases; stipulation to bring helium gas within terms.]

Any owner of an oil and gas lease heretofore issued by the commissioner of public lands and maintained in good standing according to the terms and conditions thereof and all applicable statutes and regulations may, in accordance with regulations prescribed by the commissioner of public lands, enter into a stipulation bringing helium gas within the terms of any such existing lease, the same as if helium gas had been covered by the lease agreement from the date it was first entered into.

**History:** 1953 Comp., § 7-11-3.3, enacted by Laws 1963, ch. 151, § 2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For definition of "natural gas" as used in 19-10-1 to 19-10-52 NMSA 1978, now being construed to include helium gas, see 19-10-2 NMSA 1978.

### 19-10-10. Repealed.

**Repeals.** — Laws 1985, ch. 195, § 9, repealed 19-10-10 NMSA 1978, as enacted by Laws 1945, ch. 111, § 2,

relating to amending existing leases, effective June 14, 1985. For stipulation of existing leases, see 19-10-5 NMSA 1978.

### 19-10-11. [Statement with royalty payment; inspection of books; state's lien for unpaid royalty; log; specimen of drill cuttings.]

The lessee shall be required to submit to the commissioner of public lands with each and every royalty payment, a correct statement showing the amount of oil or gas produced and saved since the last report and the market value thereof, except oil and gas used in developing and operating said lease. All books and accounts of the lessee pertaining to the production, transportation and marketing of the output from the leased lands shall be open to the examination and inspection at all reasonable hours by the commissioner of public lands or his representative. The value of any unpaid royalty, and any sum due the state upon any lease, shall become a prior lien upon the production from the leased premises and the improvements situated thereon. The lessee shall furnish to the commissioner of public lands, as and when called for by him, a full, accurate and complete log, and also a complete specimen of drill cuttings of any and all wells drilled by lessee on the leased lands.

**History:** Laws 1925, ch. 137, § 4; C.S. 1929, § 132-422; 1941 Comp., § 8-1104; 1953 Comp., § 7-11-5.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.



## 19-10-12. [New lease or extension where no discovery made; preference right; conditions.]

The legal owners of all leases issued by the commissioner of public lands prior to the effective date of this amendment, containing provision, or provisions, for preference right to a new lease, or extension of the term thereof upon the expiration of the initial five-year term, and where valuable discoveries of the oil and gas have not been made, shall have an absolute preference right to such new lease or extension, upon the terms and conditions provided in such leases without paying a bonus therefor, and in the exercise of such preference right the provisions of Chapter 125 of the 1929 Session Laws [19-10-1, 19-10-12 to 19-10-25 NMSA 1978], and of this act [19-10-1, 19-10-12, 19-10-15 to 19-10-18, 19-10-22 NMSA 1978] relating to sales made upon competitive bidding by sealed bids, or at public auction, shall not apply in any case, but all such renewals, extensions or new leases made pursuant to such preference rights shall be only for a term of five years and as long thereafter as oil and gas in paying quantities, or either of them, is produced from the leased premises, and without further preference right to renewal or extension for successive terms.

**History:** Laws 1929, ch. 125, § 3; C.S. 1929, § 132-403; Laws 1931, ch. 18, § 3; 1941 Comp., § 8-1105; 1953 Comp., § 7-11-6.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### ANNOTATIONS

**Construction.** — This section contained no provisions for shortening the term of an oil or gas lease; it provided for preference right for new leases and for extensions.

*Atlantic Oil Producing Co. v. Crile*, 1930-NMSC-040, 34 N.M. 650, 287 P. 696 (case decided prior to 1931 amendment of section).

**Applicability.** — The provisions of this section, prior to the 1931 amendment, with reference to making application for preference right lease prior to expiration of original term, were not applicable to preference right contained in lease for five years dated May 3, 1924, on form prescribed by the state land office. *State ex rel. Malone v. Crile*, 1929-NMSC-095, 34 N.M. 520, 284 P. 762.

## 19-10-13. [Assignment of leases; procedure; effect.]

All leases issued under the provisions of this act [19-10-1, 19-10-12 to 19-10-25 NMSA 1978] shall be assignable in whole or in part; provided, however, that no assignment of an undivided interest in the lease or any part thereof, or any assignment of less than a legal subdivision shall be recognized or approved by the commissioner. The term "legal subdivision" as used in this act shall be construed in its ordinary sense as used and recognized in the general land office of the United States and in the state land office of New Mexico. The assignments provided for herein shall be executed and acknowledged in the manner prescribed for conveyance of real estate in this state and shall be filed in triplicate in the office of the commissioner who shall retain two copies of the said assignment in his office as a public record and shall record one of same in permanent form in his office as a public record and shall return one of the duplicate copies to the person entitled thereto. The approval of the commissioner shall be noted upon all copies of the said assignment. The commissioner shall prescribe the form to be used for such assignments and shall fix a reasonable fee for the filing, recording and approval of same. The commissioner shall have the right to refuse approval of any assignment not executed in proper form or by the proper person or persons, or when the lease is not in good standing as to the assigned tracts, or when litigation is pending affecting the lease or the interest of any person therein. Upon approval by the commissioner of an assignment the assignor shall stand relieved from all obligations to the state with respect to the lands embraced in the assignment and the state shall likewise be relieved from all obligations to the assignor as to such tract or tracts, and thereupon the assignee shall succeed to all of the rights and privileges of the assignor with respect to such tracts and shall be held to have assumed all of the duties and obligations of the assignor to the state as to such tracts. Provided, however, the record owner of any oil and gas lease may enter into any contract for the development of the leasehold premises or any portion thereof, or may create overriding royalties or obligations payable out of production, or enter into any other agreements with respect to the development of the leasehold premises or disposition of the production therefrom, and it shall not be necessary for any such contracts, agreements or other instruments to be approved by the commissioner of public lands; but nothing herein contained shall relieve the record title owner of such lease from complying



with any of the terms or provisions thereof, and the commissioner shall look solely and only to such record owner for compliance therewith, and in any controversy respecting any such contracts, agreements or other instruments entered into by such lessee with other persons the state of New Mexico or the commissioner of public lands shall not be a necessary party. All such contracts and other instruments may be filed either in the office of the commissioner of public lands or recorded in the office of the county clerk of the county where the lands are situated, and the filing or recording thereof shall constitute notice to all the world of the existence and contents of the instruments so filed or recorded. The commissioner may prescribe a reasonable fee for the filing of such instruments in the office of the commissioner of public lands.

The discovery of oil or gas upon lands embraced in any state lease shall continue such lease as to all of the lands embraced therein for as long thereafter as oil and gas in paying quantities or either of them is being produced in accordance with the provisions thereof regardless of any assignment of all or any portion of the lease which may have been made prior or subsequent to the discovery of such production.

**History:** Laws 1929, ch. 125, § 4; C.S. 1929, § 132-404; Laws 1939, ch. 234, § 1; 1941 Comp., § 8-1106; Laws 1951, ch. 161, § 1; 1953 Comp., § 7-11-7.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For assignment or relinquishment of lease of state lands, see 19-7-36 NMSA 1978.

For assignment of mineral lease, see 19-8-28 NMSA 1978.

For transferability of lease under Geothermal Resources Act, see 19-13-21 NMSA 1978.

#### ANNOTATIONS

**Approval of assignment of leases.** — The requirement in a purchase and sale agreement that the bureau of Indian affairs approve the assignment of seller's interests in oil and gas leases located on the Navajo Nation was not a condition precedent to making the agreement effective. *Wood v. Cunningham*, 2006-NMCA-139, 140 N.M. 699, 147 P.3d 1132, cert. denied, 2006-NMCERT-011, 140 N.M. 845, 149 P.3d 942.

**Effect of production in portion of premises on rights of partial assignee.** — Where oil and gas lease from commissioner of public lands provided that if oil and gas were produced in paying quantities within 10-year period, which time had been allowed lessee to produce oil and gas, lease might be continued in force as long as oil or gas should be produced, and portion of lease was assigned, assignee succeeded to all rights of original lessee, and on producing oil in portion of lease not covered by assignment, assignee had right to continue lease in

force, subject to implied covenant to perform the development work. *State ex rel. Shell Petroleum Corp. v. Worden*, 1940-NMSC-038, 44 N.M. 400, 103 P.2d 124.

**Instrument an assignment.** — Instrument designed an assignment of oil and gas lease, being Form 33-A2, when properly executed on a portion of land originally leased by the lessor, constitutes in law and in fact an assignment and not a sublease. 1937-38 Op. Att'y Gen. No. 37-1642.

**Certain assignments prohibited.** — This section expressly prohibits the commissioner of public lands from recognizing or approving any assignment of any portion of the lease of an undivided interest. This prohibits a retention by the assignor of a reversionary interest in the portion assigned such as an overriding royalty. 1937-38 Op. Att'y Gen. No. 37-1642.

**Except by operation of law.** — The prohibition against assignment of an undivided interest in an oil and gas lease is not applicable where such interest passes necessarily by operation of law, as upon the death of a lessee, but the heirs in whom such interest vests may not assign their undivided interest to any third party, except in conformity with this section. 1941-42 Op. Att'y Gen. No. 42-4094.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — What constitutes oil or gas "royalty" or "royalties" within language of conveyance, exception, reservation, devise or assignment, 4 A.L.R.2d 492.

Liability of lessee who assigns lease for rent accruing subsequently to extension or renewal of term, 10 A.L.R.3d 818.

### 19-10-14. [Application for lease; form; deposit; appraisement.]

Applications for the issuance of any lease authorized by this act [19-10-1, 19-10-12 to 19-10-25 NMSA 1978] shall be executed under oath by the applicant or by his agent or attorney duly authorized in writing, or by any officer or attorney in fact of the corporation if the application be made by a corporation. The application shall be accompanied by the amount offered by the applicant as the bonus, if any, and rental for the first year. The form of the application shall be prescribed by the commissioner and all applications shall contain a description of the lands by legal subdivisions upon which the lease is desired, together with such data and information concerning development on and in the vicinity of the lands as may reasonably be required by the commissioner. The commissioner may also require any applicant for a lease to file in the office of the commissioner an appraisement in such form as the commissioner may require, showing the value of the lands for oil and gas purposes, such appraisement to be made under oath by one or more disinterested persons having personal knowledge of the facts set forth in the appraisement. The commissioner shall not be bound by the statements contained in any such application or appraisement. No lease shall be



issued without the filing of an application therefor as prescribed herein, and no lease shall be issued for less than the amount offered by the applicant as a bonus, if any, and rental for the first year, and if an appraisalment of the land for oil and gas purposes be required as provided herein, then no lease shall issue for less than the value of same as shown by such appraisalment.

**History:** Laws 1929, ch. 125, § 5; C.S. 1929, § 132-405; 1941 Comp., § 8-1107; 1953 Comp., § 7-11-8.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For appraisalment of state lands by applicant seeking to lease or purchase same, *see* 19-7-1 NMSA 1978.

For false swearing in appraisalment of state lands, *see* 19-7-7 NMSA 1978.

### **19-10-15. [Rental; limits; first year; rental districts; alteration; maximum size of lease; rent where lease crosses district line.]**

All leases issued by the commissioner of public lands shall provide for an annual rental to be paid by the lessee, the amount thereof to be fixed by the commissioner, but in no case shall the same be less than five cents [(\$.05)] nor more than one dollar [(\$1.00)] per acre, except during the secondary term of the leases provided for herein; provided the first year's rental for any lease, except leases issued pursuant to relinquishment under Section 8 [19-10-22 NMSA 1978] of this act, shall not be less than one hundred dollars (\$100).

It shall be the duty of the commissioner to classify and divide all state lands subject to lease hereunder, into districts to be known as "rental" districts, and thereupon prescribe the rental per acre to be paid under leases to be made upon lands in the respective rental districts, and upon such division shall post in a conspicuous place in the state land office a description of such districts and the rental prevailing in each; provided, however, the commissioner may, from time to time, alter or change the boundaries of such districts, or redistrict all of said lands, and increase or diminish the rental prevailing in each, but any change in the boundaries of the districts, or amount of rental, shall not become effective until ten days after giving notice thereof by posting a description, or list, of such changes, in a conspicuous place in the state land office.

Not more than six thousand, four hundred (6,400) acres of land may be embraced within any one lease, and where part of the lands in any lease are situated in one rental district and part thereof in another, or other districts, the lessee shall be required to pay the rental prevailing in the district wherein part of the lands affected are situated having the highest rental.

**History:** Laws 1929, ch. 125, § 6; C.S. 1929, § 132-406; Laws 1931, ch. 18, § 4; 1941 Comp., § 8-1108; 1953 Comp., § 7-11-9.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For accrual of interest on delinquent payments of rental, etc., *see* 19-1-3 NMSA 1978.

#### **ANNOTATIONS**

**Withdrawal of lands from restricted districts.** — By necessary implication the land commissioner has authority to rescind orders promulgated by him adding lands to restricted districts for oil and gas leasing, and the procedure to be followed in withdrawing any lands from a restricted district is substantially the same as set out in this section. 1951-52 Op. Att'y Gen. No. 52-5604.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 38 Am. Jur. 2d Gas and Oil § 283.

### **19-10-16. [Restricted districts; method of leasing; added area; notice; rental.]**

There is hereby created a restricted district comprising townships 3 to 15 south inclusive, ranges 34 to 39 east inclusive; townships 16 to 20 south inclusive, ranges 28 to 39 east inclusive; and townships 21 to 26 south inclusive, ranges 34 to 39 east inclusive, N.M.P.M. No oil and gas leases upon any state lands within said restricted district shall be made except upon competitive bidding by sealed bids or at public auction as hereinafter provided. No lands within the boundaries of said restricted district shall be eliminated therefrom by the commissioner, but the commissioner may, from time to time, when in his judgment the interest of the state requires such action, extend the

boundaries thereof and create other restricted districts, or areas, within which oil and gas leases may be made only upon competitive bidding by sealed bids or at public auction. Notice of the extension of the boundaries of said district, or of the creation of other districts, shall be given in the same manner as provided for giving notice of change in rental districts, as provided by Section 4 [19-10-15 NMSA 1978] of this act. Nothing contained in this act [19-10-1, 19-10-12, 19-10-15 to 19-10-18, 19-10-22 NMSA 1978] shall be construed as requiring a uniform annual rental to prevail over the entire area embraced in any restricted district. The commissioner may, when it is deemed for the best interests of the state, fix the annual rental to be paid under the terms of each lease covering lands in any restricted district at the time notice of sale thereof is given, as hereinafter provided, without regard to the rental prevailing in the district in which the lands offered for lease are situated, and in such cases the provisions of Section 4 [19-10-15 NMSA 1978] hereof, except those relating to the maximum and minimum rental, shall not apply.

**History:** Laws 1929, ch. 125, § 7; C.S. 1929, § 132-407; Laws 1931, ch. 18, § 5; 1941 Comp., § 8-1109; 1953 Comp., § 7-11-10.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Purpose of competitive bidding.** — Competitive bidding was introduced as a means of obtaining the greatest returns from the leases. *Atlantic Oil Producing Co. v. Crile*, 1930-NMSC-040, 34 N.M. 650, 287 P. 696.

**Effect of high bid on preference right holder.** — This section is a "rule of the state land office" within terms of oil and gas lease executed in 1924, and the holder

of a preference right under that form of lease must meet the bonus offered by the highest bidder at such auction to be entitled to exercise his right and take the lease. *State ex rel. Malone v. Crile*, 1929-NMSC-095, 34 N.M. 520, 284 P. 762.

**Withdrawal of lands from restricted districts.** — By necessary implication the land commissioner has authority to rescind orders promulgated by him adding lands to restricted districts for oil and gas leasing, and the procedure to be followed in withdrawing any lands from a restricted district is substantially the same as set out in Section 19-10-15 NMSA 1978. 1951-52 Op. Att'y Gen. No. 52-5604.

### 19-10-17. Public sale of restricted district leases; time; regulations; notice; minimum bonus; sealed bids or public auction authorized; site of sale; publication of notice; rejection of bids; completion of transaction.

A. The commissioner shall hold a public sale of oil and gas leases upon lands which may be open to lease and embraced within the restricted district or districts created and which may be created under Section 19-10-16 NMSA 1978 on the third Tuesday of each month or on the next business day following, where the third Tuesday falls on a legal holiday, and shall offer for lease such lands in designated tracts to the highest and best bidder. All sales of leases upon competitive bidding or a public auction shall be governed by regulations issued by the commissioner not in conflict with the provisions of Chapter 19, Article 10 NMSA 1978. Notice of such sales shall be given by posting in a conspicuous place in the state land office, not less than ten days before the date of sale, a notice of the sale specifying the day and hour when and the place where the sale will be held and specifying the following for each tract to be offered for lease:

- (1) a description of the lands;
- (2) the form of lease to be used;
- (3) the royalty rate; and
- (4) the annual rental per acre to be paid.

B. The commissioner may, when it is deemed to be for the best interests of the beneficiaries of such lands, also specify a minimum bonus to be paid for the leases upon the respective tracts, and, when so specified, the bonus shall be paid in addition to the first year's rental. The notice shall also contain such other information as the commissioner may deem advisable or necessary. Sales may be conducted through sealed bids or at public auction or by both methods combined, but the method of conducting each sale shall be stated in the notice of sale required pursuant to this section. Sales may be held at the option of the commissioner either in the office of the commissioner or at the county seat of the county in which the lands, or the greater part thereof, are situated or such other place within the state as the commissioner may designate in the notice of public auction provided for in this section. The commissioner is authorized to give such additional notice of the sales,



either by publication in newspapers or by mailing copies of the notice of sale to interested persons, firms or corporations, as he may deem necessary to give proper publicity thereto. The commissioner shall have the right to reject all bids received at any sale for the lease upon any tract but shall not reject any bids made in conformity with the regulations and provisions of Chapter 19, Article 10 NMSA 1978 without rejecting all bids applicable to the same tract of land. Leases sold at sales as provided in this section shall be awarded to the respective bidders offering the largest bonus, which shall be paid in addition to the first year's rental, or, where a minimum bonus is not specified and no offer of a bonus is received, to the bidder offering the rental specified in the notice of sale which, for the first year, shall not be less than one hundred dollars (\$100) for each lease as provided in Section 19-10-15 NMSA 1978. Where two or more sealed bids making the same offer for the same tract are received, the commissioner shall award the lease in accordance with such regulations as he may prescribe. The successful bidders shall file proper applications for the leases purchased and shall complete the payment of any balance due on their bids before the closing of the office of the commissioner on the day of the sale.

**History:** Laws 1929, ch. 125, § 8; C.S. 1929, § 132-408; Laws 1931, ch. 18, § 6; 1941 Comp., § 8-1110; Laws 1953, ch. 45, § 1; 1953 Comp., § 7-11-11; Laws 1981, ch. 97, § 1; 1985, ch. 195, § 7.

**Cross references.** — For publication of legal notice, see 14-11-1 NMSA 1978 et seq.

**The 1985 amendment**, effective June 14, 1985, designated the formerly undesignated first three sentences as Subsection A, dividing the former third sentence into introductory language and Paragraphs (1) and (4); in the introductory paragraph of Subsection A, deleted "therefor" at the end of the first sentence and substituted "Chapter 19, Article 10 NMSA 1978" for "Sections 19-10-1, 19-10-3, and 19-10-12 through 19-10-25 NMSA 1978" at the end of the second sentence and "a notice of the sale" for "a notice of same" and "and specifying the following for each tract to be offered for lease" for "giving" in the third sentence; deleted "in each tract to be offered for lease" at the end of Subsection A(1); inserted Subsections A(2) and A(3); deleted "by the lessee" at the end of Subsection A(4); designated the formerly undesignated last nine sentences

as Subsection B; and, in Subsection B, substituted "beneficiaries of such lands" for "state" and "the bonus" for "the same" in the first sentence and "pursuant to this section" for "herein" at the end of the third sentence, inserted "the" preceding "greater part thereof" and substituted "in this section" for "herein" in the fourth sentence, substituted "Chapter 19, Article 10 NMSA 1978" for "Sections 19-10-1, 19-10-3, and 19-10-12 through 19-10-25 NMSA 1978" and deleted "or tracts" following "applicable to the same tract" in the sixth sentence, substituted "in this section" for "herein" near the beginning of the seventh sentence and deleted "thereon" following "the commissioner shall award the lease" in the eighth sentence.

#### ANNOTATIONS

**Discretion of commissioner.** — Commissioner may advertise, offer and lease oil and gas lands upon a basis of the state receiving more than one-eighth royalty from the highest and best bidder as he may deem for the best interests of the state. 1945-46 Op. Att'y Gen. No. 45-4750.

### 19-10-18. No bids made; subsequent lease.

A. If no bid is received for any lease offered by notice of sale as provided in Section 19-10-17 NMSA 1978 on a tract classified as restricted and categorized as regular, then the tract or tracts upon which no bids are received may be leased by the commissioner to the first applicant for the respective tracts any time within ten days after the sale at not less than the minimum amount of rental and bonus, if any, specified in the notice of sale.

B. If no bid is received for any lease offered by notice of sale as provided herein on a tract classified as restricted and categorized as premium, then the tract or tracts upon which no bids are received may be reoffered for lease by the commissioner at some subsequent sale or may be offered for lease at some subsequent sale, as a restricted tract or tracts, categorized as regular.

**History:** Laws 1929, ch. 125, § 9; C.S. 1929, § 132-409; Laws 1931, ch. 18, § 7; 1941 Comp., § 8-1111; 1953 Comp., § 7-11-12; Laws 1985, ch. 195, § 8.

**The 1985 amendment**, effective June 14, 1985, added the section heading, designated the formerly undesignated paragraph as Subsection A, substituted "If no bid is

received" for "If no bid be received" and "in Section 19-10-17 NMSA 1978 on a tract classified as restricted and categorized as regular" for "herein" near the beginning and "the sale" for "such sale" near the end of Subsection A and added Subsection B.

### 19-10-19. [Withholding lands from lease authorized.]

Nothing contained in this act [19-10-1, 19-10-12 to 19-10-25 NMSA 1978] shall be construed as requiring the commissioner to offer any tract or tracts of land for lease but the commissioner shall



have power to withhold any tract or tracts from leasing for oil and gas purposes if in his opinion the best interests of the state will be served by so doing.

**History:** Laws 1929, ch. 125, § 10; C.S. 1929, § 132-410; 1941 Comp., § 8-1112; 1953 Comp., § 7-11-13.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 19-10-20. [Cancellation of lease for nonpayment or nonperformance of requirements by lessee; notice.]

The commissioner is hereby authorized to cancel any lease issued as provided herein for nonpayment of rentals or nonperformance by the lessee of any provision or requirement of the lease; provided, however, that before any such cancellation shall be made the commissioner must mail to the lessee or assignee by registered letter, addressed to the post-office address of such lessee or assignee shown by the records of the office of the commissioner, a notice of intention to cancel said lease, specifying the default for which the lease is subject to cancellation, and if within thirty (30) days after the mailing of said notice to the lessee or assignee he shall remedy the default specified in such notice, then no cancellation of the said lease shall be entered by the commissioner but otherwise the said cancellation shall be made and all rights of the lessee or assignee under the lease shall thereupon terminate. The mailing of the notice as provided in this section shall constitute notice of the intention of the commissioner to cancel the lease and no proof of receipt of such notice shall be necessary or required. All notices required to be given hereunder on account of failure to pay rentals shall be mailed within ninety (90) days after said rentals shall have become delinquent, and as to all leases under the terms of which rentals are delinquent as of the effective date of this amendment said notices shall be mailed within ninety (90) days from the effective date hereof.

**History:** Laws 1929, ch. 125, § 11; C.S. 1929, § 132-411; 1941 Comp., § 8-1113; Laws 1945, ch. 113, § 1; 1953 Comp., § 7-11-14.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For forfeiture of lease for failure to pay rent, see 19-7-34 NMSA 1978.

For grounds of forfeiture of agricultural or grazing lease, see 19-7-35 NMSA 1978.

For forfeiture procedure on violation of lease or other written instrument, see 19-7-50 NMSA 1978.

For forfeiture for defrauding state of royalties, see 19-8-1 NMSA 1978.

For forfeiture on failure to develop and operate mineral lands in workmanlike manner, see 19-8-13 NMSA 1978.

For forfeiture of certain mineral leases for violation thereof, see 19-8-27 NMSA 1978.

For forfeiture on failure to comply with coal lease, see 19-9-13 NMSA 1978.

For forfeiture of lease under Geothermal Resources Act, see 19-10-20 NMSA 1978.

### ANNOTATIONS

**Time of payments.** — Where ninetieth day fell on Sunday, lessee had all day the following Monday in which to make payment, and payments received by mail on the preceding Saturday or Sunday, when the land office was closed, were timely. *Durell v. Miles*, 1949-NMSC-033, 53 N.M. 264, 206 P.2d 547.

**Actual notice is not required in order to terminate lessee's interest** in an oil and gas lease. *Abbott v. Armijo*, 1983-NMSC-065, 100 N.M. 190, 668 P.2d 306.

**Notice of intent to cancel lease by certified mail.** — The commissioner of public lands fulfills the statutory requirement for notice to terminate a lessee's interest in an oil and gas lease when he sends a notice of intent to cancel by certified mail. *Abbott v. Armijo*, 1983-NMSC-065, 100 N.M. 190, 668 P.2d 306.

**Recall of notice permitted.** — Where the 90-day statutory limit for giving notice of cancellation has not expired, commissioner of public lands may recall notice of cancellation for nonpayment of rentals. *Durell v. Miles*, 1949-NMSC-033, 53 N.M. 264, 206 P.2d 547.

**Effect of production in portion on partial assignee's rights.** — Where oil and gas lease from commissioner of public lands provided that if oil and gas were produced in paying quantities within 10-year period, which time had been allowed lessee to produce oil and gas, lease might be continued in force as long as oil or gas should be produced, and portion of lease was assigned, assignee succeeded to all rights of original lessee, and on producing oil in portion of lease not covered by assignment, assignee had right to continue lease in force, subject to implied covenant to perform the development work. *State ex rel. Shell Petroleum Corp. v. Worden*, 1940-NMSC-038, 44 N.M. 400, 103 P.2d 124.

**Consent by state to suit.** — In an action brought under 8-1116, 1941 Comp. (Section 19-10-23 NMSA 1978) against the commissioner of public lands to compel him to rescind his cancellation, effected under this section, of certain oil and gas leases, it was held that the state not only has waived its immunity but has consented to be sued in a court of equity in which equitable principles must control. *Durell v. Miles*, 1949-NMSC-033, 53 N.M. 264, 206 P.2d 547.

**Time of notice.** — The commissioner of public lands is required to mail notices respecting rentals within 90 days after they become delinquent, but in the case of nonperformance other than rentals, the time for giving notice is within his discretion. 1945-46 Op. Att'y Gen. No. 45-4767.

**Grounds of cancellation.** — The commissioner of public lands may cancel a lease when the lessee fails, after due notice, to do what is expected of an operator of ordinary prudence. 1941-42 Op. Att'y Gen. No. 41-3835.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 38 Am. Jur. 2d Gas and Oil § 283.



Mistake, accident, inadvertence, etc., as ground for relief from termination or forfeiture of oil or gas lease for failure to complete well, commence drilling or pay rental strictly on time, 5 A.L.R.2d 993.

Relief against forfeiture of lease for nonpayment of rent, 31 A.L.R.2d 321.

Gas and oil lease force majeure provisions: construction and effect, 46 A.L.R.4th 976.

## 19-10-21. [Rules and regulations; amendment; rescission; effective date.]

The commissioner is hereby authorized and required to prescribe and publish for the information of the public, all rules and regulations necessary for carrying out the provisions of this act [19-10-1, 19-10-12 to 19-10-25 NMSA 1978], and he may amend or rescind any rule or regulation promulgated by him under the authority contained herein; provided, however, that no rule or regulation or amendment of same, or any order rescinding any rule or regulation shall become effective earlier than fifteen (15) days after the promulgation of same, and a copy of the proposed rule, regulation, amendment or order shall be posted in a conspicuous place in the office of the commissioner for a period of at least fifteen (15) days prior to the taking effect of same.

**History:** Laws 1929, ch. 125, § 13; C.S. 1929, § 132-413; 1941 Comp., § 8-1114; 1953 Comp., § 7-11-15.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For State Rules Act, see Chapter 14, Article 4 NMSA 1978.

## 19-10-22. [Validation of existing leases; contest of claims; relinquishment for conversion; terms of new lease; fees.]

All oil and gas leases issued by the commissioner of public lands prior to the effective date of this amendment which have not expired, or which have not been legally canceled for nonperformance by the lessee or assignee, are hereby declared to be valid and existing contracts with the state of New Mexico according to their terms and provisions, and the obligation of the state and of the commissioner to observe and conform to the terms and provisions thereof is hereby recognized. In any case where two or more persons claim a valid lease on the same tract or tracts of land under the provisions of this section, then the rights of the conflicting claimants shall be determined by the commissioner subject to right of appeal from the decision of the commissioner as provided by law.

The legal owner and holder of any lease or leases issued by the commissioner prior to March 12, 1929, if not in default of any of the provisions thereof, may relinquish the same to the state and upon application filed at the time of filing such relinquishment, the commissioner shall issue the applicant a new lease upon the form prescribed by Section 2 of this act. The primary term of the new lease issued pursuant to such relinquishment shall be the unexpired term of the original lease and as long thereafter as oil and gas in paying quantities, or either of them, is produced from the leased premises by the lessee, and the new lease shall provide for the payment of the annual rental prevailing in the district wherein the lands affected are situated, but not less than the rental provided in the original lease. In converting such lease, as herein provided, the commissioner shall prescribe a reasonable filing fee for the filing of the relinquishment and application, and the lessee shall not be required to pay any rental in addition to the rental provided in the lease relinquished for the current year in which the lease is relinquished, except the difference, if any, between the amount of rental provided in the old lease and that to be provided in the new lease. The provisions of Chapter 125 of the 1929 Session Laws [19-10-1, 19-10-12 to 19-10-25 NMSA 1978], and of this act [19-10-1, 19-10-12, 19-10-15 to 19-10-18, 19-10-22 NMSA 1978] relating to sales of leases within a restricted district upon competitive bidding, or by sealed bids, or at public auction, shall not apply to this section.

**History:** Laws 1929, ch. 125, § 14; C.S. 1929, § 132-414; Laws 1931, ch. 18, § 8; 1941 Comp., § 8-1115; 1953 Comp., § 7-11-16.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — Section 2 of this act, referred to in the first sentence of the second paragraph, had been compiled as 19-10-3 NMSA 1978. Section 19-10-3 NMSA 1978 was repealed and reenacted by Laws 1985, ch. 195, § 1.

### ANNOTATIONS

**Time to exercise surrender privilege.** — Under this statute, a lease became convertible which gave the lessee privilege to surrender at any time, although it was producing and although it would have been renewable in a few weeks at a rental higher than the statutory lease. *Harry Leonard, Inc. v. Vesely*, 1934-NMSC-090, 39 N.M. 33, 38 P.2d 1112.

**Construction of 1929 act.** — The provision in Laws 1929, ch. 125, § 14 (this section prior to its amendment in 1931), that the new lease was to be "issued in lieu of" the lease surrendered, was not sufficient to render the statute ambiguous or to support the contention that the term

of the new lease should be merely the unexpired portion of the original term. *Atlantic Oil Producing Co. v. Crile*, 1930-NMSC-040, 34 N.M. 650, 287 P. 696.

**And effect thereof on act of 1925.** — Where Laws 1925, ch. 137, § 9, providing for surrender of old leases and issue of new leases, was amended by Laws 1927, ch. 46, § 3, with same provisions, which latter act was repealed by Laws 1929, ch. 125, § 20, which act also provided for surrender of leases issued prior to March 23, 1927, and the issue of new leases, the repeal of the amendatory act, with a substitute, did not revive the original provision. *Atlantic Oil Producing Co. v. Crile*, 1930-NMSC-040, 34 N.M. 650, 287 P. 696.

## 19-10-23. Appeal of commissioner's decision.

A person or corporation aggrieved by a ruling or decision of the commissioner affecting his interest in any lease issued under or affected by the provisions relating to oil and gas leases of state lands may file an appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**History:** Laws 1929, ch. 125, § 16; C.S. 1929, § 132-416; 1941 Comp., § 8-1116; 1953 Comp., § 7-11-17; Laws 1959, ch. 198, § 1; 1998, ch. 55, § 29; 1999, ch. 265, § 30.

**Cross references.** — For provision, rule governing appeals to district court, see 39-3-2 NMSA 1978 and Rule 12-201.

For procedures governing administrative appeals to the district court, see Rule 1-074 NMRA.

**The 1999 amendment**, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1".

**The 1998 amendment**, effective September 1, 1998, rewrote this section to the extent that a detailed comparison is impracticable.

### ANNOTATIONS

**Consent to suit.** — In an action brought under this section against the commissioner of public lands to compel him to rescind his cancellation of certain oil and gas leases, it was held that the state not only has waived its immunity but has consented to be sued in a court of equity in which equitable principles must control. *Durell v. Miles*, 1949-NMSC-033, 53 N.M. 264, 206 P.2d 547.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 38 Am. Jur. 2d Gas and Oil § 283.

## 19-10-24. [Contesting claims; jurisdiction of district court; appeal and error.]

The district court of the county in which the lands or the major portion thereof may be located which are embraced in any lease issued under or affected by the provisions of this act [19-10-1, 19-10-12 to 19-10-25 NMSA 1978], shall have original exclusive jurisdiction as a court of equity for the determination of controversies between persons or corporations respecting their rights in, or claim under such lease, and no such controversies shall be considered or determined by the commissioner of public lands. Appeals to and writs of error from the supreme court shall be allowed in such cases, as provided in Section 16 [19-10-23 NMSA 1978] herein.

**History:** Laws 1929, ch. 125, § 17; C.S. 1929, § 132-417; 1941 Comp., § 8-1117; 1953 Comp., § 7-11-18.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 19-10-25. [Proof of commissioner's records.]

In the proceedings above described in Sections 16 and 17 [19-10-23, 19-10-24 NMSA 1978] of this act, records, books and papers in the office of the commissioner of public lands shall be proven by copies thereof, duly certified by the commissioner, or by certified transcript of such records and proceedings as may be necessary, which shall be admissible in evidence in such cases; and no original book, record or paper shall be removed from the office of the commissioner of public lands except upon order of a district court after a special application therefor.

**History:** Laws 1929, ch. 125, § 18; C.S. 1929, § 132-418; 1941 Comp., § 8-1118; 1953 Comp., § 7-11-19.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.



**Cross references.** — For rules regarding introduction into evidence of contents of writings, recordings and photographs, in general, *see* Rules 11-1001 to 11-1008 NMRA.

**Severability.** — Laws 1929, ch. 125, § 19, provided for the severability of the act if any provision thereof is held invalid.

**Saving clauses.** — Laws 1929, ch. 125, § 20, repealed Laws 1927, ch. 46, and all other acts and parts of acts in

conflict or inconsistent with the provisions of Laws 1929, ch. 125, with a proviso, however, that applications for oil and gas leases on file in the office of the commissioner and not disposed of when the act takes effect shall be disposed of and leases issued pursuant thereto in accordance with statutes and regulations in force at the time of the filing of the respective applications.

## **19-10-26. [Lands sold with reservation of minerals; lease; bond to protect purchaser; waiver.]**

State lands sold heretofore, or which may be sold hereafter on any deferred payment plan under contract containing a reservation to the state of the minerals therein contained, may be leased by the state for oil, gas or other mineral development or exploitation, as provided by law in the same manner as other state lands.

Provided, that before any lessee of minerals on state lands so sold shall commence development or operations thereon such lessee or the operator (being any third party conducting exploratory or development operations authorized by the lessee within the authority granted to the lessee under the provisions of Section 19-10-13 NMSA 1978) shall execute and file with the commissioner of public lands a good and sufficient bond or undertaking in an amount to be fixed by the commissioner, but not less than two thousand dollars (\$2,000), in favor of the state of New Mexico for the use and benefit of the purchaser holding purchase contract or deed to such lands on which such development is about to be commenced, his grantees or successors in interest to secure the payment for such damage to the livestock range, water, crops or tangible improvements on such lands as may be suffered by such purchaser or his successors in interest by reason of such development, use and occupation of such lands by such lessee.

And provided further, that if any such purchaser shall file with the commissioner of public lands a waiver duly executed and acknowledged by him of his right to require such bond, such development, occupation and use of the lands by a mineral lessee may be permitted without the bond herein required.

**History:** Laws 1925, ch. 137, § 5; 1929, ch. 45, § 1; C.S. 1929, § 132-423; 1941 Comp., § 8-1119; 1953 Comp., § 7-11-20; Laws 1979, ch. 60, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For filing by mineral lessee of bond securing payment for damage to the surface, and bond guaranteeing payment of royalties, *see* 19-8-24 NMSA 1978.

For bond filed by person leasing state lands for geothermal resource development, *see* 19-13-18 NMSA 1978.

For reservation of mineral purchase rights in lease or conveyance of state lands, and waiver of same, *see* 19-14-1, 19-14-2 NMSA 1978.

### **ANNOTATIONS**

**Minerals defined.** — Whether sand and gravel are "minerals" as that term is used in a mineral reservation or grant depends upon the specific facts in each case. *Rickelton v. Universal Constructors, Inc.*, 1978-NMSC-015, 91 N.M. 479, 576 P.2d 285.

## **19-10-27. [Lands sold on deferred payments with reservation of minerals or classified as mineral lands prior to full payment or issuance of patent; limited patent.]**

Where state lands have been sold heretofore, or may be sold hereafter on any deferred payment plan under contract containing a reservation to the state of the minerals therein contained and before the payment of the total purchase price, such land shall have been leased for mineral purposes as in this act [19-10-11, 19-10-26 to 19-10-30 NMSA 1978] provided; or where before the payment of the full amount of the purchase price shall have been made or patent issued, the land shall be known, classified or reported as mineral lands, or where, by reason of proximity to known mineral lands or productive oil and gas wells, the commissioner of public lands shall deem such lands to be of probable mineral character and valuable as such, he shall make proper notation on the records of his office designating the said lands as mineral lands. The commissioner of public lands is hereby authorized to issue to the purchaser of any such mineral land or lands so classified

as mineral, upon full payment of the purchase price according to the terms of the contract, a limited patent only, which shall contain reservation to the state of New Mexico to all the minerals in the said lands, together with the right to the state or its grantees, to prospect for, mine and remove the same; and such lands shall, notwithstanding the issuance of such patent, be subject to lease under the provisions of this act;

Provided, that no lease for such lands shall be issued and no person shall be authorized to prospect for, mine or remove any minerals until an indemnity bond shall be given or waiver of the same filed, as set forth in Section 5 [19-10-26 NMSA 1978] of this act.

**History:** Laws 1925, ch. 137, § 6; C.S. 1929, § 132-424; 1941 Comp., § 8-1120; 1953 Comp., § 7-11-21.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-10-28. [Lessee to purchase prior improvements on lands; proof of payment.]

If mineral lands upon which improvements have been made shall be leased in conformity with law to other than the owner of such improvements thereon, then such purchaser or such new lessee shall pay to the owner thereof the value of such improvements at an agreed price with the owner thereof; and if such owner of improvements and such new lessee or purchaser are not able to agree upon a value, the value shall be determined by a board of three arbitrators, one to be selected by the owner of the improvements, one by the commissioner of public lands and the third by the two so selected. The word "improvements" shall be construed to mean surface improvements, machinery and other equipment not removed from said lands under the provisions of Section 9 used in the operation of the plant on such land, and work performed in the development of the property for operation and mining. No lease shall be issued to any applicant other than the owner of such improvements until such applicant files with the commissioner of public lands a receipt showing payment in full of the value of such improvements as agreed upon between such applicant and the owner of the improvements, or determined by the board of arbitrators; or until such applicant shall pay to the commissioner of public lands the value of such improvements so determined. If payment is made to the commissioner of public lands it shall be at once delivered to the owner of the improvements.

**History:** Laws 1925, ch. 137, § 3; C.S. 1929, § 132-421; 1941 Comp., § 8-1121; 1953 Comp., § 7-11-22.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — Laws 1925, ch. 137, § 9, referred to in this section, was amended by Laws 1927, ch. 46, § 3, and then repealed by Laws 1929, ch. 125, § 20.

**Cross references.** — For right, in general, of owner of improvements on state lands to be compensated for same by purchaser or subsequent lessee, see 19-7-14 NMSA 1978.

For removal of removable improvements and forfeiture of others by mineral lessee, see 19-8-29 NMSA 1978.

For right of oil and gas lessee to remove certain improvements upon cancellation or termination of lease, see 19-10-29 NMSA 1978.

For removal by lessee under Geothermal Resources Act of removable improvements, and forfeiture of rest, see 19-13-24 NMSA 1978.

#### ANNOTATIONS

**Effect of repeal.** — The repeal of the amendatory act (Laws 1927, ch. 46, § 3) with a substitute, did not revive the original provision. *Atlantic Oil Producing Co. v. Crile*, 1930-NMSC-040, 34 N.M. 650, 287 P. 696.

### 19-10-29. [Removal of certain improvements on cancellation or forfeiture of lease.]

In the event of the cancellation or forfeiture of any lease issued under the provisions of this act [19-10-11, 19-10-26 to 19-10-30 NMSA 1978] from any cause whatever, the lessee or assignee shall be permitted to remove any and all improvements from the lands which lessee can remove without injury thereto, provided, however, that the commissioner of public lands may require that all or any part of the casing shall be left in any well which is productive of water when he shall deem it to the interest of the state to maintain said well, or wells, for water, and in such case the lessee shall be paid the reasonable value of the casing therein.



**History:** Laws 1925, ch. 137, § 8; C.S. 1929, § 132-426; 1941 Comp., § 8-1122; 1953 Comp., § 7-11-23.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For right, in general, of owner of improvements on state lands to be compensated for same by purchaser or subsequent lessee, *see* 19-7-14 NMSA 1978.

For removal of removable improvements and forfeiture of others by mineral lessee, *see* 19-8-29 NMSA 1978.

For payment by purchaser or subsequent lessee of oil and gas lands of value of improvements, to owner thereof, *see* 19-10-28 NMSA 1978.

For removal by lessee under Geothermal Resources Act of removable improvements, and forfeiture of rest, *see* 19-13-24 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — What are improvements, alterations or additions, within lease provisions permitting or prohibiting tenant's removal thereof at termination of lease, 30 A.L.R.3d 998.

### 19-10-30. [Rules and regulations authorized.]

The commissioner of public lands shall be, and he hereby is, authorized and empowered to adopt such uniform and reasonable rules and regulations and to prepare such uniform forms of leases as he may deem necessary to carry into effect the terms and provisions of this act [19-10-11, 19-10-26 to 19-10-30 NMSA 1978] and not inconsistent herewith.

**History:** Laws 1925, ch. 137, § 10; C.S. 1929, § 132-427; 1941 Comp., § 8-1123; 1953 Comp., § 7-11-24.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For statutory oil and gas lease forms, *see* 19-10-4.1 to 19-10-4.3 NMSA 1978.

For State Rules Act, *see* Chapter 14, Article 4 NMSA 1978.

#### ANNOTATIONS

**Law reviews.** — For note, "State Regulation of Oil and Gas Pools on State, Federal, Indian and Fee Lands," *see* 2 Nat. Resources J. 355 (1962).

### 19-10-31. [Filing and recording of leases, other instruments and assignments with commissioner; constructive notice; recording in county waived.]

All leases and other instruments executed or issued by the commissioner of public lands, hereinafter referred to as the commissioner, pertaining to oil and gas rights in state lands, and including assignments of such rights when approved by the commissioner, shall be made in duplicate and one copy thereof retained in the files of the state land office and recorded in full by the commissioner in suitable books provided by him and kept for such purpose. Such filing and recording shall be constructive notice to all persons of the contents of such instruments from the date of such filing and it shall not be necessary to record such instruments in the county where the lands affected thereby are located, and the filing and recording in the office of the commissioner as provided herein shall have the same force and effect as the filing and recording of such instruments in the county where the lands affected thereby are located would now have under existing statutes.

**History:** Laws 1925, ch. 68, § 1; C.S. 1929, § 132-501; 1941 Comp., § 8-1124; 1953 Comp., § 7-11-25.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For recording of certain agricultural and grazing lease or contract assignments in office of commissioner, *see* 19-7-39 NMSA 1978.

For recording of instruments effecting real estate and giving of constructive notice thereby generally, *see* 14-9-1, 14-9-2 NMSA 1978.

For recording of assignment made for benefit of creditors, *see*, 56-9-10 NMSA 1978.

#### ANNOTATIONS

**Assignment of partial lease filed with county, not state, offices.** — Because an assignment of a partial lease is not recognized by the commissioner of public lands, pursuant to Section 19-10-13 NMSA 1978, the assignment cannot be filed in the state land office, but must be filed in the appropriate county clerk's office; there it provides constructive notice of its contents. *Angle v. Slayton*, 1985-NMSC-032, 102 N.M. 521, 697 P.2d 940.

**19-10-32. [Acknowledgments required; commissioner excepted.]**

All such instruments shall be acknowledged by the parties thereto except that the commissioner shall not be required to acknowledge any such instrument but shall authenticate his signature to same with his seal of office.

**History:** Laws 1925, ch. 68, § 2; C.S. 1929, § 132-502; 1941 Comp., § 8-1125; 1953 Comp., § 7-11-26.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For necessity for acknowledgment generally, see 14-8-4 NMSA 1978.

**19-10-33. [Contracts relating to oil and gas rights; filing for record in land office.]**

Contracts between persons or corporations owning or holding oil and gas rights in state lands, when duly acknowledged by the parties thereto, may be filed for record and recorded in the state land office in the same manner and with the same force and effect as the instruments referred to in the foregoing sections.

**History:** Laws 1925, ch. 68, § 3; C.S. 1929, § 132-503; 1941 Comp., § 8-1126; 1953 Comp., § 7-11-27.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**19-10-34. [System of records; indexing; public inspection.]**

The commissioner is authorized and directed to provide and install as soon as possible after the passage of this act [19-10-31 to 19-10-38 NMSA 1978] a full and complete system of records and books in his office for carrying out the provisions of this act and shall provide for the full and complete indexing of such records, and such records and indices shall be open for inspection by the public during the business hours of the office under such reasonable rules and regulations as may be prescribed by the commissioner.

**History:** Laws 1925, ch. 68, § 4; C.S. 1929, § 132-504; 1941 Comp., § 8-1127; 1953 Comp., § 7-11-28.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**19-10-35. [Tract book system for oil and gas lands.]**

The commissioner shall also install in his office as soon as practicable a tract book system for the mineral lands of the state on which any oil and gas rights have been granted by him which tract books shall be separate from the tract books pertaining to grazing rights or purchase contracts, and all instruments on file in his office pertaining to oil and gas rights shall be noted on such tract books in connection with the tract or tracts affected thereby, and such notations shall show the nature of the instrument, its date, the parties thereto, the date of filing and the book and page where recorded.

**History:** Laws 1925, ch. 68, § 5; C.S. 1929, § 132-505; 1941 Comp., § 8-1128; 1953 Comp., § 7-11-29.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**19-10-36. [Rules and regulations; protection of instruments and records.]**

The commissioner is authorized to make, publish and enforce all necessary and reasonable rules and regulations for carrying out the purposes and provisions of this act [19-10-31 to 19-10-38 NMSA 1978] and shall take necessary precautions for the safekeeping and protection of the instruments and records referred to in this act.



**History:** Laws 1925, ch. 68, § 6; C.S. 1929, § 132-506; 1941 Comp., § 8-1129; 1953 Comp., § 7-11-30.

**Cross references.** — For State Rules Act, see Chapter 14, Article 4 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **19-10-37. [Filing and recording fees; disposition; expenses payable from maintenance fund.]**

The commissioner shall prescribe adequate, reasonable and uniform fees to be charged for the filing and recording of instruments under the provisions hereof and all such fees shall be covered into the maintenance fund of his office; and all reasonable and necessary expenditures for carrying out the provisions of this act [19-10-31 to 19-10-38 NMSA 1978] shall be made from such maintenance fund and the same are hereby directed and authorized to be made.

**History:** Laws 1925, ch. 68, § 7; C.S. 1929, § 132-507; 1941 Comp., § 8-1130; 1953 Comp., § 7-11-31.

**Cross references.** — For establishment of state lands maintenance fund, see 19-1-11 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **19-10-38. [Repeal and saving clause.]**

All acts and parts of acts in conflict herewith are hereby repealed, and this act [19-10-31 to 19-10-38 NMSA 1978] shall apply to all instruments now on file in the state land office and which pertain to oil and gas rights in state lands, but nothing contained herein shall be construed to deprive any person or corporation of any valid and existing right acquired in good faith through compliance with or the operation of any law in effect prior to the passage of this act.

**History:** Laws 1925, ch. 68, § 8; C.S. 1929, § 132-508; 1941 Comp., § 8-1131; 1953 Comp., § 7-11-32.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **19-10-39. [Litigation involving lessee's oil and gas rights on land sold with reservation of oil and gas; suspense account for royalty payments.]**

In any case where litigation has been instituted in the state courts of the state of New Mexico, or in the United States district court for the district of New Mexico, involving the right or title of the lessee under any oil and gas leases issued by the state of New Mexico on lands heretofore sold or contracted to be sold by the state of New Mexico, with a reservation of oil and gas to the state of New Mexico, where such litigation calls in question the right of the state of New Mexico to make any such lease or the ownership by the state of New Mexico of such oil and gas, the commissioner of public lands is authorized to place in a special suspense fund with the treasurer of the state of New Mexico, all moneys accruing to the state under the terms of any such lease from royalties.

**History:** Laws 1931, ch. 17, § 1; 1941 Comp., § 8-1132; 1953 Comp., § 7-11-33.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **19-10-40. [Litigants to show right to have royalties placed in suspense fund; determination of amount.]**

The commissioner of public lands shall require the lessee or any party litigant in such litigation desiring to have such royalties placed in such suspense fund, to make such showing by affidavit or otherwise as the commissioner may require, that such litigation is pending and involves the question or questions referred to in Section 1 [19-10-39 NMSA 1978] hereof; and he shall require

such lessee or any party litigant to furnish such information as may be necessary to determine the amount of royalties accruing from each and every tract of land involved in such litigation.

**History:** Laws 1931, ch. 17, § 2; 1941 Comp., § 8-1133; 1953 Comp., § 7-11-34.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **19-10-41. [Remitting moneys for oil and gas royalty suspense fund; investment of fund; disposition of investment income.]**

The commissioner of public lands is directed to remit all such royalties to the state treasurer, with the proper memorandum of distribution of such funds attached thereto and such moneys shall be placed in a special suspense fund by the state treasurer, to be known as "the oil and gas royalty suspense fund," and such fund shall be segregated from all other funds in the hands of the state treasurer; all moneys of such fund shall from time to time be invested by the state treasurer in the same manner as the permanent school fund is now required to be invested or such funds may be placed on time deposit in qualified state depositories under the provisions of Chapter 92 of the Session Laws of 1929 [6-10-31, 6-10-32 NMSA 1978]. All income accruing from such investments or deposits shall likewise be held in said special suspense fund.

**History:** Laws 1931, ch. 17, § 3; 1941 Comp., § 8-1134; 1953 Comp., § 7-11-35.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For statutory provisions regarding investment of permanent school fund and other permanent funds, see 19-1-17 NMSA 1978 et seq.

For establishment of permanent school fund and investment of same, see N.M. Const., art. XII, §§ 2, 7.

### **19-10-42. [Distribution of suspense funds after litigation is completed.]**

When the questions involved in the litigation referred to in Section 1 [19-10-39 NMSA 1978] hereof shall have been finally determined, the commissioner of public lands is directed to disburse said fund to the funds of the institutions or common schools lawfully entitled thereto, or, the persons, firms or corporations entitled to said royalties, as the final judgment of the court in such case or cases may require; and when making such distribution to the permanent trust funds of the state the commissioner of public lands shall treat and distribute the income from said fund in the same manner as income from other permanent funds and in all cases in distributing said income shall make an equitable distribution thereof as between the different funds or the parties who may be lawfully entitled to the same; provided, however, that in making said distribution, any permanent fund or party lawfully entitled to any part of the money so distributed may be given, in lieu of cash, any securities in which said fund may have been invested and any application made hereunder to have said royalty payments placed in said suspense fund shall be taken as indicating the consent of such applicant to all of the provisions of this act [19-10-39 to 19-10-44 NMSA 1978].

**History:** Laws 1931, ch. 17, § 4; 1941 Comp., § 8-1135; 1953 Comp., § 7-11-36.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **19-10-43. [Suit by state to determine rights.]**

If the commissioner of public lands shall not be satisfied with the conduct or determination of any litigation between the lessee under any such oil and gas lease, and the purchaser of said lands from the state, he shall request the attorney general to bring such suit or suits in the name of the state as said commissioner may deem necessary and advisable for the complete and final determination of the questions involved.

**History:** Laws 1931, ch. 17, § 5; 1941 Comp., § 8-1136; 1953 Comp., § 7-11-37.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.



### 19-10-44. [Intervention in pending litigation by attorney general.]

In event the attorney general of the state of New Mexico shall deem it for the best interests of the state of New Mexico to intervene in any pending litigation involving such questions, he is hereby specifically authorized to intervene therein in the name of the state of New Mexico, for the purpose of obtaining a final determination of any and all questions involved in such litigation.

**History:** Laws 1931, ch. 17, § 6; 1941 Comp., § 8-1137; 1953 Comp., § 7-11-38.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-10-45. Cooperative agreements for development or operation of oil and gas pools between lessees and others.

For the purpose of more properly conserving the oil and gas resources of the state, the commissioner of public lands may consent to and approve the development or operation of state lands under agreements made by lessees of state land jointly or severally with other lessees of state lands, with lessees of the United States or with others, including the consolidation or combination of two or more leases of state lands held by the same lessee. The agreements may provide for one or more of the following: for the cooperative or unit operation or development of part or all of any oil or gas pool, field or area; for reduction of gas-oil ratios; for repressuring or secondary recovery operations, or for the storing of gas regardless of where such gas is produced, including the use of wells on state lands as input wells; for the allocation of production and the sharing of proceeds from the whole or any specified part of the area covered by the agreement on an acreage or other basis, regardless of the particular tract from which production is obtained or proceeds are derived; for considering for all purposes the drilling or operation of a well on any part of the area included in the agreement, as being drilled or operated on each tract included in the agreement; for the payment of advance royalties in such sum or sums as shall be fixed by the commissioner; or for commingling of oil or gas from a well or wells or from one or more leases.

**History:** 1941 Comp., § 8-1138, enacted by Laws 1943, ch. 88, § 1; 1953 Comp., § 7-11-39; Laws 1961, ch. 176, § 1.

**Cross references.** — For state participation in pooling and communitization agreements, see 19-10-53 NMSA 1978.

For cooperative development or operation of geothermal resources lands, see 19-13-14 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Secondary recovery of oil and gas, 19 A.L.R.4th 1182.

### 19-10-46. [Cooperative agreements; requisites for approval.]

- No such agreement shall be consented to or approved by the commissioner unless he finds that:
- A. such agreement will tend to promote the conservation of oil or gas and the better utilization of reservoir energy;
  - B. under the operations proposed the state and each beneficiary of the lands involved will receive its fair share of the recoverable oil or gas in place under its lands in the area affected; and
  - C. the agreement is in other respects for the best interests of the state.

**History:** 1941 Comp., § 8-1139, enacted by Laws 1943, ch. 88, § 2; 1953 Comp., § 7-11-40; Laws 1961, ch. 176, § 2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-10-47. [Amendment of leases to conform with cooperative agreements.]

When any such agreement has been approved by the commissioner, he may, with the approval of the lessee evidenced by the lessee's execution of such agreement or otherwise, amend any oil or gas lease embracing state lands within the area included in such agreement so that the provisions of such lease so far as they apply to lands within such area will conform to the provisions of such

agreement and so that the length of the secondary term as to lands within such area will be extended, insofar as necessary, to coincide with the term of such agreement, and the approval of such agreement by the commissioner and the lessee, as aforesaid, shall without further action of the commissioner or the lessee be effective to conform the provisions and extend the term of such lease as to lands within such area, to the provisions and terms of such agreement; or the commissioner may permit the holder of any such lease of state lands within such area to surrender such lease, so far as it embraces lands within such area, with the preference right to a new lease for the lands surrendered, containing such provisions and for such a term as will conform to the provisions and term of such agreement. The commissioner is authorized to issue such new lease under regulations prescribed by him. No law applicable to restricted districts and the making of oil and gas leases therein, or providing for a minimum rental within restricted districts, shall be applicable to any lease conformed or issued hereunder.

If any such agreement provides for extensions of the term thereof, any such extension pursuant to the provisions of such agreement shall, with the approval of the commissioner, be effective also to extend the term of such lease, so far as it applies to lands within such area, to coincide with the extended term of such agreement.

**History:** 1941 Comp., § 8-1140, enacted by Laws 1943, ch. 88, § 3; 1951, ch. 162, § 1; 1953 Comp., § 7-11-41.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Saving clauses.** — Laws 1951, ch. 162, § 2, provided that all cooperative or unit agreements approved by the commissioner of public lands, all approved amendments of oil and gas leases covering state lands to conform to such approved agreements, and all new oil and gas leases issued on state lands by said commissioner to conform to such approved agreements, prior to the effective date of the act, which have not expired or been canceled for nonperformance with the terms thereof, are declared to be valid and existing contracts with the state of New Mexico according to their terms.

#### ANNOTATIONS

**Commissioner's powers limited.** — The commissioner of public lands of New Mexico is merely an agent of the state, with such powers, and only such, as have been conferred upon him by the constitution and laws of the state, as limited by the Enabling Act. *Hickman v. Mylander*, 1961-NMSC-068, 68 N.M. 340, 362 P.2d 500.

**Commissioner properly refused to extend terms of oil and gas leases** as to lands partly within unit area

except as to land included within unit area. *Hickman v. Mylander*, 1961-NMSC-068, 68 N.M. 340, 362 P.2d 500.

**Effect of discovery without production prior to expiration.** — Where there is no evidence that gas in paying quantities was produced from a gas well from the time the gas well was completed to the expiration dates provided in the lease, the mere discovery of oil or gas cannot validate or extend a lease providing oil or gas must be produced. *Hickman v. Mylander*, 1961-NMSC-068, 68 N.M. 340, 362 P.2d 500.

**Rights of assignee.** — Where a lessee had 10 years within which to produce oil and gas in paying quantities, upon so producing oil and gas, the lease continued in force so long as oil and gas in paying quantities were so produced, and an assignee of a portion of the lease succeeded to all of the rights of the original lessee, subject to the continued payment of the specified rentals and subject to the implied covenant to develop with reasonable diligence the undeveloped portion of the leased land. *Hickman v. Mylander*, 1961-NMSC-068, 68 N.M. 340, 362 P.2d 500.

**Lease terms to apply separately.** — Where the unit agreement specifically provides that the portions within the unit area shall be segregated from the portions outside the unit area, the terms of the lease shall apply separately to such segregated portions. 1953-54 Op. Att'y Gen. No. 53-5806.

### 19-10-48. [Effect of provisions on powers of oil conservation commission and commissioner of public lands.]

Nothing herein [19-10-45 to 19-10-48 NMSA 1978] contained shall be held to modify in any manner the power of the oil conservation commission under laws now existing or hereafter enacted with respect to the proration, and conservation of oil or gas and the prevention of waste, nor as limiting in any manner the power and the authority of the commissioner of public lands now existing or hereafter vested in him.

**History:** 1941 Comp., § 8-1141, enacted by Laws 1943, ch. 88, § 4; 1953 Comp., § 7-11-42.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — Pursuant to Laws 1977, ch. 255, § 9, the oil conservation commission is absorbed by the

energy and minerals department. *See also* Laws 1977, ch. 255, § 4, compiled as 9-5-4 NMSA 1978, for establishment of the oil conservation division of the energy and minerals department, and 70-2-4 NMSA 1978 et seq. for jurisdiction and authority of the commission and of the division.



**19-10-49. [Validating act.]**

That all oil and gas leases issued by the commissioner of public lands of the state of New Mexico prior to the effective date of this act [section], in substantial conformity with the statutes of the state, the terms of which have not expired and where all rentals have been paid thereunder and accepted by the commissioner of public lands, and such leases have not been canceled by the commissioner of public lands for nonperformance by the lessee or any assignee, are hereby declared to be valid and existing contracts with the state of New Mexico according to their terms and provisions, and the obligations of the state and of the commissioner to observe and conform to the terms and provisions thereof are hereby recognized.

**History:** 1941 Comp., § 8-1142, enacted by Laws 1947, ch. 36, § 1; 1953 Comp., § 7-11-43.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**19-10-50. Oil, gas and mineral leases on state park lands.**

The state park and recreation director has the right to authorize the commissioner of public lands to lease for oil and gas and other minerals any lands acquired by the state for state park or state recreational purposes upon such terms and conditions as may be prescribed by the state park and recreation director, where, in the discretion of the state park and recreation director, the leasing of such lands for oil and gas will not materially interfere with the use of such lands for state park or state recreational purposes or where it is deemed necessary or advisable and for the best interest of the state that such lands be leased for said purpose.

**History:** 1941 Comp., § 8-1143, enacted by Laws 1949, ch. 82, § 1; 1953 Comp., § 7-11-44; Laws 1977, ch. 254, § 42.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 38 Am. Jur. 2d Gas and Oil § 283.

**19-10-51. Terms and conditions of leases on state park lands; disposition of rentals and royalties.**

The commissioner of public lands has the right to lease for oil and gas and other minerals any lands acquired by the state for state park or state recreational purposes when authorized so to do by the state park and recreation director, the same to be leased upon such terms and conditions as may be prescribed by the state park and recreation director. All bonuses, rentals and royalties which may be collected under the terms of any such lease by the commissioner of public lands shall be placed to the credit of the state park and recreation fund.

**History:** 1941 Comp., § 8-1144, enacted by Laws 1949, ch. 82, § 2; 1953 Comp., § 7-11-45; Laws 1977, ch. 254, § 43.

**Saving clauses.** — Laws 1949, ch. 82, § 3, declared all oil and gas or other mineral leases heretofore issued by either the state park commission (now the state parks division) or the commissioner of public lands embracing state lands acquired for state park or state recreational purposes where the terms of such leases have not expired and the lessees are not in default are to be valid

and existing contracts with the state and recognizes the obligations of the state and of the commissioner to observe and conform to the terms thereof.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Gas and oil lease force majeure provisions; construction, and effect, 46 A.L.R.4th 976.

**19-10-52. [Drainage of state lands by oil or gas wells required to be offset; agreement to compensate state.]**

In any case where it appears to the commissioner of public lands of the state of New Mexico that lands owned by the state of New Mexico are being drained by an oil or gas well required to be offset under the terms of any oil or gas lease issued by the commissioner of public lands, he is hereby authorized and empowered to enter into agreements whereby the state of New Mexico will be reasonably compensated for such drainage, such agreements to be made with the consent of the owners of

the leases affected thereby. The fixed term (primary and secondary terms) of any lease on account of which the compensatory royalty is being paid shall be extended so long as such compensatory royalty agreement is in effect and if drilling operations upon such lease during the effective period of any such agreement result in the production of oil or gas, such lease shall be extended as long thereafter as oil or gas or either of them is being produced from the leased premises.

The nature of the agreement and the method of computing the amount of the compensatory royalty to be paid thereunder shall depend upon the conditions and circumstances involved in the particular case and shall be calculated to give to the state its fair share of the oil or gas being produced from the well or wells on account of which compensatory royalty is to be paid. The owners of any lease on account of which compensatory royalty is being paid shall be relieved of the offset obligation as to the well or wells for which compensatory royalty is being paid during the life of any such agreement.

**History:** 1941 Comp., § 8-1145, enacted by Laws 1951, ch. 175, § 1; 1953 Comp., § 7-11-46.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-10-53. [State participation in pooling and communitization agreements authorized.]

In the interest of conservation of oil and gas and the prevention of waste, the commissioner of public lands may consent to and approve the development or operation of state lands under agreements made by lessees of oil and gas leases thereon, jointly or severally with other oil and gas lessees of state lands or with oil and gas lessees of the United States or oil and gas lessees or mineral owners of privately owned or fee lands or oil and gas lessees of tribal or allotted Indian lands for the purpose of pooling or communitizing such lands to form a proration unit or portion thereof or well spacing unit pursuant to any order, rule or regulation of the New Mexico oil conservation commission where such agreement provides for the allocation of the production of oil or gas from such pooled or communitized area on an acreage or other basis found by the commissioner to be fair and equitable, and when such agreement is so approved, the drilling or operation of a well on any part of the area included in such agreement shall be considered as being drilled or operated on each tract included in such agreement, and the production of oil or gas in paying quantities from any part of such pooled or communitized area shall, for all purposes, be considered the same as if such production had been obtained upon each tract or separate lease included in such agreement. Upon approval of any such agreement, the lease or leases covering state lands committed thereto shall thereupon be amended to conform to such agreement.

**History:** 1953 Comp., § 7-11-47, enacted by Laws 1955, ch. 259, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — Pursuant to Laws 1977, ch. 255, § 9, the oil conservation commission was absorbed by the energy and minerals department. *See also* Laws 1977, ch.

255, § 4, compiled as 9-5-4 NMSA 1978, for establishment of the oil conservation division of the energy and minerals department, and 70-2-4 NMSA 1978 et seq. for jurisdiction and authority of the commission and of the division.

**Cross references.** — For cooperative agreements for development or operation of oil and gas pools between lessees and others, *see* 19-10-45 to 19-10-48 NMSA 1978.

### 19-10-54. [Existing pooling and communitization agreements confirmed and validated; segregation of leases in accordance with prior agreement.]

In all cases where the commissioner of public lands has heretofore approved agreements made by oil and gas lessees of state lands with other oil and gas lessees of state lands or with oil and gas lessees of the United States or with lessees or mineral owners of fee or privately owned lands or oil and gas lessees of tribal or allotted Indian lands for the purpose of forming a proration unit or portion thereof, or well spacing unit in conformity with any order, rule or regulation of the New Mexico oil conservation commission, or for the purpose of forming a cooperative or unit agreement in the interest of conservation and the prevention of waste of oil and gas, and where all rentals



have been paid in accordance with the terms of such leases embracing state lands and have been accepted by the commissioner of public lands and such leases have not been canceled for nonperformance by the lessee or any assignee of the terms or conditions thereof or any of the terms or conditions of such pooling, communitization, cooperative or unit agreement, and have been recognized by the commissioner of public lands as being in good standing, such leases are hereby declared to be valid and existing contracts with the state of New Mexico according to their terms and provisions and the obligation of the state and of the commissioner of public lands to observe and conform to the terms and provisions thereof, are hereby recognized and such leases and the approval of such pooling, communitization, cooperative or unit agreements are hereby validated and such leases shall continue in full force and effect according to their terms and conditions as modified, extended or amended by such pooling, communitization, cooperative or unit agreements as to all of the lands embraced in each such lease; provided, however, in any case where a cooperative or unit agreement heretofore approved by the commissioner of public lands contains a provision segregating any lease committed to such agreement as to lands within and without the cooperative or unit area so as to constitute separate leases as to such portions of said lands, such lease shall be segregated according to the provisions of the cooperative or unit agreement.

**History:** 1953 Comp., § 7-11-48, enacted by Laws 1955, ch. 259, § 2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — Pursuant to Laws 1977, ch. 255, § 9, the oil conservation commission was absorbed by the

energy and minerals department. *See also* Laws 1977, ch. 255, § 4, compiled as 9-5-4 NMSA 1978, for establishment of the oil conservation division of the energy and minerals department, and 70-2-4 NMSA 1978 et seq. for jurisdiction and authority of the commission and of the division.

## 19-10-55. [Validation of oil and gas leases.]

All oil and gas leases issued by the commissioner of public lands prior to the effective date of this section are declared to be valid and existing contracts with the state according to their terms and provisions where:

- A. made in substantial conformity with law;
- B. the terms have not expired;
- C. all rentals have been paid and accepted by the commissioner of public lands; and
- D. the leases have not been canceled by the commissioner of public lands for nonperformance by the lessee or any assignee.

The obligations of the state and the commissioner to observe and conform to the terms and provisions of these leases are recognized. Any suit or action to reinstate any lease heretofore canceled or expired by order or decision of the commissioner of public lands shall be brought within sixty days from the effective date of this section or be waived.

**History:** 1953 Comp., § 7-11-49, enacted by Laws 1957, ch. 113, § 1; 1959, ch. 40, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 19-10-56. Reports and remittance of state royalty; rules and regulations prescribed by commissioner.

Any person obligated to pay royalties pursuant to a producing oil and gas lease issued by the commissioner shall make reports and remittance of state oil and gas royalty through the oil and natural gas administration and revenue database system pursuant to rules and regulations of the commissioner.

**History:** 1953 Comp., § 7-11-50, enacted by Laws 1959, ch. 51, § 1; 1977, ch. 249, § 14; 1994, ch. 102, § 2.

The 1994 amendment, effective May 18, 1994, deleted "Of Public Lands; Amendment of State Oil and Gas Leases" following "Commissioner" in the section heading, and rewrote the section, which read "Any owner of a producing oil and gas lease heretofore or hereafter issued by

the commissioner of public lands and maintained in good standing according to the terms and conditions thereof and all applicable statutes and regulations may, in accordance with rules and regulations to be prescribed by the commissioner of public lands make reports and remittance of state oil and gas royalty through the oil and gas accounting division of the taxation and revenue department."

### 19-10-57. Rules; regulations; notice; hearing.

Before any rule or regulation concerning reporting and remittance of oil and gas royalty shall be adopted by the commissioner of public lands a public hearing shall be held. Notice of such hearing shall be mailed at least fifteen days prior to date set for the hearing to every oil and gas operator or purchaser as disclosed by the records of the commissioner of public lands. Such notice shall specify time and place of the hearing and briefly state the general nature of the rules and regulations to be considered. Such notice shall also be published once in a newspaper of general circulation in Santa Fe county at least fifteen days before such hearing.

The inadvertent failure of the commissioner of public lands to mail a notice to an operator or purchaser or the failure of an operator or purchaser to receive such notice shall not affect the validity of any rule of [or] regulation adopted.

**History:** 1953 Comp., § 7-11-51, enacted by Laws 1959, ch. 51, § 2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For publication of legal notice, see 14-11-1 NMSA 1978 et seq.

### 19-10-58. Rules; regulations; record; filing with supreme court librarian.

All rules and regulations concerning reporting and remittance of oil and gas royalty adopted by the commissioner of public lands shall be entered in full in a record book to be kept for such purpose by the commissioner of public lands. Such rules and regulations shall be filed with the librarian of the New Mexico supreme court library [supreme court law library] in accordance with the provisions of Sections 4-10-13 through 4-10-19 [repealed] inclusive NMSA 1953 or as they may be amended. Such rules and regulations shall also be published and made available to any interested person.

**History:** 1953 Comp., § 7-11-52, enacted by Laws 1959, ch. 51, § 3.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1963, ch. 27, § 1 provided that the name of the supreme court library was changed to supreme court law library. See 18-1-1 NMSA 1978.

Sections 4-10-13 through 4-10-19, 1953 Comp., were repealed by Laws 1967, ch. 275, § 13. Section 14-4-9 NMSA 1978 provided that where a law requires filing of a rule, etc., with the librarian of the supreme court law library, such filing shall be accomplished by complying with the State Rules Act (Chapter 14, Article 4 NMSA 1978).

### 19-10-59. Reporting and rendition forms to be adopted by rule or regulation.

All reporting and royalty rendition forms required by the commissioner of public lands shall be adopted by appropriate rule or regulation.

**History:** 1953 Comp., § 7-11-53, enacted by Laws 1959, ch. 51, § 4.

### 19-10-60. Repealed.

**Repeals.** — Laws 1994, ch. 102, § 3 repealed 19-10-60 NMSA, as amended by Laws 1977, ch. 249, § 15, relating to the transfer of state royalties to the commissioner of

public lands, effective May 18, 1994. For provisions of former section, see the 1993 NMSA 1978 on *NMOneSource.com*.

### 19-10-61. [Sale or exchange of royalty gas taken in kind.]

The commissioner of public lands shall have the authority to negotiate and enter into agreements for the sale or exchange of royalty gas taken in kind under oil and gas leases issued



by the state. Provided, however, he shall not dispose of said gas for a net consideration of less than that being received at the time of exercising the option. In selling or exchanging the gas, the commissioner of public lands shall be entitled to use the lessee's gathering, processing and compression facilities provided that reasonable compensation is made to the lessee for such use.

**History:** 1953 Comp., § 7-11-54.1, enacted by Laws 1972, ch. 70, § 3.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 19-10-62. Repealed.

**Repeals.** — Laws 1994, ch. 102, § 3 repealed 19-10-62 NMSA 1978 as amended by Laws 1977, ch. 249, § 16, relating to the contracting by the commissioner of public

lands for oil and gas royalty accounting services, effective May 18, 1994. For provisions of former section, see the 1993 NMSA 1978 on *NMOneSource.com*.

## 19-10-63. [Validation of oil and gas leases; 1967 act.]

All oil and gas leases issued by the commissioner of public lands prior to the effective date of this act [section] are declared to be valid and existing contracts with the state according to their terms and provisions where:

- A. made in substantial conformity with law;
- B. the terms have not expired;
- C. all rentals have been paid and accepted by the commissioner of public lands; and
- D. the leases have not been canceled by the commissioner of public lands for nonperformance by the lessee or any assignee.

The obligations of the state and the commissioner to observe and conform to the terms and provisions of these leases are recognized.

**History:** 1953 Comp., § 7-11-56, enacted by Laws 1967, ch. 13, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 19-10-64. [Royalties paid in oil; sale of;] purpose of act.

The purpose of this act [19-10-64 to 19-10-70 NMSA 1978] is to assist small business enterprise within the state by encouraging the establishment and operation of petroleum refineries not having an adequate supply of refinery charge stocks through granting a preference to such petroleum refineries in the sale of state royalty oil accruing from public land oil and gas leases.

**History:** 1953 Comp., § 7-11-57, enacted by Laws 1967, ch. 34, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 19-10-65. Definitions.

As used in Sections 19-10-64 through 19-10-70 NMSA 1978:

- A. "refinery charge stocks" means crude oils, petroleum or gas condensates and blends thereof and all other products charged or chargeable to petroleum refinery facilities;
- B. "royalty oil" means crude oil, liquid petroleum products, condensates from wells or lease plants or a mixture thereof; and
- C. "small business" means a concern owning a refinery located in New Mexico that obtains more than seventy percent of its New Mexico refinery input of crude oil from producers which do not control, are not controlled by and are not under common control with such concern and that does not refine more than one hundred thousand barrels per day of crude oil at owned or leased facilities located in New Mexico.

**History:** 1953 Comp., § 7-11-58, enacted by Laws 1967, ch. 34, § 2; 1981, ch. 105, § 1; 1991, ch. 4, § 1.

The 1991 amendment, effective June 14, 1991, in Subsection C, substituted "one hundred thousand barrels" for "fifty thousand barrels" and made minor stylistic changes.

corporation concerned chiefly with wholesaling and retailing liquid petroleum gas on the East Coast, was nevertheless an independently owned and operated refinery within the meaning of this section; the indicia of separateness considerably outweighed those of sameness of identity. 1973-74 Op. Att'y Gen. No. 73-50.

#### ANNOTATIONS

**Independent refinery.** — A petroleum producer, refiner and marketer, which was the subsidiary of a

### 19-10-66. Payment of royalties of the state in oil on demand.

All royalties accruing to the state under any oil or gas lease or permit under Sections 19-10-1 to 19-10-62 [repealed] NMSA 1978, shall be paid in royalty oil on demand of the commissioner of public lands.

**History:** 1953 Comp., § 7-11-59, enacted by Laws 1967, ch. 34, § 3.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws

1994, ch. 102, § 3 repealed 19-10-62 NMSA 1978, effective May 18, 1994.

### 19-10-67. Sale of state oil royalties; preference; authority of commissioner.

A. Upon granting any oil or gas lease upon public lands in the state, and during the term of any existing lease, the commissioner of public lands may offer for sale from time to time, for such period as he may determine, by competitive bidding, upon notice and advertisement on sealed bids, a portion or all of the royalty oil accruing or reserved to the state under such leases. Such advertisement and sale shall reserve to the commissioner of public lands the right to reject all bids whenever in his judgment the interest of the state demands. In cases where no satisfactory bid is received or where the accepted bidder fails to complete the purchase or where the commissioner of public lands shall determine that it is unwise in the public interest to accept the offer of the highest bidder, the commissioner of public lands, within his discretion, may readvertise such royalty oil for sale, sell it at a private sale at not less than the market price for such period or accept the cash value thereof from the lessee.

B. The sale of state royalty oil by the commissioner of public lands in accordance with Subsection A of this section shall be subject to the following provisions:

(1) the commissioner of public lands, when a determination has been made by the oil conservation commission that sufficient supplies of refinery charge stocks are not available on the open market to refineries within the state which do not have an adequate source of supply for refinery charge stocks, shall grant preferences to such petroleum refineries in the sale of royalty oil under the provisions of this section, for processing or use in such petroleum refineries but not for resale in kind; provided, however, that agreements providing for the exchange of refinery charge stocks purchased under this act [19-10-64 to 19-10-70 NMSA 1978] for other refinery charge stocks on a volume or equivalent value basis will not be construed as constituting a resale in kind prohibited by this act. Where an exchange agreement has been entered into or is contemplated with regard to royalty oil available for sale, full information relative thereto must be furnished either at the time of filing applications to purchase royalty oil or with the submission of a bid;

(2) the commissioner of public lands may sell to petroleum refineries located in the state and not having their own source of supply of refinery charge stocks, at private sale at not less than the market price, any royalty oil accruing or reserved to the state under oil and gas leases upon public lands, provided:

(a) that in selling such royalty oil the commissioner may, at his discretion, prorate such royalty oil among refineries;



(b) that pending the making of a permanent contract for the sale of any royalty oil, as herein provided, the commissioner of public lands may sell the current product at private sale, at not less than the market price;

(c) the commissioner shall assess a fee not to exceed the actual additional cost, if any, of administering the procedures under this act, which fee shall be assessed against the purchaser of the royalty oil; and

(d) in no instance shall the additional trucking charges caused by a change in purchaser and a subsequent change in the method of oil delivery or trucking distance be allowed to decrease the value of the royalty oil or the taxes assessed against such oil.

**History:** 1953 Comp., § 7-11-60, enacted by Laws 1967, ch. 34, § 4.

**Compiler's notes.** — Pursuant to Laws 1977, ch. 255, § 9, the oil conservation commission was absorbed by the energy and minerals department. *See also* Laws 1977, ch.

255, § 4, compiled as 9-5-4 NMSA 1978, for establishment of the oil conservation division of the energy and minerals department, and 70-2-4 NMSA 1978 et seq. for jurisdiction and authority of the commission and of the division.

## 19-10-68. Application for preference in sale of royalty oil; requirements.

A petroleum refinery within the state unable to purchase in the open market at prevailing prices an adequate supply of refinery charge stocks of a quality to meet the needs of its existing petroleum refinery capacity may file an application and supporting documents with the oil conservation commission. Such application shall be filed in triplicate and must be accompanied by a detailed statement containing the following information:

A. the full name and address of the applicant; the location of the petroleum refinery; a complete disclosure of applicant's affiliation or association with any other petroleum refiner of oil if such relationship exists; and reasons for believing that applicant is entitled to a preference under this act [19-10-64 to 19-10-70 NMSA 1978], including a full showing of efforts made to purchase refinery charge stocks in the open market;

B. the capacity of the refinery to be supplied and the amount, source and grade of all refinery charge stocks currently available to the applicant petroleum refiner by purchase; and

C. the minimum amount and grade of additional refinery charge stocks needed to meet existing refinery commitments or existing refinery capacity, the field or fields which the petroleum refiner believes offer a potential source of refinery charge stocks supply because of proximity to its refinery and the available transportation facilities which the refiner proposes to utilize.

**History:** 1953 Comp., § 7-11-61, enacted by Laws 1967, ch. 34, § 5.

**Compiler's notes.** — Pursuant to Laws 1977, ch. 255, § 9, the oil conservation commission was absorbed by the energy and minerals department. *See also* Laws 1977, ch.

255, § 4, compiled as 9-5-4 NMSA 1978, for establishment of the oil conservation division of the energy and minerals department, and 70-2-4 NMSA 1978 et seq. for jurisdiction and authority of the commission and of the division.

## 19-10-69. Grant of preference based upon application.

The oil conservation commission shall examine each application from petroleum refineries within the state requesting a preference and where it finds that the showing submitted is inadequate or unsatisfactory, it shall so notify the applicant and shall require such additional showing as it deems necessary. Upon being satisfied that the applicant is a bona fide small business enterprise operating an oil refinery in this state within the intent of this act [19-10-64 to 19-10-70 NMSA 1978], the oil conservation commission shall notify the commissioner of public lands in writing that the applicant is eligible to be granted a preference under this act, for the purchase of royalty oil.

**History:** 1953 Comp., § 7-11-62, enacted by Laws 1967, ch. 34, § 6.

**Compiler's notes.** — Pursuant to Laws 1977, ch. 255, § 9, the oil conservation commission was absorbed by the energy and minerals department. *See also* Laws 1977, ch.

255, § 4, compiled as 9-5-4 NMSA 1978, for establishment of the oil conservation division of the energy and minerals

department, and 70-2-4 NMSA 1978 et seq. for jurisdiction and authority of the commission and of the division.

## 19-10-70. Advertising for bids; priority of bidders; award of oil.

A. Where the commissioner of public lands elects to offer royalty oil for sale, the royalty oil will be advertised for sale in designated newspapers or periodicals of general circulation in the state in accordance with regulations to be promulgated by the commissioner. The notice will set the day and hour on which sealed bids will be received in the office of the commissioner of public lands, and will contain the terms and conditions of sale. The notice will be published at the expense of the state.

B. Bids may be submitted regardless of whether or not a preference is asserted pursuant to the preceding section [19-10-69 NMSA 1978] of this act. Where such preference is asserted, bids must be accompanied by the showing required in the application under this act [19-10-64 to 19-10-70 NMSA 1978]. Bidders asserting a preference and found properly entitled thereto will receive priority over bidders who have no preference where the bids are made for the same royalty oil.

C. The commissioner of public lands shall consider all bids submitted and shall award the oil as follows:

(1) where none of the bidders for the same royalty oil is properly entitled to a preference, the royalty oil will be awarded to the qualified bidder offering the highest price therefor in accordance with the specifications governing the sale;

(2) where two or more bidders for the same royalty oil are properly entitled to a preference, the oil will be awarded to the preferred bidder offering the highest price therefor in accordance with the specifications governing the sale; and

(3) where two or more identical bids are received for the same royalty oil from bidders properly entitled to a preference, the commissioner reserves the right to prorrate the royalty oil among the bidders in such amounts as he may deem equitable, or if it is not practicable to prorrate the royalty oil, to award it to one of such bidders by public drawing after notice to the bidders who submitted the identical bids.

D. In connection with the sale of royalty oil under this act, the commissioner of public lands reserves the right to reject all bids and sell the oil or any portion thereof at private sale to any petroleum refinery entitled to a preference at not less than the market price whenever in his judgment the spirit and intent of this act will be subserved thereby.

**History:** 1953 Comp., § 7-11-63, enacted by Laws 1967, ch. 34, § 7.

**Cross references.** — For publication of legal notice, see 14-11-1 NMSA 1978 et seq.

## ARTICLE 10A

### Carbon Dioxide Act

Sec. 19-10A-1. Short title.	Sec. 19-10A-5. Application for preference producer or refiner.
19-10A-2. Carbon dioxide taken in kind.	19-10A-6. Grant of preference based upon application.
19-10A-3. Definitions.	19-10A-7. Advertising for bids; priority of bidders; award of carbon dioxide.
19-10A-4. Sale of state royalty carbon dioxide and carbon dioxide upon which commissioner has call.	

#### 19-10A-1. Short title.

This act [19-10A-1 to 19-10A-7 NMSA 1978] may be cited as the "State Carbon Dioxide Act."

**History:** Laws 1981, ch. 108, § 1.



## 19-10A-2. Carbon dioxide taken in kind.

The purpose of the State Carbon Dioxide Act [19-10A-1 to 19-10A-7 NMSA 1978] is to assist New Mexico industries, specifically including but not limited to producers of crude oil in obtaining carbon dioxide for enhanced recovery of oil and to assist New Mexico refineries in obtaining a supply of refinery charge stocks for the operation of their refineries.

**History:** Laws 1981, ch. 108, § 2.

## 19-10A-3. Definitions.

As used in the State Carbon Dioxide Act [19-10A-1 to 19-10A-7 NMSA 1978]:

- A. "gas or carbon dioxide" means carbon dioxide whether in a gaseous or liquid form;
- B. "producer" means a person producing crude oil in New Mexico who:
  - (1) is a participant in a carbon dioxide project for enhanced recovery of crude oil and related hydrocarbons from a reservoir in New Mexico; and
  - (2) does not own or control a source of carbon dioxide which is sufficient to supply the carbon dioxide for the enhanced recovery project;
- C. "refiner" means a person who owns a petroleum refinery located in New Mexico; and
- D. "state carbon dioxide" means carbon dioxide which the commissioner of public lands may take in kind as royalty under a lease issued by the state or carbon dioxide which the commissioner of public lands has the right to purchase under leases issued pursuant to Sections 19-10-3 and 19-10-4 NMSA 1978.

**History:** Laws 1981, ch. 108, § 3.

## 19-10A-4. Sale of state royalty carbon dioxide and carbon dioxide upon which commissioner has call.

The commissioner of public lands may offer from time to time, for such period as he may determine, by competitive bidding, upon notice and advertisement on sealed bids, a portion or all of the state carbon dioxide. The advertisement and sale shall reserve to the commissioner of public lands the right to reject all bids whenever in his judgment the interest of the state demands. In cases where no satisfactory bid is received or where the commissioner of public lands shall determine that it is not in the best interests of the state lands trust or of the public to accept the offer of the highest bidder, the commissioner of public lands, within his discretion, may readvertise the state carbon dioxide for sale, sell it at a private sale at not less than the market price for such period or accept the cash value thereof from the lessee. The interests of the state lands trust and its beneficiaries shall be accorded primacy in the sale or disposition of the carbon dioxide hereunder. Should any provision of the carbon dioxide royalty law conflict with this section, this section shall prevail.

**History:** Laws 1981, ch. 108, § 4.

**Cross references.** — For sale of state royalty oil, see 19-10-67 NMSA 1978.

## 19-10A-5. Application for preference producer or refiner.

- A. A producer who wants to qualify for a preference shall submit an application to the oil conservation division. This application shall contain:
  - (1) the name and address of the producer;
  - (2) the location of the project for which the producer seeks the state carbon dioxide;
  - (3) a description, including ownership, of all lands which are to be included within the project for which the carbon dioxide is sought;
  - (4) a description of the enhanced recovery project in sufficient detail to demonstrate the feasibility of the project and the need for the carbon dioxide; and

- (5) such other information as the commissioner of public lands may by regulation require.
- B. A refiner who wants to qualify for a preference shall submit an application to the oil conservation division. The application shall contain:
- (1) the name and address of the refiner;
  - (2) the location of the project for which the refiner seeks the carbon dioxide;
  - (3) proof that the purchase of the state carbon dioxide will enable the refiner to obtain crude oil from the enhanced recovery project for refinery charge stocks for a New Mexico refinery; and
  - (4) such other information as the commissioner of public lands may by regulation require.

**History:** Laws 1981, ch. 108, § 5.

### **19-10A-6. Grant of preference based upon application.**

The oil conservation division shall examine each application for certification as a preference producer or refiner. If the oil conservation division finds that the applicant is a bona fide refiner or producer and has satisfied the requirements of the preceding sections of the State Carbon Dioxide Act [19-10A-1 to 19-10A-7 NMSA 1978]; that the enhanced recovery project for which the carbon dioxide proposed to be used is feasible; and that the applicant qualifies for the purchase of state carbon dioxide, it shall notify the commissioner of public lands in writing that the applicant is eligible to be granted a preference for the purchase of state carbon dioxide.

**History:** Laws 1981, ch. 108, § 6. **Cross references.** — For grant of preference in sale of royalty oil, *see* 19-10-69 NMSA 1978.

### **19-10A-7. Advertising for bids; priority of bidders; award of carbon dioxide.**

A. Where the commissioner of public lands elects to offer state carbon dioxide for sale, the carbon dioxide will be advertised for sale in designated newspapers or periodicals of general circulation in the state in accordance with regulations to be promulgated by the commissioner. The notice will set the day and hour on which sealed bids will be received in the office of the commissioner of public lands and will contain the terms and conditions of the sale. The notice will be published at the expense of the state.

B. Bids may be submitted regardless of whether or not a preference is asserted. Where the preference is asserted, bids must be accompanied by the order of the oil conservation division which states that the person claiming the preference is a producer or a refiner.

C. The commissioner of public lands shall, in an open meeting, consider all bids submitted and shall award the carbon dioxide as follows:

- (1) where none of the bidders for the same state carbon dioxide is properly entitled to a preference, the carbon dioxide will be awarded to the qualified bidder offering the highest price therefor in accordance with the specifications governing the sale;
- (2) where one or more bidders for the same state carbon dioxide are properly entitled to a preference, and their bids are within a percentage of the high bid, such percentage to be set by the commissioner, the qualified preference bidders will be allowed to submit additional bids and the carbon dioxide will be awarded to the preferred bidder offering the highest price equal to or better than the highest price offered in the advertised bids therefor in accordance with the specifications governing the sale; and
- (3) where two or more identical additional bids are received for the same carbon dioxide from bidders properly entitled to a preference, the commissioner reserves the right to prorate the carbon dioxide among the bidders in such amounts as he may deem equitable. The commissioner shall in prorating the carbon dioxide take into consideration the state lands affected by the enhanced recovery project and the increase in the production of crude oil from the state lands which could be caused by the enhanced recovery project.

**History:** Laws 1981, ch. 108, § 7.



## ARTICLE 10B

### Ongard System Development

Sec.

19-10B-1. Short title.

19-10B-2. Findings and purpose.

19-10B-3. Definitions.

19-10B-4. ONGARD system development.

19-10B-5. Commissioner of public lands; authorization to issue revenue bonds.

Sec.

19-10B-6. ONGARD system; sales; licenses.

19-10B-7. Joint powers agreement.

19-10B-8. Oversight.

#### 19-10B-1. Short title.

Sections 1 through 8 [19-10B-1 to 19-10B-8 NMSA 1978] of this act may be cited as the "ONGARD System Development Act".

**History:** Laws 1990, ch. 127, § 1.

#### 19-10B-2. Findings and purpose.

A. The legislature finds that a new oil and gas data base system will substantially increase revenues from state trust lands with resulting benefits to the trust beneficiaries and that funding the development of a new system with income from state trust lands constitutes a necessary and vital expense of the commissioner of public lands in the control and administration of the state trust lands and is a prudent and permitted use of trust income. The legislature further finds that a new oil and gas data base system will also increase severance tax revenues and that investment of the severance tax permanent fund in revenue bonds issued by the commissioner of public lands to finance the development of the new system is a prudent investment by the state.

B. The purpose of the ONGARD Systems [System] Development Act [19-10B-1 to 19-10B-8 NMSA 1978] is to provide for the development of an oil and gas data base system that will assure that the state is receiving the oil and gas tax and royalty revenue to which it is entitled, that the appropriate calculations are based on proper volumes and values and that correct amounts are remitted and accurately accounted for.

**History:** Laws 1990, ch. 127, § 2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### 19-10B-3. Definitions.

As used in the ONGARD System Development Act [19-10B-1 to 19-10B-8 NMSA 1978]:

A. "ONGARD system" means the oil and natural gas administration and revenue data base, a computerized data base system which collects, processes, analyzes and reports all oil and gas data received by the state; and

B. "state trust lands" means those lands described in Article 13, Section 1 of the constitution of New Mexico.

**History:** Laws 1990, ch. 127, § 3.

#### 19-10B-4. ONGARD system development.

The commissioner of public lands shall design, develop, acquire and implement an ONGARD system that relies on the latest capabilities of relational data base technology and that provides automated support to the constitutionally and legislatively mandated responsibilities of the commissioner of public lands, the taxation and revenue department, the energy, minerals and natural

resources department and other agencies requiring such information, including but not limited to: the administration and management of the process of tax and royalty collection and distribution, allowable gas and oil production calculation and leasing activities.

**History:** Laws 1990, ch. 127, § 4.

### **19-10B-5. Commissioner of public lands; authorization to issue revenue bonds.**

A. In order to provide funds for the design, development, acquisition and implementation of the ONGARD system, the commissioner of public lands is authorized to issue revenue bonds, in a principal amount not to exceed eighteen million dollars (\$18,000,000), payable solely from that part of the income derived from state trust lands that is required by law to be deposited in the state lands maintenance fund and from certain revenues generated by the ONGARD system.

B. The bonds shall have a maturity of no more than twenty years from the date of issuance. The commissioner of public lands shall determine all other terms, covenants and conditions of the bonds subject to the approval of the state board of finance.

C. The bonds shall be executed with the manual or facsimile signature of the commissioner of public lands and countersigned by the state treasurer, with the seal of the commissioner of public lands imprinted or otherwise affixed to the bonds.

D. Proceeds from the sale of the bonds shall be placed in a special fund created within the state treasury. The fund and the earnings of the fund are appropriated to the commissioner of public lands for the design, development, acquisition and implementation of the ONGARD system and may also be used to pay expenses incurred in the preparation, issuance and sale of the bonds. Any balance remaining in the fund after the ONGARD system has been fully implemented shall be used to retire the bonds or, if the bonds have been fully retired, shall be deposited into the state lands maintenance fund.

E. The bonds may be sold only at a private sale and only to the state investment officer or to the state treasurer.

F. This section is full authority for the issuance and sale of the bonds, and the bonds shall not be invalid for any irregularity or defect in the proceedings for their issuance and sale and shall be incontestable in the hands of bona fide purchasers or holders of the bonds for value.

G. An amount of money in the state lands maintenance fund sufficient to pay the principal of and interest on the bonds as they become due in each year shall be set aside, and is hereby pledged, for the payment of the principal of and interest on the bonds.

H. The bonds shall be payable by the state treasurer who shall keep a complete record relating to the payment of the bonds.

**History:** Laws 1990, ch. 127, § 5.

### **19-10B-6. ONGARD system; sales; licenses.**

Any software or other property developed pursuant to the provisions of the ONGARD System Development Act [19-10B-1 to 19-10B-8 NMSA 1978] shall be owned by the commissioner of public lands. The commissioner of public lands is authorized to enter into sales agreements, licensing arrangements and other business relationships with other state agencies within New Mexico and with other public and private entities for the purpose of marketing the property. Any sale proceeds, licensing fees, royalties or other revenue arising from such relationships shall be used to retire the bonds or, if the bonds have been fully retired, shall be deposited into the state lands maintenance fund.

**History:** Laws 1990, ch. 127, § 6.



## 19-10B-7. Joint powers agreement.

The commissioner of public lands, the taxation and revenue department, the energy, minerals and natural resources department and any other agency that utilizes the system shall enter into a joint powers agreement for the purpose of cooperating in the joint design, development, acquisition and implementation of the ONGARD system. The agreement shall provide either for the sharing of costs incurred to develop the system or for the payment to the commissioner of public lands by the taxation and revenue department, the energy, minerals and natural resources department or other agencies for the use of those portions of the ONGARD system that are utilized by those agencies. Any such payments received by the commissioner of public lands shall be used to retire the bonds or, if the bonds have been fully retired, shall be deposited into the state lands maintenance fund.

**History:** Laws 1990, ch. 127, § 7.

**Cross references.** — For commissioner of public lands, see 19-1-1 NMSA 1978.

For energy, minerals, and natural resources department, see 9-5A-1 NMSA 1978 et seq.

For taxation and revenue department, see 9-11-1 NMSA 1978 et seq.

For Joint Powers Agreement Act, see 11-1-1 NMSA 1978 et seq.

## 19-10B-8. Oversight.

A. No less than twice each year until the ONGARD system is fully implemented, the commissioner of public lands, the secretary of taxation and revenue, the secretary of energy, minerals and natural resources and the chief administrative officer of any other user agency shall appear before the legislative finance committee for the purpose of presenting a status report on the ONGARD system. The status report shall describe the progress and expenditures to date and shall detail the progress made toward retiring the bonds. In addition, each year until the bonds are fully retired, the commissioner of public lands shall submit a written report to the legislative finance committee describing the progress made toward bond retirement.

B. Until the bonds are fully retired, at each meeting held with the state land trusts advisory board and the administrative head or designee of the beneficiary institutions, as required by Section 19-1-1.4 NMSA 1978, the commissioner of public lands shall report on the status of the ONGARD system, the effects of the system on the revenues received by the beneficiary institutions and the progress made toward retiring the bonds. In addition, prior to each appearance before the legislative finance committee pursuant to Subsection A of this section, the commissioner shall inform the administrative head of each beneficiary institution.

**History:** Laws 1990, ch. 127, § 8.

# ARTICLE 11

## Timberlands

**Sec. 19-11-1.** Care and protection; rules and regulations; forestry standards.

**19-11-2.** Fire prevention and watershed protection; agreement with federal or private agencies.

**19-11-3.** Sale of timber lands.

**19-11-4.** Deferment of payment because of fire prevention assistance; failure to observe protective regulations; forfeiture; payment required before timber cut.

**19-11-5.** Sales prohibited; exceptions.

**Sec. 19-11-6.** Cutting certain timber for purchaser's own consumption.

**19-11-6.** Cutting certain timber for purchaser's own consumption.

**19-11-7.** Covenant to conserve and protect young timber and timber products; use of land for agricultural purposes.

**19-11-8.** Roadway reserved.

**19-11-9.** Purchaser of timber leasing additional grazing lands; conditions.

**19-11-10.** Timber; sale of [down, large growth and matured timber]

### 19-11-1. [Care and protection; rules and regulations; forestry standards.]

That the commissioner of public lands shall have authority, and it shall be his duty, to care for the timber and the timber products upon the state lands, under such rules and regulations as he may prescribe, [and] said rules and regulations shall provide for the practice of forestry according to standards that will protect the timber and timber products and also protect the watersheds of the state.

**History:** Laws 1921, ch. 84, § 2; 1923, ch. 101, § 2; C.S. 1929, § 132-165; 1941 Comp., § 8-1201; 1953 Comp., § 7-12-1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Law reviews.** — For note, "Forest Fire Protection on Public and Private Lands in New Mexico," see 4 Nat. Resources J. 374 (1964).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Constitutionality of reforestation or forest conservation legislation, 13 A.L.R.2d 1095.

73A C.J.S. Public Lands §§ 13 to 16.

### 19-11-2. [Fire prevention and watershed protection; agreement with federal or private agencies.]

In order to carry out the provisions of this act [19-11-1, 19-11-2 NMSA 1978], as well as for cooperative forest fire prevention and watershed protection, the commissioner of public lands is hereby authorized to enter into agreements with federal or private agencies.

**History:** Laws 1921, ch. 84, § 3; C.S. 1929, § 132-173; 1941 Comp., § 8-1202; 1953 Comp., § 7-12-2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Law reviews.** — For note, "Forest Fire Protection on Public and Private Lands in New Mexico," see 4 Nat. Resources J. 374 (1964).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Constitutionality of reforestation or forest conservation legislation, 13 A.L.R.2d 1095.

### 19-11-3. Sale of timber lands.

That on application therefor, the commissioner of public lands shall sell timber lands and the timber thereon, upon such terms and conditions as other state lands are now sold, except as hereinafter expressly provided. The minimum price for such lands exclusive of the timber products east of the range line between ranges 18 and 19 east, shall be five (\$5.00) dollars per acre, and west of the range line between range 18 and 19 east, shall be three (\$3.00) dollars per acre. Not more than five sections thereof shall be sold in any one block. Before executing any contract of sale, the commissioner shall, in the event of sale on deferred payment plan or deed in the event of sale for cash, require the purchaser to subscribe and swear to an affidavit in writing that the purchase is made in good faith solely for the benefit of such purchaser and not for any other person, and false swearing to any such affidavit shall be perjury and punishable as such under the laws of the state and shall render such contract or deed void.

The timber on such lands before any such sale shall be cruised and classified as to its kind and character and appraised according to its stumpage market value, and the minimum price for such timber shall be two dollars (\$2.00) dollars per thousand feet for saw timber, provided that the minimum price for white fir (balsam) shall not be less than one (\$1.00) [dollar] per thousand feet, board measure.

**History:** Laws 1923, ch. 101, § 3; C.S. 1929, § 132-166; Laws 1935, ch. 105, § 1; 1941 Comp., § 8-1203; 1953 Comp., § 7-12-3.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For false swearing in application for lease or purchase of state lands, or appraisal of same, see 19-7-7 NMSA 1978.

For perjury in general, see 30-25-1, 30-25-2 NMSA 1978.



**ANNOTATIONS**

**Intent of section.** — Laws 1935, ch. 105, § 1, effectively limits timberland sales to small tracts, thus making it possible for interested persons with small means to compete fairly with the capitalist, but there was no intention in this enactment to require that the lands embraced in one sale be contiguous. 1951-52 Op. Att'y Gen. No. 52-5614.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Statute of frauds: sale or contract for sale of standing timber as

within provisions of statute of frauds respecting sale or contract of sale of real property, 7 A.L.R.2d 517.

Description: sufficiency of description in standing timber deed or contract, 35 A.L.R.2d 1422.

Size and kind of trees contemplated by contract, 72 A.L.R.2d 727.

Construction of standing timber contract providing that trees to be cut and order of cutting shall be as selected by seller, 79 A.L.R.2d 1243.

73A C.J.S. Public Lands § 50.

#### **19-11-4. [Deferment of payment because of fire prevention assistance; failure to observe protective regulations; forfeiture; payment required before timber cut.]**

The commissioner of public lands shall be authorized to defer the payment, without interest, for a period not to exceed three years for the timber upon any tracts so sold upon condition that the said purchaser shall lend his best effort, aid and assistance in the suppression of forest fires in the community of said land purchased and that he also complies with whatsoever rules and regulations the commissioner of public land [lands] may adopt with reference to the general protection of the timbered lands of the state; and that upon his failure to comply with the same the commissioner shall have power to declare his contract to purchase forfeited, and in which event all money paid thereon shall be forfeited to the state; that the title to such timber sold on said tracts shall be vested and remain in the state until the same is paid for and no timber shall be cut by such purchaser or his assigns until the money therefor has been paid to the commissioner of public lands.

**History:** Laws 1923, ch. 101, § 4; C.S. 1929, § 132-167; 1941 Comp., § 8-1204; 1953 Comp., § 7-12-4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For cancellation of lease or contract to purchase state lands due to fraud or mistake, see 19-7-8 NMSA 1978.

For forfeiture of contract for failure to comply with terms thereof, see 19-7-19 NMSA 1978.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Constitutionality of reforestation or forest conservation legislation, 13 A.L.R.2d 1095.

73A C.J.S. Public Lands § 184.

#### **19-11-5. [Sales prohibited; exceptions.]**

No timber or timbered lands of the state shall be sold except as provided in Sections 3 and 4 [19-11-3, 19-11-4 NMSA 1978] of this act or Section 19-11-10 NMSA 1978.

**History:** Laws 1923, ch. 101, § 5; C.S. 1929, § 132-168; 1941 Comp., § 8-1205; 1953 Comp., § 7-12-5.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### **19-11-6. [Cutting certain timber for purchaser's own consumption.]**

Any purchaser of timbered lands, under the provisions of this act [19-11-1 to 19-11-9 NMSA 1978], shall be permitted to cut sufficient pinon and juniper for his own consumption only.

**History:** Laws 1923, ch. 101, § 6; C.S. 1929, § 132-169; 1941 Comp., § 8-1206; 1953 Comp., § 7-12-6.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### **19-11-7. [Covenant to conserve and protect young timber and timber products; use of land for agricultural purposes.]**

All land sold under the provisions of this act [19-11-1, 19-11-3 to 19-11-9 NMSA 1978] shall be so sold with the proviso and a covenant running therewith, that the purchaser or purchasers thereof shall encourage, protect and conserve the growing of young timber and timber products thereon,

such as are particularly adapted to the said lands; provided, however, that any part of such lands sold that are suited for agricultural purposes may be used for that purpose.

**History:** Laws 1923, ch. 101, § 7; C.S. 1929, § 132-170; 1941 Comp., § 8-1207; 1953 Comp., § 7-12-7.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For restrictions and regulations concerning cutting of timber, see 68-1-1 NMSA 1978 et seq.

### 19-11-8. [Roadway reserved.]

There shall be reserved over all said timbered and other mountain lands hereinafter sold by the state, or its assigns, an adequate roadway, for all purposes, to serve as an outlet to all other lands owned by the state, or its assigns.

**History:** Laws 1923, ch. 101, § 8; C.S. 1929, § 132-171; 1941 Comp., § 8-1208; 1953 Comp., § 7-12-8.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For rights-of-way across state lands, see 19-7-57, 19-7-58 NMSA 1978.

### 19-11-9. [Purchaser of timber leasing additional grazing lands; conditions.]

Any purchaser of timbered lands under the provisions of this act [19-11-1 to 19-11-9 NMSA 1978] shall be privileged to lease additional state timbered lands for grazing purposes, but in which event the granting of said lease, by the state, shall be conditioned upon the lessee's compliance with the rules and regulations adopted by the commissioner of public lands, for the general protection of timber and timber products on said leased land, or other state timbered lands adjacent thereto.

**History:** Laws 1923, ch. 101, § 9; C.S. 1929, § 132-172; 1941 Comp., § 8-1209; 1953 Comp., § 7-12-9.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-11-10. Timber; sale of [down, large growth and matured timber]

The commissioner of public lands may sell the down, large growth and matured timber on any state lands in the manner and after the notice provided by law governing sales of state lands. The sale of any such timber shall not be construed as a sale of the land on which the same is situated. No growing of matured timber less than twelve inches in diameter inside of bark, three feet from the butt, shall be sold. Provided, that timber not less than nine inches in diameter, inside of bark, three feet from the butt, may be sold for railroad ties, mine props or fence posts.

All sales of timber shall be on the stumpage basis. No down, large growth and matured timber, except such as is fit only for firewood, shall be sold at less than two dollars (\$2.00) per thousand feet, board measure, provided that the minimum price for white fir (balsam) shall be not less than one dollar (\$1.00) per thousand feet, board measure.

**History:** Laws 1912, ch. 82, § 65; Code 1915, § 5243; C.S. 1929, § 132-177; Laws 1935, ch. 106, § 1; 1941 Comp., § 8-1210; 1953 Comp., § 7-12-10.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 73A C.J.S. Public Lands §§ 13 to 16.



## ARTICLE 12

### Land Office Building

Sec.	Sec.
19-12-1. Short title.	19-12-7.1. Name of land office building.
19-12-2. Acquisition of land; construction and maintenance of buildings; use; lease to other agencies; disposition and use of rents.	19-12-8. Anticipation of proceeds of rentals from trust lands; issuance and sale of state land office debentures; interest rate; form; maturity.
19-12-3. Total cost of acquisition and construction; appropriation.	19-12-9. Debentures; signed by commissioner; seal affixed.
19-12-4. Architect, employment by commissioner; contract for construction of building; notice of letting; rejection of bids; performance bond.	19-12-10. Funds derived from sale of debentures; disposition.
19-12-5. Commissioner's power to provide for construction and maintenance; disbursements.	19-12-11. State investment officer may purchase state land office debentures; approval; private sale; interest rates.
19-12-6. Interest in contracts by commissioner or his agents prohibited.	19-12-12. Contract for maintenance.
19-12-7. Location of building; style of architecture.	19-12-13. Acceptance of gift, or loan, from federal government authorized.

#### 19-12-1. Short title.

This act [19-12-1 to 19-12-13 except 19-12-7.1 NMSA 1978] may be cited as the "Land Office Building Act."

**History:** 1953 Comp., § 7-14-1, enacted by Laws 1959, ch. 25, § 1.

#### 19-12-2. [Acquisition of land; construction and maintenance of buildings; use; lease to other agencies; disposition and use of rents.]

The commissioner of public lands of the state is authorized to acquire the necessary land to construct, equip and maintain a land office building or buildings thereon to be used as offices for the purpose of administering the trust created by the New Mexico Enabling Act and other similar acts of congress granting lands to the state. In acquiring land and construction of a building, the commissioner of public lands is authorized to anticipate need for expansion. Pending immediate need, he is authorized to lease office space or land to other agencies of the state on a year-to-year basis at a rental rate comparable to that charged for office space and lands in the area. Rents received shall be covered into the state lands maintenance fund to be used in its entirety to retire and repay the indebtedness incurred under the provisions of this 1959 act [19-12-1 to 19-12-13 NMSA 1978].

**History:** 1953 Comp., § 7-14-2, enacted by Laws 1959, ch. 25, § 2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For establishment of state lands maintenance fund, see 19-1-11 NMSA 1978.

#### 19-12-3. [Total cost of acquisition and construction; appropriation.]

The total cost of acquiring of land and the construction of the building or buildings shall not exceed the sum of one million five hundred thousand dollars (\$1,500,000), which sum is appropriated from the funds borrowed against the state lands maintenance fund, as hereinafter provided.

**History:** 1953 Comp., § 7-14-4, enacted by Laws 1959, ch. 25, § 4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### **19-12-4. [Architect, employment by commissioner; contract for construction of building; notice of letting; rejection of bids; performance bond.]**

The commissioner is empowered to employ an architect after competition among three or more architects of the state, on the basis of the best design submitted, and to contract for the construction of a building with the lowest and best bidder among three or more bidders, after notice in two consecutive issues of any Santa Fe or Albuquerque, New Mexico, newspaper not less than twenty days before the day of letting. The commissioner may either let the work in one entire contract or to different contractors, as the commissioner may deem advisable. The commissioner may reject any or all bids and call for new bids. The commissioner may require a performance bond with surety in an amount he deems necessary from bidders.

**History:** 1953 Comp., § 7-14-5, enacted by Laws 1959, ch. 25, § 5.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For Procurement Code, see 13-1-28 NMSA 1978 et seq.

#### **19-12-5. Commissioner's power to provide for construction and maintenance; disbursements.**

The commissioner has authority to perform all acts incidental to acquisition of such lands and the construction, equipping and maintaining of the land office building. The secretary of finance and administration shall draw his warrant on the state treasurer for the payment of vouchers drawn by the commissioner of public lands and the state treasurer shall pay the warrant out of the fund specified in and provided for by the Land Office Building Act [19-12-1 to 19-12-13 NMSA 1978].

**History:** 1953 Comp., § 7-14-6, enacted by Laws 1959, ch. 25, § 6; 1977, ch. 247, § 89.

#### **19-12-6. [Interest in contracts by commissioner or his agents prohibited.]**

Neither the commissioner nor any of his agents shall be directly or indirectly interested in any contract let under the Land Office Building Act [19-12-1 to 19-12-13 NMSA 1978].

**History:** 1953 Comp., § 7-14-7, enacted by Laws 1959, ch. 25, § 7.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### **19-12-7. [Location of building; style of architecture.]**

The land office building shall be located at the city of Santa Fe and conform substantially to the architecture of existing capitol buildings.

**History:** 1953 Comp., § 7-14-8, enacted by Laws 1959, ch. 25, § 8.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### **19-12-7.1. Name of land office building.**

The building located in Santa Fe currently used for offices to administer the trust created by the Enabling Act for New Mexico and other acts of congress granting lands to the state shall be known as the "Edward J. Lopez land office building".



**History:** 1978 Comp., § 19-12-7.1, enacted by Laws 1997, ch. 35, § 1.

**Effective dates.** — Laws 1997, ch. 35 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 20, 1997, 90 days after adjournment of the legislature.

**Cross references.** — For the Enabling Act for New Mexico, see Pamphlet 3 in Volume One of the NMSA 1978.

### **19-12-8. [Anticipation of proceeds of rentals from trust lands; issuance and sale of state land office debentures; interest rate; form; maturity.]**

The commissioner of public lands is authorized to anticipate the proceeds of rentals from trust lands, to the extent that the same are required to be covered into the state lands maintenance fund created by the provisions of Section 19-1-11 NMSA 1978 by the issuance and sale of state land office debentures not exceeding in the aggregate one million five hundred thousand dollars (\$1,500,000). The commissioner of public lands may issue these debentures at times and in denominations as he may deem expedient. Debentures issued shall bear the rate of interest prescribed by law, and shall be issued in serial form. Debentures in the principal amount of not more than fifty thousand dollars (\$50,000) shall mature not before June 30, 1960, and a principal amount of these debentures of not more than fifty thousand dollars (\$50,000) shall mature at every six-month interval thereafter, until all debentures issued under the Land Office Building Act [19-12-1 to 19-12-13 NMSA 1978] have been retired.

**History:** 1953 Comp., § 7-14-9, enacted by Laws 1959, ch. 25, § 9.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **19-12-9. [Debentures; signed by commissioner; seal affixed.]**

The debentures shall be signed by the commissioner and his seal shall be affixed thereto.

**History:** 1953 Comp., § 7-14-10, enacted by Laws 1959, ch. 25, § 10.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **19-12-10. [Funds derived from sale of debentures; disposition.]**

The funds derived from the sale of debentures shall be used by the commissioner of public lands for the purposes of carrying out the provisions of the Land Office Building Act [19-12-1 to 19-12-13 NMSA 1978].

**History:** 1953 Comp., § 7-14-11, enacted by Laws 1959, ch. 25, § 11.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **19-12-11. [State investment officer may purchase state land office debentures; approval; private sale; interest rates.]**

Any debentures authorized by the Land Office Building Act [19-12-1 to 19-12-13 NMSA 1978] may be purchased by the state investment officer as an investment for the permanent funds in his hands, with the approval of the officials whose approval is required by the constitution for the investment of permanent funds. The purchase by the state investment officer may be made at private sale without the necessity of advertising and at interest rates not to exceed the per annum rate prescribed by law.

**History:** 1953 Comp., § 7-14-12, enacted by Laws 1959, ch. 25, § 12.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — Section 6-8-4 NMSA 1978 named the director of the investment division of the department of finance and administration as the "state investment officer."

## 19-12-12. Contract for maintenance.

The commissioner of public lands is authorized to contract with the facilities management division of the general services department on a cost basis for the maintenance of the lands and buildings acquired under the provisions of the Land Office Building Act.

**History:** 1953 Comp., § 7-14-14, enacted by Laws 1959, ch. 25, § 14; 1977, ch. 247, § 90; 1983, ch. 301, § 67; 1984, ch. 64, § 23; 2013, ch. 115, § 21.

The 2013 amendment, effective June 14, 2013, changed the name of the property control division of the general services department to the facilities management division; and deleted "property control" and added "facilities management" before "division".

The 1984 amendment, effective May 17, 1984, substituted "building services division" for "property control division."

**Saving clauses.** — Laws 1984, ch. 64, § 25, provided that no suit, action or other proceeding commenced by or against any public officer or employee of the state in his official capacity shall abate by reason of the effect of the act and provided that the district courts may allow a suit, action or other proceeding to be maintained by or against the appropriate officer and any successor agency created under the act.

## 19-12-13. [Acceptance of gift, or loan, from federal government authorized.]

The commissioner of public lands is authorized to accept any services, equipment, supplies, materials or funds by way of gift, or loan, from the United States government, which could be used in carrying out the purposes of the Land Office Building Act [19-12-1 to 19-12-13 NMSA 1978].

**History:** 1953 Comp., § 7-14-15, enacted by Laws 1959, ch. 25, § 15.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Severability.** — Laws 1959, ch. 25, § 16, provided for the severability of the Land Office Building Act if any part or application thereof is held invalid.

# ARTICLE 13

## Lease of Geothermal Resources on State Lands

Sec.

- 19-13-1. Short title.
- 19-13-2. Definitions.
- 19-13-3. Administration of act.
- 19-13-4. Geothermal resources of commercial value.
- 19-13-5. Leases; applications; limitations.
- 19-13-6. Known geothermal resources fields.
- 19-13-7. Leases; terms; rentals and royalties.
- 19-13-8. Leases; relinquishment.
- 19-13-9. Rent or royalties; waiver; suspension; reduction.
- 19-13-10. Suspension of operation and production.
- 19-13-11. Leases; duration.
- 19-13-11.1. Leases; stipulation; rental; royalty.
- 19-13-11.2. Validation of geothermal resource leases.
- 19-13-12. Combining geothermal resources.
- 19-13-13. Reinjecting geothermal resources.
- 19-13-14. Cooperative development or operation.
- 19-13-15. Posting of open acreage; simultaneous applications.

Sec.

- 19-13-16. State land sales and leases; reservations.
- 19-13-17. Use of the surface.
- 19-13-18. Bonds; surface damage; performance.
- 19-13-19. State lands; jurisdictions.
- 19-13-20. General mining lease; lease preference.
- 19-13-21. Transferability.
- 19-13-22. Inspection of records; reports.
- 19-13-23. Violation of lease; notice; forfeiture.
- 19-13-24. Removing improvements upon termination of lease.
- 19-13-25. Regulations.
- 19-13-26. Withholding state lands from lease; lease by competitive bids.
- 19-13-27. Public hearings.
- 19-13-28. Collateral assignment of leases.

### 19-13-1. Short title.

This act [19-13-1 to 19-13-28 NMSA 1978] may be cited as the "Geothermal Resources Act."

**History:** 1953 Comp., § 7-15-1, enacted by Laws 1967, ch. 158, § 1.

### ANNOTATIONS

**Law reviews.** — For comment on geothermal energy and water law, see 19 Nat. Resources J. 445 (1979).



### 19-13-2. Definitions.

As used in the Geothermal Resources Act:

A. "geothermal resources" means the natural heat of the earth in excess of two hundred fifty degrees Fahrenheit, or the energy in whatever form below the surface of the earth present in, resulting from, created by or which may be extracted from this natural heat in excess of two hundred fifty degrees Fahrenheit, and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases and steam in whatever form found below the surface of the earth, but excluding oil, hydrocarbon gas and other hydrocarbon substances and excluding the heating and cooling capacity of the earth not resulting from the natural heat of the earth in excess of two hundred fifty degrees Fahrenheit, as may be used for the heating and cooling of buildings through an on-site geoechange heat pump or similar on-site system;

B. "commissioner" means the commissioner of public lands;

C. "state lands" includes all land owned by the state, all land owned by school districts, beds of navigable rivers and lakes, submerged lands and lands in which mineral rights have been reserved to the state;

D. "lease" means a lease for the extraction and removal of geothermal resources from state lands; and

E. "well" means any well for the discovery of geothermal resources or any well on lands producing geothermal resources or reasonably presumed to contain geothermal resources.

**History:** 1953 Comp., § 7-15-2, enacted by Laws 1967, ch. 158, § 2; 2013, ch. 125, § 1.

The 2013 amendment, effective June 14, 2013, changed the definition of "geothermal resources" to establish a minimum threshold of heat; and in Subsection A, after "natural heat of the earth" added "in excess of two hundred fifty degrees Fahrenheit", after "extracted from

this natural heat", added "in excess of two hundred fifty degrees Fahrenheit", and after "and other hydrocarbon substances", added the remainder of the sentence.

#### ANNOTATIONS

**Law reviews.** — For comment on geothermal energy and water law, see 19 Nat. Resources J. 445 (1979).

### 19-13-3. Administration of act.

Administration of the Geothermal Resources Act shall be based on the principle of multiple use of state land and resources and shall allow coexistence of other leases on the same lands for deposits of other minerals, and the existence of leases issued pursuant to the Geothermal Resources Act shall not preclude other uses of the land covered thereby. Geothermal resources may be administered as a renewable energy resource, in which case any leases for and regulations of a geothermal resource as a renewable energy resource shall require that the geothermal resource not be diminished beneath applicable natural seasonal fluctuations in the measurable quantity, quality or temperature of any area classified as a known geothermal resources field. However, operations under other leases or for other uses shall not unreasonably interfere with or endanger operations under any lease issued pursuant to the Geothermal Resources Act, nor shall operations under leases issued pursuant to the Geothermal Resources Act unreasonably interfere with or endanger operations under any lease issued pursuant to any other law. The Geothermal Resources Act shall not be construed to supersede the authority that any state department or agency has with respect to the management, protection and utilization of the state lands and resources under its jurisdiction.

**History:** 1953 Comp., § 7-15-3, enacted by Laws 1967, ch. 158, § 3; 2013, ch. 125, § 2.

The 2013 amendment, effective June 14, 2013, provided for conditions of leases of geothermal resources to sustain the resource; and added the second sentence.

### 19-13-4. Geothermal resources of commercial value.

Where it is determined by the commissioner that the production or use of geothermal energy is also susceptible of economically producing other of the geothermal resources in commercially

valuable quantities, and a market therefor exists, production of the other geothermal resources may be required by the commissioner.

**History:** 1953 Comp., § 7-15-4, enacted by Laws 1967, ch. 158, § 4.

### 19-13-5. Leases; applications; limitations.

A. Leases may be issued by the commissioner according to such terms and conditions not inconsistent with the provisions of the Geothermal Resources Act which the commissioner determines to be in the best interest of the state.

B. An application for a lease on state lands shall not be made for less than six hundred forty acres nor more than two thousand five hundred sixty acres and shall embrace a reasonably compact area. A lease on state lands may only be issued for a parcel less than six hundred forty acres if the parcel is isolated from or not contiguous with other parcels of land available for a lease. The commissioner may provide for compensatory agreements on those parcels of state lands which he determines should be subjected to such an agreement rather than a lease. No person, association or corporation, except as otherwise provided in the Geothermal Resources Act, shall take, hold, own or control at one time whether acquired directly from the commissioner or otherwise, any direct or indirect interests in state geothermal leases exceeding fifty-one thousand two hundred acres.

C. The commissioner shall issue a lease to the first qualified applicant under regulations adopted by the commissioner.

**History:** 1953 Comp., § 7-15-5, enacted by Laws 1967, ch. 158, § 5; 1979, ch. 386, § 1.

#### ANNOTATIONS

**Law reviews.** — For comment on geothermal energy and water law, see 19 Nat. Resources J. 445 (1979).

### 19-13-6. Known geothermal resources fields.

A. The commissioner shall, after consultation with the director of the bureau of geology and mineral resources, make a classification of geothermal areas that he has determined may be capable of producing geothermal resources in commercial quantities. These geothermal areas shall be classified as "known geothermal resources fields".

B. If any lands to be leased are within a known geothermal resources field, the lands shall be leased to the highest responsible qualified bidder under rules prescribed by the commissioner. The rules prescribed by the commissioner shall include notice to the public of the terms and conditions of the sale and procedures of conducting the sale, including the receipt of written bids on a competitive basis and the issuing of the lease.

**History:** 1953 Comp., § 7-15-6, enacted by Laws 1967, ch. 158, § 6; 2001, ch. 246, § 1.

**Cross references.** — For giving of legal notice, see 14-11-1 NMSA 1978 et seq.

For establishment of bureau of geology and mineral resources, a division of the New Mexico institute of mining and technology, and duties thereof, see 69-1-1 NMSA 1978 et seq.

**The 2001 amendment,** effective June 15, 2001, substituted "bureau of geology" for "bureau of mines" in Subsection A; and substituted "rules" for "regulations" in two places in Subsection B.

#### ANNOTATIONS

**Law reviews.** — For comment on geothermal energy and water law, see 19 Nat. Resources J. 445 (1979).

### 19-13-7. Leases; terms; rentals and royalties.

A. Each lease issued pursuant to the Geothermal Resources Act shall provide for the following base rentals, royalties and percentage rentals with respect to geothermal resources produced or sold from the lands included within the lease:

(1) a base lease rent to be charged under each lease based upon fair market value at the time of leasing as determined by the commissioner;



(2) a royalty or percentage rent to be charged as a percentage of gross revenue derived from the production, sale or use of geothermal resources, or the energy produced therefrom, under the lease as determined by the commissioner, who shall not determine a value below or above a range that could be determined by the federal bureau of land management, based on fair market value of the geothermal resource or use of the geothermal resource at the time of leasing. The commissioner may require an escalation of the royalty or percentage rent over time; and

(3) a royalty of the gross revenue received from the sale of mineral products or chemical compounds recovered from geothermal fluids, if any, based on fair market value of the mineral product as determined by the commissioner, except that as to any by-product or minerals covered by other mineral leasing statutes administered by the commissioner or rules or regulations of the commissioner, the rate of royalty for such mineral or by-product shall be the same as the then-existing rate of royalty under leases currently being issued by the commissioner.

B. The commissioner shall have the authority in leasing lands pursuant to the Geothermal Resources Act to prescribe a development program. In prescribing the program, the commissioner shall consider all applicable economic factors, including market conditions and the cost of drilling for, producing, processing and utilizing geothermal resources.

**History:** 1953 Comp., § 7-15-7, enacted by Laws 1967, ch. 158, § 7; 1979, ch. 386, § 2; 2013, ch. 125, § 3.

**The 2013 amendment**, effective June 14, 2013, provided for conditions of leases of geothermal resources to sustain the resource and for terms based on market value; in Subsection A, in the introductory sentence, after "following", added "base", after "royalties", added "and percentage rentals", and after "resources produced", deleted "saved and" and added "or"; in Paragraph (1) of Subsection A, at the beginning of the sentence, after "a", deleted language which provided for a ten percent royalty from the sale of steam, brine, or hot water and between ten and fifteen percent from leases of known geothermal resource fields, and added the remainder of the sentence; added Paragraph (2) of Subsection A; in Paragraph (3) of Subsection A, after "a royalty of", deleted "not less than two percent nor more than five percent of" and after "geothermal fluids", deleted "in the first marketable form as to each such mineral product or chemical compound for the primary term of the lease" and added "if any, based on fair

market value of the mineral product as determined by the commissioner", deleted former Paragraph (3) of Subsection A, which provided a royalty of eight percent of revenue from an energy-producing plant; deleted former Paragraph (4) of Subsection A, which provided for a royalty of not less than two percent nor more than ten percent on revenue from geothermal resources for recreational, space heating or health purposes; deleted former Paragraph (5) of Subsection A, which provided for an annual rental of one dollar per acre; deleted former Paragraph (6) of Subsection A, which provided for a minimum rental when the royalty did not exceed two dollars per acre; deleted Paragraph (7) of Subsection A, which required the renegotiation of royalties after twenty years; deleted former Paragraph (8) of Subsection A, which provided that except for royalties on minerals, royalties and rentals could be other than the rates specified in Subsection A; and deleted former Subsection B, which provided the method for calculating royalties on resources that were used and not sold.

## 19-13-8. Leases; relinquishment.

A. The holder of any lease may at any time relinquish all his rights under the lease by filing a written relinquishment of all rights under the lease with the commissioner. The relinquishment shall be effective as of the date of its filing, subject to the continued obligation of the person, in accordance with the terms of the lease and any regulations:

- (1) to make payment of all accrued rentals and royalties;
- (2) to place all wells on the lands to be relinquished in condition for suspension or abandonment; and
- (3) to protect or restore the surface and surface resources.

B. Upon compliance with this section, the person holding the lease shall be released of all obligations thereafter accruing under the lease with respect to the lands relinquished, but no such relinquishment shall release such person from any liability for breach of any obligation of the lease, other than an obligation to drill, accrued at the date of relinquishment.

**History:** 1953 Comp., § 7-15-8, enacted by Laws 1967, ch. 158, § 8.

**Cross references.** — For relinquishment of lease of state lands, see 19-7-36 NMSA 1978.

For relinquishment of mineral lands lease, see 19-8-26 NMSA 1978.

### 19-13-9. Rent or royalties; waiver; suspension; reduction.

The commissioner may, after a public hearing, waive, suspend or reduce the rental or minimum royalty for the lands included in a lease, or any portion thereof, and waive, suspend, alter or amend the operating requirements contained in a lease or regulation in the interest of conservation and to encourage the greatest ultimate recovery of geothermal resources if he determines that such action is necessary or beneficial to promote development or finds that the lease cannot be successfully operated under the terms of the lease or regulations.

**History:** 1953 Comp., § 7-15-9, enacted by Laws 1967, ch. 158, § 9.

**Cross references.** — For accrual of interest on delinquent rental payments for state lands, see 19-1-3 NMSA 1978.

### 19-13-10. Suspension of operation and production.

The commissioner may, upon application and after a public hearing, suspend operations and production on a producing lease. On his own motion and after a public hearing, the commissioner, in the interest of conservation, may suspend operations on any lease, but in any such case he shall extend the lease term for the period of any suspension.

**History:** 1953 Comp., § 7-15-10, enacted by Laws 1967, ch. 158, § 10.

### 19-13-11. Leases; duration.

A. Any lease entered into pursuant to the Geothermal Resources Act shall be for a primary term of five years and so long thereafter as geothermal resources are being produced or utilized or are capable of being produced or utilized in commercial quantities from such lands or from lands unitized therewith, subject to continued payment of rentals as provided in Section 19-13-7 NMSA 1978. If the lessee fails to produce or utilize geothermal resources or to discover geothermal resources capable of being produced or utilized in commercial quantities from the lands or from lands unitized therewith during the initial five-year term, the lessee may continue the lease in full force and effect as to the portion held by the lessee for a secondary term of five years and so long thereafter as geothermal resources are being produced or utilized or are capable of being produced or utilized in commercial quantities from such lands or from lands unitized therewith by continued payment each year, in advance, of rentals at the rate set by the lease. Provided that if for any reason beyond the control of the lessee production or utilization of geothermal resources in commercial quantities ceases or if the capability to so produce is temporarily lost after the secondary term has expired, the producing lessee may, with the written permission of the commissioner, continue such lease as to the acreage held by the lessee in effect from year to year for an additional period not to exceed three years by continued payment of rentals as provided in the lease at the rate provided in the secondary term of the lease.

B. If commercial production or capability of commercial production occurs during the primary term and thereafter ceases before the primary term would have expired, the lease shall be deemed to be a "nonproducing or incapable of producing lease" from that date, and the lessee shall have the unexpired portion of the primary term and any subsequent terms within which to resume such production or capability of production. If commercial production or capability of commercial production occurs during the primary term and ceases during the secondary term, the lease shall be deemed to be a "nonproducing or incapable of producing lease" from that date and, upon payment of rentals as provided in Subsection A of this section, the lessee shall have the unexpired portion of the secondary term within which to resume such production or capability of production. When such production or capability of production is resumed, the term of the lease shall continue so long thereafter as geothermal resources are being produced or utilized or are capable of being produced or utilized in commercial quantities from the leased land or from land unitized therewith. In such



cases, the rental rate for the lease or the portion thereof shall be the rental rate provided in the term or portion of the term in which such production or capability of production is resumed.

**History:** 1953 Comp., § 7-15-11, enacted by Laws 1967, ch. 158, § 11; 1979, ch. 386, § 3; 2013, ch. 125, § 4.

The 2013 amendment, effective June 14, 2013, provided for the rental rate of land for geothermal resources when no resources are produced or used; and in Subsection A, in the first sentence, after "subject to continued

payment of", deleted "annual"; in the second sentence, after "in advance, of", deleted "annual", and after "rentals at the rate", deleted "of five dollars (\$5.00) per acre annually", and added "set by the lease", and in the third sentence, after "continued payment of", deleted "annual".

### 19-13-11.1. Leases; stipulation; rental; royalty.

The owner or owners of any geothermal resources lease or approved assignment thereof, heretofore issued by the commissioner, which lease has not automatically expired by its own terms or which has not been canceled after proper notice by the commissioner and which has otherwise been maintained in good standing, may enter into a stipulation with the commissioner of public lands making the terms and conditions of Sections 19-13-7 and 19-13-11 NMSA 1978 a part of such existing lease, the same as if the provisions had been a part of the lease when issued. In such case, the rentals, royalties and fees shall be computed as follows:

A. rentals shall be computed for the remainder of the primary term of the lease at one dollar (\$1.00) per acre or fraction thereof per year, payable in advance, and for the secondary term of the lease at five dollars (\$5.00) per acre or fraction thereof per year, payable in advance;

B. royalties shall be payable as provided in the lease being stipulated; provided, however, if at the time of entering into the stipulation the acreage has been included in a known geothermal resource field and if the commissioner has established a higher rate for such area, then the royalties shall be payable at the higher rates so established; and

C. the commissioner may charge a fee of ten dollars (\$10.00) for the approval, filing and recording of such stipulation.

**History:** 1978 Comp., § 19-13-11.1, enacted by Laws 1979, ch. 386, § 4.

**Cross references.** — For rentals and royalties on leases issued after the enactment of this section, see 19-13-7 NMSA 1978.

For waiver of rents or royalties, see 19-13-9 NMSA 1978.

### 19-13-11.2. Validation of geothermal resource leases.

All geothermal resource leases issued by the commissioner of public lands prior to the effective date of this section are declared to be valid and existing contracts with the state according to their terms and provisions where:

A. such leases were made in substantial conformity with law;

B. the terms have not expired;

C. all rentals have been paid and accepted by the commissioner of public lands; and

D. the leases have not been canceled by the commissioner of public lands for nonperformance by the lessee or any assignee.

The obligations of the state and the commissioner to observe and conform to the terms and provisions of these leases are recognized.

**History:** 1978 Comp., § 19-13-11.2, enacted by Laws 1979, ch. 386, § 5.

**Cross references.** — For duration of leases, see 19-13-11 NMSA 1978.

For cancellation of leases, see 19-13-23 NMSA 1978.

### 19-13-12. Combining geothermal resources.

Any person engaged in the production of geothermal resources under a lease issued by the commissioner may commingle geothermal resources from any two or more wells without regard to whether such wells are located on the lands for which such lease was issued or elsewhere; provided,

however, that the person holding the lease shall install and maintain meters or other measuring devices satisfactory to the commissioner to measure the amount of geothermal resources produced from lands for which leases were issued by the commissioner.

**History:** 1953 Comp., § 7-15-12, enacted by Laws 1967, ch. 158, § 12.

### **19-13-13. Reinjecting geothermal resources.**

Any person holding a lease may, upon approval of the commissioner, drill special wells, convert producing wells or reactivate and convert abandoned wells for the sole purpose of reinjecting geothermal resources or the residue thereof.

**History:** 1953 Comp., § 7-15-13, enacted by Laws 1967, ch. 158, § 13.

### **19-13-14. Cooperative development or operation.**

For the purpose of more properly conserving the natural resources of any geothermal resources lands, or any part thereof, the holders of leases may unite with each other or with others in collectively adopting and operating under a cooperative or unit plan of development or operation of such geothermal resources lands whenever determined and certified by the commissioner to be necessary or advisable in the public interest. The commissioner may, with the consent of the holders of leases involved, establish, alter, change or revoke any drilling and production requirement of such leases, permit apportionment of production, and may make such regulations with reference to such leases, with like consent on the part of the persons holding the leases, in connection with the institution and operation of any such cooperative or unit plan, as the commissioner deems necessary or proper to secure the proper protection of the interests of the state.

**History:** 1953 Comp., § 7-15-14, enacted by Laws 1967, ch. 158, § 14.

**Cross references.** — For cooperative agreements for development or operation of oil and gas pools, see 19-10-45 to 19-10-48 NMSA 1978.

### **19-13-15. Posting of open acreage; simultaneous applications.**

When newly acquired acreage is posted to the tract books, or when other acreage is designated upon the tract books to be open acreage after having been previously leased or after having been withdrawn from leasing by the commissioner, all applications for leases filed thereon within three regular working days after such posting or designation shall be considered as simultaneous applications.

**History:** 1953 Comp., § 7-15-15, enacted by Laws 1967, ch. 158, § 15.

### **19-13-16. State land sales and leases; reservations.**

In addition to any other requirements of law, in all leases, deeds or sales contracts of state lands for any purpose, there shall be inserted a clause reserving the right to execute leases for geothermal resource development and operation thereon; the right to sell or dispose of the geothermal resources of such lands; and the right to grant rights-of-way and easements for the purpose of this section.

**History:** 1953 Comp., § 7-15-16, enacted by Laws 1967, ch. 158, § 16.

**Cross references.** — For sale rather than lease of known saline, mineral and oil and gas lands, see 19-7-25 NMSA 1978.



For reservation from sale of mineral deposits, products and easements on grazing and agricultural leases, *see* 19-7-28 NMSA 1978.

For rights-of-way and easements over state lands, *see* 19-7-56, 19-7-57 NMSA 1978.

For reservation of roadway over timbered and mountain lands sold by state, *see* 19-11-8 NMSA 1978.

For reservation of mineral purchase rights in state lands leased or conveyed, *see* 19-14-1 to 19-14-3 NMSA 1978.

### 19-13-17. Use of the surface.

Subject to the provisions of the Geothermal Resources Act, any person holding a lease for geothermal resources shall be entitled to use so much of the surface as is reasonably necessary as determined by the commissioner for the production and conservation of geothermal resources.

**History:** 1953 Comp., § 7-15-17, enacted by Laws 1967, ch. 158, § 17.

### 19-13-18. Bonds; surface damage; performance.

A. Before any person commences development or operations of geothermal resources under a lease, including any prospecting activity on the leased land, the person holding the lease shall execute and file with the commissioner, a bond or undertaking in an amount fixed by the commissioner which shall not be less than five thousand dollars (\$5,000) in favor of the state of New Mexico for the benefit of the state's contract purchaser, patentee or surface lessee. The purpose of the bond or undertaking shall be to secure payment for damages to the tangible improvements on the leased land as may be suffered by reason of the development and operations on the land by the person holding the lease.

B. The commissioner may, at any time, require a person holding a lease to furnish a bond in a reasonable amount to guarantee payment of royalties to become due the state if, in his judgment, such is necessary to protect the interest of the state.

C. The commissioner shall, by regulations, establish the standards and the forms for any bonds or undertakings required pursuant to this section.

**History:** 1953 Comp., § 7-15-18, enacted by Laws 1967, ch. 158, § 18.

**Cross references.** — For filing by mineral lessee of bond securing payment for damage to the surface, and

bond guaranteeing payment of royalties, *see* 19-8-24 NMSA 1978.

For bond required of mineral lessee of lands sold on deferred payment plan with reservation of minerals, *see* 19-10-26 NMSA 1978.

### 19-13-19. State lands; jurisdictions.

Where the surface of state lands sought for use or development of geothermal resources or the waters thereon are under the jurisdiction of a state department or agency other than the commissioner, the commissioner may issue leases under the Geothermal Resources Act only with the consent of and subject to such reasonable terms and conditions as may be prescribed by the other department or agency to insure [ensure] the adequate utilization of the surface of the lands or the waters thereon for the purposes for which they are then being administered or for which they were acquired; provided, however, that such other department or agency shall not prescribe any terms and provisions inconsistent with the Geothermal Resources Act nor any rental or royalty for the use of the lands.

**History:** 1953 Comp., § 7-15-19, enacted by Laws 1967, ch. 158, § 19.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 19-13-20. General mining lease; lease preference.

Notwithstanding any other provision of the Geothermal Resources Act, at any time within ninety days following the effective date of the Geothermal Resources Act, any person who held

prior to January 1, 1967 and who holds on the effective date of the Geothermal Resources Act, a general mining lease issued by the commissioner, upon showing to the satisfaction of the commissioner that the application or general mining lease was made or issued to develop geothermal resources, may apply for and receive a lease pursuant to the Geothermal Resources Act covering the same land having priority dating from the date of filing or issuance of the original application or general mining lease. The lease preference pursuant to this section shall be accomplished in accordance with procedures prescribed by regulations of the commissioner.

**History:** 1953 Comp., § 7-15-20, enacted by Laws 1967, ch. 158, § 20.

### 19-13-21. Transferability.

Any lease pursuant to the Geothermal Resources Act may be assigned, transferred or sublet with the approval of the commissioner.

**History:** 1953 Comp., § 7-15-21, enacted by Laws 1967, ch. 158, § 21.

**Cross references.** — For assignment or relinquishment of lease of state lands, *see* 19-7-36 NMSA 1978.

For assignment of mineral lease, *see* 19-8-28 NMSA 1978.

For assignment of oil and gas lease, *see* 19-10-13 NMSA 1978.

### 19-13-22. Inspection of records; reports.

The commissioner or his representative shall have the right to inspect all records, books or accounts pertaining to geothermal resources taken from leased state lands, and at the request of the commissioner, the holder of the lease shall furnish such reports, samples, logs, assays or cores within reasonable bounds as he may deem to be necessary for the proper administration of the state lands under lease.

**History:** 1953 Comp., § 7-15-22, enacted by Laws 1967, ch. 158, § 22.

### 19-13-23. Violation of lease; notice; forfeiture.

The commissioner may cancel any lease issued pursuant to the Geothermal Resources Act for nonpayment of rentals, nonpayment of royalties or for violation of any of the terms, covenants or conditions of the lease. Before any cancellation shall be made, the commissioner shall mail to the lessee or assignee, by registered or certified mail, addressed to the post-office address of the lessee or assignee shown by the lease or by specific written notice of change of address given by the lessee, a thirty-day notice of intention to cancel the lease, specifying the default for which the lease is subject to cancellation. No proof of receipt of notice shall be necessary and thirty days after such mailing, the commissioner may enter cancellation unless the lessee shall have remedied the default prior to this time; provided that if the violation could not be remedied within the thirty-day period and the lessee shall have commenced operations to remedy the violation within such period, the lease shall not be canceled for a period not to exceed one year as long as the lessee diligently pursues actions necessary to remedy the violation or after the violation is remedied.

**History:** 1953 Comp., § 7-15-23, enacted by Laws 1967, ch. 158, § 23; 1979, ch. 386, § 6.

**Cross references.** — For forfeiture for failure to comply with purchase contract, *see* 19-7-19 NMSA 1978.

For forfeiture of lease for failure to pay rent, *see* 19-7-34 NMSA 1978.

For grounds of forfeiture of agricultural or grazing lease, *see* 19-7-35 NMSA 1978.

For forfeiture procedure on violation of lease or other written instrument, *see* 19-7-50 NMSA 1978.

For forfeiture for defrauding state of royalties, *see* 19-8-1 NMSA 1978.

For forfeiture on failure to develop and operate mineral lands in workmanlike manner, *see* 19-8-13 NMSA 1978.

For forfeiture of certain mineral leases for violation thereof, *see* 19-8-27 NMSA 1978.

For forfeiture on failure to comply with coal lease, *see* 19-9-13 NMSA 1978.

For cancellation of oil and gas lease, *see* 19-10-20 NMSA 1978.



### 19-13-24. Removing improvements upon termination of lease.

Upon termination of any lease issued pursuant to the Geothermal Resources Act by reason of forfeiture, surrender, expiration of term or for any other reason, the lessee may remove all improvements and equipment as can be removed without material injury to the premises; provided, however, that all rents and royalties have been paid and that such removal is accomplished within two years from the termination date or before such earlier date as the commissioner may set, upon thirty days' written notice to the lessee. All improvements and equipment remaining upon the premises after the removal date as set in accordance with this section shall be forfeited to the state without compensation.

**History:** 1953 Comp., § 7-15-24, enacted by Laws 1967, ch. 158, § 24.

**Cross references.** — For compensation paid by purchaser or subsequent lessee to owner of improvements on state lands, in general, *see* 19-7-14 NMSA 1978.

For removal by certain mineral lessees of removable improvements and forfeiture of rest without compensation, *see* 19-8-29 NMSA 1978.

For payment for value of improvements by purchaser or subsequent oil and gas lessee to owner thereof, *see* 19-10-28 NMSA 1978.

For oil and gas lessee's right to remove certain improvements upon cancellation or forfeiture of lease, *see* 19-10-29 NMSA 1978.

### 19-13-25. Regulations.

Pursuant to the Geothermal Resources Act, the commissioner shall adopt such reasonable regulations as he may determine are necessary to carry out the provisions of the Geothermal Resources Act. The regulations shall be posted in a conspicuous place in the state land office for a period of at least ten consecutive days.

**History:** 1953 Comp., § 7-15-25, enacted by Laws 1967, ch. 158, § 25.

**Cross references.** — For State Rules Act, *see* Chapter 14, Article 4 NMSA 1978.

### 19-13-26. Withholding state lands from lease; lease by competitive bids.

Nothing in the Geothermal Resources Act [19-13-1 to 19-13-28 NMSA 1978] shall be construed to require the commissioner to offer any tract or tracts of state lands for lease. The commissioner may withhold any tract or tracts from leasing for geothermal resources purposes, if, in his opinion, the best interests of the state would be served by so doing. Nothing in the Geothermal Resources Act shall be construed to prohibit the commissioner from rejecting any application at any time prior to approval, or offering the land embraced within the application for lease by competitive bidding by sealed bids or at public auction to the bidder offering the highest bonus in addition to the annual rentals or royalties as set by the commissioner. Notice of the public sale pursuant to this section shall be given by posting in a conspicuous place in the state land office not less than ten days before the date of sale, a written notice of the sale specifying the day and hour when the sale will be held, the place where the sale will be held and a description of the state land to be offered for lease. The notice shall also state that the sale will be conducted through sealed bids or at public auction and any other information the commissioner determines is necessary. Where two or more sealed bids are received making the same offer on the same land, the commissioner shall award the lease to the land in accordance with regulations prescribed by the commissioner.

**History:** 1953 Comp., § 7-15-26, enacted by Laws 1967, ch. 158, § 26.

**Cross references.** — For publication of legal notice, *see* 14-11-1 NMSA 1978 et seq.

### 19-13-27. Public hearings.

A public hearing pursuant to the Geothermal Resources Act [19-13-1 to 19-13-28 NMSA 1978] shall only be held after notice of the public hearing has been posted in a conspicuous place in the state land office for a period of at least fifteen consecutive days and after a copy of the notice of

public hearing has been mailed to each holder of a lease affected. The notice of the public hearing shall be mailed not less than fifteen days prior to the date set for the public hearing and shall be addressed to the address of the lessee shown on the lease or the address of the lessee on record in the state land office. The notice shall specify the day, hour and place of the public hearing and shall also state the purpose for the public hearing.

**History:** 1953 Comp., § 7-15-27, enacted by Laws 1967, ch. 158, § 27.

**Cross references.** — For publication of legal notice, see 14-11-1 NMSA 1978 et seq.

## 19-13-28. Collateral assignment of leases.

Any lease for geothermal resources in good standing, together with improvements placed on the land thereunder, may be assigned as collateral security under the same procedures and in the same manner as provided by law for filing, recording, approval, release and foreclosure of state land purchase contracts issued by the commissioner. When any assignment pursuant to this section has been approved by the commissioner, it shall constitute constructive notice thereof to the world from the date of approval.

**History:** 1953 Comp., § 7-15-28, enacted by Laws 1967, ch. 158, § 28.

**Compiler's notes.** — Sections 19-7-37 to 19-7-47 NMSA 1978 set out the procedures surrounding assignment of state land purchase contracts as collateral.

**Severability.** — Laws 1967, ch. 158, § 29, provided for severability of the Geothermal Resources Act if any part or application thereof is held invalid.

# ARTICLE 14

## Reservation of Rights in Lease or Conveyance of State Lands

Sec.

19-14-1. Commissioner of public lands to reserve certain rights to the state in leases or other conveyances of any mineral interests or rights to minerals in state lands.

19-14-2. Waiver of requirements for reservation of rights in leases or conveyance for specific minerals; procedures for waiver.

Sec.

19-14-3. Disposal of minerals by commissioner of public lands.

### 19-14-1. Commissioner of public lands to reserve certain rights to the state in leases or other conveyances of any mineral interests or rights to minerals in state lands.

In any lease or other conveyance of state lands granting any interest in or rights to minerals of whatsoever kind, including oil and gas, in those lands executed by the commissioner of public lands after the effective date of this section, the following reservation of rights to the state shall be made: "The state has a continuing option to purchase at any time and from time to time, at the market price prevailing in the area on the date of purchase, all or part of any minerals (specify the minerals) that may be produced from the lands covered by this lease (or other conveyance)."

**History:** 1953 Comp., § 7-16-1, enacted by Laws 1973, ch. 26, § 1.

**Cross references.** — For reservation of mineral rights on state lands leased for grazing or agricultural purposes, see 19-7-28 NMSA 1978.

For reservation of geothermal resources in leases, deed or sales contracts of state lands, see 19-13-16 NMSA 1978.



### **19-14-2. Waiver of requirements for reservation of rights in leases or conveyance for specific minerals; procedures for waiver.**

A. The commissioner of public lands may waive by written order the reservation of rights required under Section 1 [19-14-1 NMSA 1978] of this act in respect to any specific mineral, other than fossil fuels, for which there is no significant consumptive use within the state, but such order may be made only:

(1) after written notice is mailed by certified mail at least twenty days before the hearing required by Paragraph (3) of this subsection to the governor;

(2) after notice of the hearing required by Paragraph (3) of this subsection is posted in the same manner as notice of public sale of mineral leases is required to be posted under Section 19-8-33 NMSA 1978;

(3) after a public hearing on the issue of waiver under this subsection has been held by the commissioner of public lands or his designated representative in accordance with procedures adopted by the commissioner of public lands; and

(4) if the commissioner of public lands finds after considering the evidence produced at the hearing that a waiver of the provision would be in the best interests of the trust beneficiaries considering long-range and short-range benefits.

B. A waiver granted under Subsection A of this section shall be limited to a definite period of time not to exceed five years. Waivers may be renewed by the commissioner but only after following the procedure required under Subsection A of this section.

**History:** 1953 Comp., § 7-16-2, enacted by Laws 1973, ch. 26, § 2.

### **19-14-3. Disposal of minerals by commissioner of public lands.**

The commissioner of public lands shall dispose of any minerals reserved under this act [19-14-1 to 19-14-3 NMSA 1978] at the best price available in order to gain the maximum benefit for the trust beneficiaries.

**History:** 1953 Comp., § 7-16-3, enacted by Laws 1973, ch. 26, § 3.

## **ARTICLE 15**

### **Administration of Public Lands**

(Repealed by Laws 1981, ch. 241, § 13.)

### **19-15-1 to 19-15-10. Repealed.**

**Repeals.** — Laws 1981, ch. 241, § 13, repealed 19-15-1 to 19-15-10 NMSA 1978, as enacted by Laws 1980, ch. 153, §§ 1 to 10 and as amended by Laws 1981, ch. 241,

§ 13, relating to administration of public lands, effective July 1, 1990.





# CHAPTER 20

## Military Affairs

### Art.

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## ARTICLE 1

### General Provisions

#### Sec.

- 20-1-1. New Mexico Military Code; regulations.
- 20-1-2. Laws to conform to United States regulations.
- 20-1-3. Armed forces regulations to govern.
- 20-1-4. Governor to be commander-in-chief; enforcement of New Mexico Military Code.
- 20-1-5. Adjutant general; appointment and duties.
- 20-1-6. Payments by state treasurer; certificates of indebtedness.
- 20-1-7. Reference to gender.

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- 20-1-8. State benefits for members of armed forces called to active duty and deployed; benefits for surviving children of a member killed in the line of duty.
- 20-1-8.1. Military deployment; municipal or county services and utilities discontinued.
- 20-1-9. Onate training center complex; morale, welfare and recreation facility; establishment; powers and duties; proceeds; audits.

### 20-1-1. New Mexico Military Code; regulations.

The New Mexico Military Code shall consist of:

A. the constitution of the United States of America, including:

- (1) Article 1, Section 8 (the militia clause);
- (2) Article 2, Section 2 (powers of the president);
- (3) Amendment 2 (right to keep and bear arms);
- (4) Amendment 5 (rights of accused in criminal proceedings); and
- (5) Amendment 10 (powers reserved to states or people);

B. the constitution of New Mexico:

- (1) Article 2, Section 9 (military power subordinate; quartering of soldiers);
- (2) Article 2, Section 14 (indictment and information; grand juries; rights of accused);
- (3) Article 5, Section 4 (governor's executive power; commander of militia);
- (4) Article 9, Section 7 (state indebtedness; purposes); and
- (5) Article 18 (militia); and

C. Chapter 20 NMSA 1978:

The New Mexico Military Code shall be published, maintained and disseminated by the adjutant general. It may be implemented by executive orders or proclamations or by orders, rules or regulations of the adjutant general, consistent with the constitutions and laws of the state and of the United States, so as to achieve its intended effects and purposes. When attested by the

adjutant general as issued by command of the governor, regulations shall have full force and effect upon publication. They are exempt from the requirements of filing of the State Rules Act [Chapter 14, Article 4 NMSA 1978].

**History:** 1978 Comp., § 20-1-1, enacted by Laws 1987, ch. 318, § 1.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-1-1 NMSA 1978, as amended

by Laws 1977, ch. 258, § 10, relating to the office of military affairs, and enacted a new section, effective April 10, 1987.

**Cross references.** — For tuition payments for residents conscripted into military service, see 21-1-4.1 NMSA 1978.

## 20-1-2. Laws to conform to United States regulations.

The intent of the New Mexico Military Code and all laws and regulations of the state affecting the military forces is to reasonably conform to all laws and regulations of the United States affecting the same subjects, except as otherwise expressly provided with respect to military justice.

**History:** 1978 Comp., § 20-1-2, enacted by Laws 1987, ch. 318, § 2.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-1-2 NMSA 1978, as amended by Laws 1977, ch. 258, § 11, relating to the adjutant general as director, and enacted a new section, effective April 10, 1987.

### ANNOTATIONS

**Sovereign immunity barred USERRA claim against the state.** — Article I, Section 8, Clause 11 of the United States Constitution, known as the war powers clause, does not authorize congress to subject the state to private suits for damages in state courts pursuant to the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. §§ 4301 to 4335, absent the state's consent and the legislature has not waived the state's

constitutional immunity to private USERRA suits for damages. *Ramirez v. State ex rel. CYFD*, 2014-NMCA-057, *rev'd* by 2016-NMSC-016.

Where plaintiff, who was a member of the New Mexico national guard, was employed by the department; plaintiff was deployed to Iraq; upon plaintiff's return from active duty, plaintiff was reemployed by the department in plaintiff's previous position; plaintiff's working relations with plaintiff's supervisors deteriorated and plaintiff's employment was terminated; and filed a suit under Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. §§ 4301 to 4335, alleging that the department discriminated against plaintiff and terminated plaintiff because of plaintiff's military service, plaintiff's claim was barred by state sovereign immunity. *Ramirez v. State ex rel. CYFD*, 2014-NMCA-057, *rev'd* by 2016-NMSC-016.

## 20-1-3. Armed forces regulations to govern.

All matters relating to the organization, discipline and government of the military forces, not otherwise provided for in the New Mexico Military Code, shall be decided by the custom, regulations and usage of the armed forces of the United States.

**History:** 1978 Comp., § 20-1-3, enacted by Laws 1987, ch. 318, § 3.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-1-3 NMSA 1978, as enacted by

Laws 1977, ch. 258, § 12, relating to the military division, and enacted a new section, effective April 10, 1987.

## 20-1-4. Governor to be commander-in-chief; enforcement of New Mexico Military Code.

A. The governor shall be the commander-in-chief of the military forces, except so much thereof as may be in the actual service of the United States, and may employ the military forces for the defense or relief of the state, the enforcement of its law and the protection of life and property therein.

B. The adjutant general shall be the commanding general of New Mexico, and the deputy adjutant general shall be the deputy commanding general of New Mexico.

C. Whenever the governor or acting governor is unable to personally perform the duties of commander-in-chief or whenever the governor so directs, the adjutant general or, in the adjutant general's absence, the senior line officer of the national guard present for duty with the troops shall command the military forces.

D. The governor may appoint a staff consisting of the adjutant general and aides-de-camp of field grade or higher who shall be detailed from the national guard or the state defense force. The governor may designate honorarily other persons as colonels aide-de-camp.



E. The governor may, by executive orders, proclamations or regulations not inconsistent with law, enforce all the provisions of the New Mexico Military Code.

**History:** 1978 Comp., § 20-1-4, enacted by Laws 1987, ch. 318, § 4; 2021, ch. 55, § 1.

**Cross references.** — For governor as commander in chief of national guard, see N.M. Const., art. XVIII, § 1.

**The 2021 amendment**, effective June 18, 2021, provided that the adjutant general is the commanding general of New Mexico and that the deputy adjutant general is the deputy commanding general of New Mexico; added a new Subsection B and redesignated former Subsections

B through D as Subsections C through E, respectively; and in Subsection E, added "New Mexico" preceding "Military Code".

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53 Am. Jur. 2d Military, and Civil Defense §§ 3, 32.  
6 C.J.S. Armed Services § 289.

### 20-1-5. Adjutant general; appointment and duties.

In case of a vacancy, the governor shall appoint as the adjutant general of New Mexico for a term of five years an officer who for three years immediately preceding the appointment as the adjutant general of New Mexico has been federally recognized as an officer in the national guard of New Mexico and who during service in the national guard of New Mexico has received federal recognition in the rank of colonel or higher. The adjutant general shall not be removed from office during the term for which appointed, except for cause to be determined by a court-martial or efficiency board legally convened for that purpose in the manner prescribed by the national guard regulations of the United States department of defense. The adjutant general shall have the military grade of major general and shall receive the same pay and allowances as is prescribed by federal law and regulations for members of the active military in the grade of major general, unless a different rate of pay and allowances is specified in the annual appropriations bill. The adjutant general may promulgate rules for the conduct of courts-martial and punishments under the Code of Military Justice [Chapter 20, Article 12 NMSA 1978]. Such procedural rules shall be consistent with and carry into effect the New Mexico Military Code and afford reasonable due process to criminal defendants. The adjutant general shall:

A. prepare and publish, by order of the governor, such orders, rules and regulations, consistent with law, as are necessary to maintain the military forces in a state of efficiency in conformity with the needs of the state and the federal defense requirements;

B. supervise the receipt, preservation, repair, distribution, issue and collection of all arms and military equipment of the state;

C. supervise all personnel, organizations, facilities, equipment, supplies and funds of the military forces;

D. maintain records of all members of the military forces and keep on file in the adjutant general's offices copies of all orders, reports, regulations and communications received and issued by the adjutant general;

E. perform such other duties as may be required by the commander-in-chief; and

F. have a seal of office.

**History:** 1978 Comp., § 20-1-5, enacted by Laws 1987, ch. 318, § 5; 2018, ch. 6, § 1; 2021, ch. 55, § 2.

**The 2021 amendment**, effective June 18, 2021, authorized the adjutant general to promulgate rules for the conduct of courts-martial and punishments under the Code of Military Justice; after "appointment", added "powers"; and added "The adjutant general may promulgate rules for the conduct of courts-martial and punishments under the Code of Military Justice. Such procedural rules shall be consistent with and carry into effect the New Mexico Military Code and afford reasonable due process to criminal defendants".

**The 2018 amendment**, effective July 1, 2018, increased the rank required to be appointed adjutant general; in the introductory paragraph, after "recognition in the rank of", deleted "major" and added "colonel"; and in Subsection D, after "on file in", deleted "his" and added "adjutant general's", and after "issued by", deleted "him" and added "the adjutant general".

#### ANNOTATIONS

**Offices of adjutant general.** — The adjutant general of state holds two offices, one a civil office and the other that of brigadier general (now major general) of the national guard of the state, and when ordered to duty as national guard officer he is entitled to pay in both capacities. 1933-34 Op. Att'y Gen. No. 34-805.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Incompatibility of offices of judge and national guard officer, 26 A.L.R. 142, 132 A.L.R. 254, 147 A.L.R. 1419, 148 A.L.R. 1399, 150 A.L.R. 1444.

Incompatibility of offices or positions in the military, and in the civil service, 132 A.L.R. 254, 147 A.L.R. 1419, 148 A.L.R. 1399, 150 A.L.R. 1444.

6 C.J.S. Armed Services § 291.



## **20-1-6. Payments by state treasurer; certificates of indebtedness.**

A. All compensation of personnel and all the necessary expenses incurred in quartering, housing, caring for, subsisting, protecting, equipping, warning for duty and transporting such officers and members and their equipment, including the purchase or lease of any articles of material, equipment or supplies reasonably required, designed or needed to accomplish the purpose or results desired by the governor or specified in the governor's call for such troops into service of the state, shall be paid by the state. The state treasurer, upon presentation to the state treasurer of vouchers and payrolls for such compensation, expenses, supplies and materials, certified by the officers commanding such forces and approved by the adjutant general, shall pay the vouchers and payrolls out of any money available in the state treasury not otherwise appropriated; provided that the vouchers and payrolls for such service, supplies and materials do not exceed one million dollars (\$1,000,000) in any one fiscal year.

B. If there is no money available in the state treasury that is not otherwise appropriated or if the vouchers and payrolls for such service, material and supplies approach the amount of one million dollars (\$1,000,000) in any one fiscal year, the state treasurer shall certify such facts to the governor who shall inquire into and make an estimate of the total probable cost necessary to be incurred for all purposes in connection with or to accomplish the purpose for which such troops were called into active service. If the governor deems it necessary and prudent in order to provide for the public defense that such expenses be incurred and that it is necessary to create an indebtedness for the purpose of paying the expenses, the governor shall by proclamation declare an emergency to exist requiring the creation of an indebtedness under Article 9, Section 7 of the constitution of New Mexico in order to suppress insurrection or to provide for the public defense. The governor shall order the issuance of certificates of indebtedness in such amount as the governor deems required or necessary to provide funds for the payment of expenses and costs incident to or connected with the emergency.

C. The certificates of indebtedness shall be approved as to form by the attorney general. They shall be dated the day of their issuance and the state board of finance shall by proper resolutions prescribe the denominations of the certificates, the maturity dates thereof, the rate of interest they shall bear payable semiannually, the time and place of payment of both principal and interest and the amount of the certificates that shall be issued from time to time. The certificates shall be signed by the secretary of the state board of finance and the state treasurer and the coupons attached thereto shall have the engraved lithographed facsimile of the signature of the state treasurer thereon; provided, however, that certificates purchased by the state treasurer may be issued without coupons. The certificates shall be sold by the state board of finance from time to time in such amounts as it deems advisable, at not less than par and accrued interest to date of delivery, after advertisement for a period of two weeks immediately prior to the sale in one daily newspaper in the state and in some financial journal in the city and state of New York; provided, however, that the state treasurer may purchase the certificates as an investment of any funds in the state treasurer's hands available for investment and in the event of any such purchase by the state treasurer, no advertisement shall be required. The proceeds of certificates so sold shall be by the state treasurer covered into a fund known as the "adjutant general emergency public defense fund" and shall be expended and disbursed only in the manner and for the purposes specified and provided for in Chapter 20, Article 1 NMSA 1978.

D. A fund to be known as the "adjutant general emergency public defense certificates fund" to provide for the payment of interest and principal on the foregoing certificates is established and, beginning with the tax levy for the year following the issuance of the certificates, a tax shall be levied annually in the same manner as other ad valorem taxes are levied on all taxable property in the state, not to exceed one-half mill on the dollar of valuation, sufficient to produce the amount required to pay interest on the certificates and the principal thereof at maturity, for each year prior to the maturity of the certificates, which taxes when collected shall be credited to the adjutant general emergency public defense certificates fund. The state auditor shall each year prior to August 1 certify to the property tax division of the taxation and revenue department the amount necessary to meet all payments of principal and interest due on the certificates during the year ending June 30 following the date of the certificates.



E. On or before the twentieth legislative day of the next legislative session following the expenditures of the sums provided for in this section, the governor shall file a written report with the presiding officer of each house of the legislature setting forth the purpose and the amounts of money expended as provided in this section.

F. The provisions of this section may be used for the operation of the national guard or the state defense force when on militia duty.

**History:** 1978 Comp., § 20-1-6, enacted by Laws 1987, ch. 318, § 6; 1999, ch. 52, § 1; 2009, ch. 17, § 1.

**Cross references.** — For \$200,000 limitation on state borrowing to meet deficits, see N.M. Const., art. IX, § 7.

**The 2009 amendment**, effective June 19, 2009, in Subsections A and B, increased the funding cap for supplies, materials and supplies from \$250,000 to \$1,000,000.

**The 1999 amendment**, effective March 17, 1999, substituted "two hundred fifty thousand dollars (\$250,000)" for "one hundred thousand dollars (\$100,000)" in the last sentence of Subsection A and in the first sentence of Subsection B, updated a statutory reference at the end of the last sentence of Subsection C, and deleted "foregoing" preceding "provisions" in Subsection F.

### ANNOTATIONS

**Where issuance of certificates mandated.** — State was liable for expense of converting cavalry unit into an anti-aircraft artillery, under order of governor to conform the militia and equipment to the organization and equipment of the regular army of the United States, and issuance of certificates of indebtedness therefor was mandated. *State ex rel. Charlton v. French*, 1940-NMSC-010, 44 N.M. 169, 99 P.2d 715.

**Legislative intent.** — The intent of the legislature in this section is that the governor has been given the discretion to decide what is an emergency, and if he deems it necessary and prudent in order to provide for the public

defense that such expenses be incurred in order to protect the lives or the property of the citizens, he may without issuing a certificate of indebtedness, if funds are available in the general fund, expend additional sums to pay for the maintaining of the militia. 1955-56 Op. Att'y Gen. No. 56-6479.

**Where section does not conflict.** — This section does not interfere with the governor's power to call out the militia and does not conflict with N.M. Const., art. V, § 4. 1951-52 Op. Att'y Gen. No. 51-5438.

**Scope of expenses for transportation.** — If the adjutant general does not have sufficient transportation for the national guard, he may rent trucks for such purpose, since expenses for transportation would include and permit the renting of trucks. It would also include the repair and maintenance of state trucks, provided such repairs were incident to maintenance and not permanent in nature. 1937-38 Op. Att'y Gen. No. 38-1968.

**Where indebtedness less than \$1,000,000.** — Where the indebtedness created is less than \$5000 (now \$1,000,000), it is to be paid out of moneys available in the state treasury not otherwise appropriated, and no certificate is to be issued in such instance unless there are no moneys available in the state treasury not otherwise appropriated. 1953-54 Op. Att'y Gen. No. 54-5986.

**Exceptions to limitation on borrowing.** — Limitation on the state's borrowing to meet casual deficits or failure in revenue, or for necessary expenses, does not apply to debts contracted to suppress insurrection or to provide for the public defense. 1951-52 Op. Att'y Gen. No. 51-5438.

## 20-1-7. Reference to gender.

In Chapter 20 NMSA 1978, the use of the male pronoun shall be construed to include the female equivalent unless specifically stated to the contrary.

**History:** 1978 Comp., § 20-1-7, enacted by Laws 1987, ch. 318, § 7.

## 20-1-8. State benefits for members of armed forces called to active duty and deployed; benefits for surviving children of a member killed in the line of duty.

A. A New Mexico resident who is a member of the New Mexico national guard or of a branch of the federal armed forces and who is called to active duty and is deployed and serves during the period beginning on the effective date of this section and ending on the date the president of the United States declares that the emergency requiring the call-up is terminated is entitled to the following benefits, notwithstanding any provision of law to the contrary:

(1) a free game hunting and fishing license for the year following the year of the member's deactivation and return to the state;

(2) an extension of one year after the return of the member to the state of the date the member is required to file a state personal income tax return if the filing date occurs while the member is on active duty and deployed;

(3) an extension for one month after the member's return to the state of the date to renew a driver's license if the renewal date occurs while the member is on active duty and deployed; and

(4) a refund or credit of tuition paid to a state post-secondary educational institution for attendance during a period when the attendance of the member was interrupted by activation and deployment.

B. The surviving children of a New Mexico resident who was a member of the New Mexico national guard or of a branch of the federal armed forces and who was killed in the line of duty after being called to active duty and deployed during the period beginning on April 3, 2003 and ending on the date the president of the United States declares that the emergency requiring the call-up is terminated are entitled to waivers of tuition for four consecutive years at a state post-secondary educational institution, notwithstanding any provision of law to the contrary.

**History:** Laws 2003, ch. 136, § 1; 2011, ch. 186, § 7.

The 2011 amendment, effective April 1, 2012, eliminated the category of general hunting license.

### **20-1-8.1. Military deployment; municipal or county services and utilities discontinued.**

A. When a resident is a member of a branch of the United States armed forces, the reserves or the New Mexico national guard and is deployed or on temporary duty assignment outside the resident's community for more than thirty days, the resident may suspend some or all municipal or county services, public utilities or telecommunications services provided by persons whose rates are regulated by the municipality, the county or the public regulation commission for the home of the resident without a penalty. The resident shall certify to the municipality, county or other service providers that:

- (1) the resident has orders to deploy or to be temporarily assigned outside the resident's community;
- (2) the service is in the resident's name;
- (3) the resident owns the home or has a lease that does not preclude suspension of municipal or county services or utilities; and
- (4) family members or other persons will not be staying in the home during the time the resident is deployed or temporarily assigned.

B. Upon return from deployment or temporary duty assignment, the resident shall be allowed to reconnect the suspended municipal or county services, public utilities or telecommunications services without having to pay a reconnection fee. Except for new equipment or installation of equipment, the resident may establish new service at a new address without paying a connection fee.

**History:** Laws 2013, ch. 35, § 1 and Laws 2013, ch. 193, § 1.

**Compiler's notes.** — Laws 2013, ch. 35, § 1 and Laws 2013, ch. 193, § 1, both effective June 14, 2013, enacted

identical new sections. The section was set out as enacted by Laws 2013, ch. 193, § 1. See 12-1-8 NMSA 1978.

### **20-1-9. Onate training center complex; morale, welfare and recreation facility; establishment; powers and duties; proceeds; audits.**

A. As used in this section:

- (1) "department" means the department of military affairs; and
- (2) "facilities" means a post exchange, canteen, barber shop, fitness center, snack bar, transient housing, billeting operation, laundry or similar facility, the purpose of which is to enhance the morale and welfare of military personnel.

B. The department may establish "morale, welfare and recreation facilities" at the Onate training center complex in Santa Fe for use by:

- (1) active and reserve component members of the armed forces of the United States;
- (2) persons retired from the armed forces of the United States; and
- (3) state and federal civilian employees assigned to the department.

C. The facilities shall be established in accordance with rules of the federal departments of the army and air force and the national guard governing nonappropriated fund morale, welfare and





## 20-2-2. Militia composition.

The militia is composed of the organized and the unorganized militia.

A. The organized militia is the national guard and the standing cadre of the state defense force and such parts of the unorganized militia when and as may be activated, enrolled or enlisted into the national guard or into the state defense force.

B. The unorganized militia is comprised of all able-bodied male citizens of the state and all other able-bodied males who have or shall have declared their intentions to become citizens of the United States and are residents of the state who are not less than eighteen or more than forty-five years of age, but who shall not be more than sixty-four years of age if they shall have earlier served in or retired from the national guard; subject to the following exceptions:

- (1) persons exempted by the laws of the United States from federal military service;
- (2) persons who are engaged in civilian occupations which are deemed by the governor to be of greater public service or necessity than would be their service in the militia if called into active service of the state;
- (3) persons who have received dismissal, a dishonorable discharge, a bad conduct discharge, an undesirable discharge or a discharge under other than honorable conditions from any military component; and
- (4) persons in active federal military service or retired military members subject to federal recall to active military service.

C. The adjutant general may prescribe plans by regulation for the orderly activating and detailing of the unorganized militia and its members, to include mission analysis and personnel classification. Enrollment or enlistment of members of the unorganized militia may be into the national guard, subject to federal criteria, or into the state defense force, as determined by the governor.

D. The governor may authorize the voluntary appointment or voluntary enlistment of female citizens of the state into any military occupational specialty or career field of the branches and services of the organized militia that is consistent with current federal department of defense policy and while so serving they shall have the same status as male members.

**History:** 1978 Comp., § 20-2-2, enacted by Laws 1987, ch. 318, § 9; 2017, ch. 43, § 1.

**Repeals and reenactments.** — Laws' 1987, Chapter 318 repealed former 20-2-2 NMSA 1978, as enacted by Laws 1925, ch. 113, § 2, and enacted a new section, effective April 10, 1987.

**The 2017 amendment,** effective June 16, 2017, authorized women to serve in any position of the organized militia; and in Subsection D, after "female citizens of the state into", deleted "the noncombat" and added "any military occupational specialty or career field of the", and after "services of the organized militia", added "that is consistent with current federal department of defense policy".

### ANNOTATIONS

**Legislative intent.** — The constitution makers did not say that the legislature should organize the militia, but mandated them to provide for the organization of the militia, and the legislature, by this chapter (Laws 1925, ch. 113), has declared its legislative policy of establishing a militia. *State ex rel. Charlton v. French*, 1940-NMSC-010, 44 N.M. 169, 99 P.2d 715.

**Enlistment generally.** — A voluntary enlistment is a contractual relationship between the person enlisting and the state. It is a contract which, in effect, changes the status of the party enlisting. 1955-56 Op. Att'y Gen. No. 55-6315.

**When guard part of United States armed forces.** — New Mexico national guard is included as a part of the armed forces of the United States only during a period of federal service. 1959-60 Op. Att'y Gen. No. 59-18.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53 Am. Jur. 2d Military, and Civil Defense §§ 3, 7, 29 et seq., 40, 64, 70.

Military service as basis of discrimination as to taxation or licenses, 83 A.L.R. 1231.

Selective training and service acts, 129 A.L.R. 1171, 147 A.L.R. 1313, 148 A.L.R. 1388, 149 A.L.R. 1457, 150 A.L.R. 1420, 151 A.L.R. 1456, 152 A.L.R. 1452, 153 A.L.R. 1422, 154 A.L.R. 1448, 155 A.L.R. 1452, 156 A.L.R. 1450, 157 A.L.R. 1450, 158 A.L.R. 1450.

Soldiers' and sailors' relief acts, 130 A.L.R. 774, 147 A.L.R. 1366, 148 A.L.R. 1395, 149 A.L.R. 1463, 150 A.L.R. 1428, 151 A.L.R. 1460, 152 A.L.R. 1457, 153 A.L.R. 1429, 154 A.L.R. 1455, 155 A.L.R. 1456, 156 A.L.R. 1455, 157 A.L.R. 1454, 158 A.L.R. 1456.

Injury or damage to person or property as result of "black-out," liability for, 136 A.L.R. 1327, 147 A.L.R. 1442, 148 A.L.R. 1401, 150 A.L.R. 1448, 153 A.L.R. 1433, 154 A.L.R. 1459, 155 A.L.R. 1458, 158 A.L.R. 1463.

Minors, enlistment or mustering of, 137 A.L.R. 1467, 147 A.L.R. 1311, 151 A.L.R. 1455, 153 A.L.R. 1420, 155 A.L.R. 1451, 157 A.L.R. 1449.

Civil and criminal liability of soldiers, sailors, and militiamen, 141 A.L.R. 1526.

Validity of governmental requirement of oath of allegiance or loyalty, 18 A.L.R.2d 268.

Construction and effect of soldiers' bonus laws, 22 A.L.R.2d 1134.

Privacy, right of privacy of military personnel, 57 A.L.R.3d 16.

6 C.J.S. Armed Services § 288 et seq.



### 20-2-3. Governor; power to call out militia.

A. The governor may, in case of insurrection, invasion, riot or breach of the peace or of imminent danger thereof or in case of other emergency, order into active service of the state the militia or any components or parts thereof that have not been called into federal service. As used in this section, "emergency" includes any man-made or natural disaster causing or threatening widespread physical or economic harm that is beyond local control and requiring the resources of the state.

B. The governor may also order any member of the national guard to active state service for a period not to exceed a cumulative total of four months within a calendar year for any individual member for the following reasons:

- (1) to protect critical infrastructure in the state from a cybersecurity threat or security vulnerability;
- (2) to protect an information system owned or operated by the state from a cybersecurity threat or security vulnerability;
- (3) to protect information that is stored on, processed by or transiting on an information system owned or operated by the state from a cybersecurity threat or security vulnerability; or
- (4) to identify the source of a cybersecurity threat.

C. A member of the national guard called to active service pursuant to the provisions of Subsection B of this section shall not have any police powers or arrest authority. "Subsection B of Section 20-2-3 NMSA 1978" shall be cited on all orders, vouchers and payroll documents submitted for reimbursement pursuant to Section 20-1-6 NMSA 1978 in support of all actions authorized by Subsection B of this section. In no case shall an activation ordered pursuant to Subsection B of this section be used to incur a debt under Article 9, Section 7 of the constitution of New Mexico.

D. In case of any breach of the peace, tumult, riot or resistance to process of this state or imminent danger thereof, the sheriff of a county may call for aid from the governor as commander-in-chief of the national guard. If it appears to the governor that the power of the county is insufficient to enable the sheriff to preserve the peace and protect the lives and property of the peaceful residents of the county or to overcome the resistance to process of this state, the governor shall, on application of the sheriff, order out such military force as is necessary.

E. When any portion of the militia is called out for the purpose of suppressing an unlawful or riotous assembly, the commander of the troops shall cooperate with the civil officers to the fullest extent consistent with the accomplishment of the object for which the troops were called. The civil officials may express to the commander of the troops the general or specific objective that the civil officials desire to accomplish, but the tactical direction of the troops, the kind and extent of force to be used and the particular means to be employed to accomplish the object specified by the civil officers shall be left solely to the commander of the troops present on duty.

F. When any portion of the militia is ordered into active service pursuant to this section in case of an emergency, the militia may provide those resources and services necessary to avoid or minimize economic or physical harm until a situation becomes stabilized and again under local self-support and control, including the provision, on a temporary, emergency basis, for lodging, sheltering, health care, food and any transportation or shipping necessary to protect lives or public property; or for any other action necessary to protect the public health, safety and welfare.

G. In the event of the exercise by the governor of the powers under this section, the governor shall first utilize the personnel and assets of the national guard and only in their absence or insufficiency utilize the personnel and assets of the state defense force.

**History:** 1978 Comp., § 20-2-3, enacted by Laws 1987, ch. 318, § 10; 1999, ch. 140, § 3; 2017, ch. 93, § 1.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-2-3 NMSA 1978, as enacted by Laws 1943, ch. 29, § 1, relating to the definition of militia, and enacted a new section, effective April 10, 1987.

**Cross references.** — For constitutional power of governor to call out militia, see N.M. Const., art. V, § 4.

**The 2017 amendment,** effective April 6, 2017, authorized the activation of the national guard in the case of

cybersecurity threats, placed limits on the authority exercised pursuant to such activation, and prohibited the incurrence of debt for such activations; added new Subsections B and C, and redesignated the succeeding subsections accordingly; and in Subsection F, after "health care, food", added "and".

**The 1999 amendment,** effective June 18, 1999, added the last sentence in Subsection A, added Subsection D, redesignated former Subsection D as Subsection E and made minor stylistic changes.



### ANNOTATIONS

**Generally.** — When acting within the power vested in him by N.M. Const., art. V, § 4 and this section, the governor may order into active service the militia of the state and may direct locality of operations. He is made the sole judge of the facts that may seem to demand the assistance of the military forces of the state. The presumption of course is that he will not exercise this power unless it becomes necessary. To his good judgment and sound discretion, the law has left the final decision as to whether the military arm of the state shall be ordered into active service. There is no power in the courts to control or restrain his acts. *State ex rel. Charlton v. French*, 1940-NMSC-010, 44 N.M. 169, 99 P.2d 715.

**Effects of using militia.** — Where the governor of the state, seeking to quell insurrection, calls out the militia by executive process and puts them in charge, such military forces do not act as sheriffs or deputy sheriffs, but their power supersedes the civil authorities; the courts may not, under writs of habeas corpus, interfere with their arrests made during insurrection. *State ex rel. Roberts v. Swope*, 1933-NMSC-097, 38 N.M. 53, 28 P.2d 4.

**Quartering of men and equipment.** — Governor may expend money to quarter men and equipment of national guard, although men and equipment are not engaged in active duty. *State ex rel. Charlton v. French*, 1940-NMSC-010, 44 N.M. 169, 99 P.2d 715.

**Converting and quartering of cavalry.** — Governor may convert cavalry into a mechanized unit in an emergency to provide better for the public defense, and may order armories altered to quarter same. *State ex rel. Charlton v. French*, 1940-NMSC-010, 44 N.M. 169, 99 P.2d 715.

**Enlistment generally.** — A voluntary enlistment is a contractual relationship between the person enlisting and the state. It is a contract which, in effect, changes the status of the party enlisting. 1955-56 Op. Att'y Gen. No. 55-6315.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53 Am. Jur. 2d Military, and Civil Defense §§ 3, 32.

Constitutionality of statute providing for payments to public officers or employees who enter military service of the United States or their dependents, 145 A.L.R. 1156.

Workmen's compensation: person in military or naval service, 150 A.L.R. 1456.

6 C.J.S. Armed Services § 295.

## 20-2-4. Governor; proclamation of a state of insurrection.

Whenever any portion of the militia is in active service of the state in aid of civil authority, the governor, if in his judgment the maintenance of law and order will thereby be promoted, may by proclamation declare a specified area in which the troops are serving to be in a state of insurrection and may declare martial law therein.

**History:** 1978 Comp., § 20-2-4, enacted by Laws 1987, ch. 318, § 11.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-2-4 NMSA 1978, as enacted by Laws 1925, ch. 113, § 3, relating to the classification of militia, and enacted a new section, effective April 10, 1987.

**Cross references.** — For constitutional power of governor to call out militia, see N.M. Const., art. V, § 4.

### ANNOTATIONS

**Declaration conclusive.** — The governor need not set out in his proclamation why martial law is declared

and his declaration is conclusive. 1943-44 Op. Att'y Gen. No. 43-4252.

**Effects of using militia.** — Where the governor of the state, seeking to quell insurrection, calls out the militia by executive process and puts them in charge, such military forces do not act as sheriffs or deputy sheriffs, but their power supersedes the civil authorities; the courts may not, under writs of habeas corpus, interfere with their arrests made during insurrection. *State ex rel. Roberts v. Swope*, 1933-NMSC-097, 38 N.M. 53, 28 P.2d 4.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53 Am. Jur. 2d Military, and Civil Defense §§ 3, 32.

## 20-2-5. Fresh pursuit.

A. In case the United States is at war or in case of any other emergency declared by the president or the congress of the United States or by the governor or the legislature of this state, any organization, unit or detachment of the military forces of this state by direction of the governor and upon order of the officer in immediate command thereof may continue in fresh pursuit of insurrectionists, saboteurs, perpetrators of felony, enemies or enemy forces beyond the borders of this state into another state of the United States until they are apprehended or captured by such organization, unit or detachment or until the military or police forces of such other state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture the persons pursued, provided such other state shall have given authority by law for such pursuit by such forces of this state. Except as otherwise provided by law, any person who shall be apprehended or captured in another state of the United States by any of the forces of this state shall without unnecessary delay be surrendered to the military or police forces of the state in which he is taken or to the United States, but such surrender shall not constitute a waiver by this state of its right to extradite or prosecute such person for any crime committed in this state.

B. Military forces of other states of the United States may enter this state. Any military forces of another state of the United States who are in fresh pursuit of insurrectionists, saboteurs,



perpetrators of felony, enemies or enemy forces may continue such pursuit into this state until the military or police forces of this state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture the persons pursued and the pursuing forces may arrest or capture such persons within this state while in fresh pursuit. Any such person who shall be captured or arrested by the military forces of such other state while in this state shall without unnecessary delay be surrendered to the military or police forces of this state to be dealt with according to law.

C. This section shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful or to repeal or prevent the application of any of the provisions of the Uniform Act on Fresh Pursuit [31-2-1 to 31-2-7 NMSA 1978].

**History:** 1978 Comp., § 20-2-5, enacted by Laws 1987, ch. 318, § 12.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-2-5 NMSA 1978, as enacted

by Laws 1925, ch. 113, § 4, relating to proclamation of insurrection, and enacted a new section, effective April 10, 1987.

## 20-2-6. Governor; call for federal or state service; powers.

A. When the national guard or a part thereof is called or ordered into active federal service under the constitution and laws of the United States and the numbers or composition of the national guard forces are insufficient to meet such call or order, the governor may order out and cause through the adjutant general to be enrolled into the organized militia such persons as may be required and expected to reasonably meet the federal call or order.

B. The governor may order out the organized militia when:

- (1) the national guard or any significant portion thereof is called or ordered into active federal service and the remaining national guard forces are insufficient for the needs of the state; or
  - (2) the governor deems it necessary to meet a major disaster, experienced or anticipated.
- The governor is authorized to call into active state service the state defense force or any portion thereof as may be necessary for the protection and well being of the state. If the numbers or composition of the state defense force is inadequate to meet the need, the governor may call out and cause through the adjutant general to be enrolled from the unorganized militia such persons as are required to bring the organized militia up to strength.

**History:** 1978 Comp., § 20-2-6, enacted by Laws 1987, ch. 318, § 13; 2021, ch. 55, § 3.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-2-6 NMSA 1978, as enacted by Laws 1925, ch. 113, § 5, and enacted a new section, effective April 10, 1987.

**The 2021 amendment,** effective June 18, 2021, authorized the governor to order out the organized militia, which may be formed when the numbers or composition of the national guard forces are insufficient, when the governor deems it necessary, and removed a provision that

authorized the governor to call out the organized militia when the total strength or composition of the national guard is deemed by the governor to be insufficient; and in Subsection B, Paragraph B(2), after the first occurrence of "the", deleted "total strength or composition of the national guard within the state is deemed by the governor to be insufficient" and added "governor deems it necessary".

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 6 C.J.S. Armed Services § 295.

## 20-2-7. Miscellaneous provisions.

A. The composition, uniform, equipment and location of all units of the militia shall be prescribed by the governor consistent with the laws and regulations of the United States.

B. The designation of organizations of the national guard shall not be given to any new organization during their absence from the state.

**History:** 1978 Comp., § 20-2-7, enacted by Laws 1987, ch. 318, § 14.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-2-7 NMSA 1978, as enacted by Laws 1925, ch. 113, § 6, relating to oaths, and enacted a new section, effective April 10, 1987.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 6 C.J.S. Armed Services § 288 et seq.

## 20-2-8. Honorary promotion upon retirement.

Members of the organized militia may be promoted by the governor to the next higher grade on the occasion of their retirement from service under the following conditions:

A. that the member has honorably served either a total of thirty years in the federal military or organized militia combined or a minimum of twenty years in the organized militia, provided that no period of less than ten years in the state defense force shall be credited toward either of these requirements; and

B. that the honorary promotion be requested by the member and be favorably recommended by the adjutant general.

**History:** 1978 Comp., § 20-2-8, enacted by Laws 1987, ch. 318, § 15.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-2-8 NMSA 1978, as enacted by

Laws 1925, ch. 113, § 7, relating to enrolling officers, and enacted a new section, effective April 10, 1987.

## 20-2-9 to 20-2-18. Repealed.

**Repeals.** — Laws 1987, ch. 318, § 98A repealed 20-2-9 to 20-2-18 NMSA 1978, as enacted by Laws 1925, ch. 113, §§ 8 to 20, relating to assignment of county quotas,

appointment of officers, draft, reports, call-up for federal service, process and service, and composition and location of units, effective April 10, 1987.

# ARTICLE 3

## Department of Military Affairs

Sec.

20-3-1. Department of military affairs [created].

20-3-2. Department structure; authority of adjutant general.

Sec.

20-3-3 to 20-3-10. Repealed.

## 20-3-1. Department of military affairs [created].

There is created the "department of military affairs" which shall act on behalf of the governor to exercise organizational, operational and administrative command and control of the military forces of the state and to direct and coordinate the functions, efforts and activities of the civil air patrol division for the well being of the state.

**History:** 1978 Comp., § 20-3-1, enacted by Laws 1987, ch. 318, § 16; 1989, ch. 204, § 20; 1989, ch. 337, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-3-1 NMSA 1978, as enacted by Laws 1925, ch. 113, § 21, relating to the commander-in-chief, and enacted a new section, effective April 10, 1987.

**Cross references.** — For the Military Affairs Act, see 9-9-1 NMSA 1978 et seq.

**The 1989 amendment,** effective June 16, 1989, deleted "civil emergency preparedness division and the" preceding "civil air patrol division".

Laws 1989, ch. 204, § 20, effective July 1, 1989, and Laws 1989, ch. 337, § 1, effective June 16, 1989, enacted identical amendments to this section. The section was set out as amended by Laws 1989, ch. 337, § 1. See 12-1-8 NMSA 1978.

## 20-3-2. Department structure; authority of adjutant general.

A. The department of military affairs consists of:

- (1) the office of the adjutant general;
- (2) three subordinate military divisions:
  - (a) the army national guard division;
  - (b) the air national guard division; and
  - (c) the state defense force division; and
- (3) five subordinate civil divisions:
  - (a) the selective service office;



- (b) the state armory board;
- (c) the civil air patrol division;
- (d) the state programs division; and

(e) the United States property and fiscal office and such other agencies, administrative staffs and clerical staffs necessary for departmental operation that the adjutant general may by regulation prescribe.

B. The adjutant general is the military chief of staff to the governor and is the head of the department of military affairs.

C. The adjutant general shall prescribe policies, rules and procedures for the orderly functioning of the department of military affairs, which may include subordinate organizational structures and lines of authority.

D. The adjutant general may employ such administrative, technical, clerical and other personnel as the adjutant general deems necessary and may fix the compensation of exempt personnel subject to the concurrence of the department of finance and administration.

E. The adjutant general may make expenditures from appropriations or from other funds available to the adjutant general for all purposes within Chapter 20 NMSA 1978.

F. The adjutant general is authorized to accept through the United States property and fiscal officer such equipment, supplies, arms, facilities and personnel support funding as may be authorized and appropriated by federal law.

G. The adjutant general shall be furnished suitable buildings, facilities, supplies and equipment for conducting the business of the department of military affairs to include the proper storage, repair and issuance of military property.

H. The adjutant general may appoint as assistant adjutants general one officer from each of the three military divisions in the department of military affairs. The officers appointed shall hold the rank of brigadier general during such appointment. The qualifications of each person so appointed shall meet the specific standards required for such appointment within Chapter 20 NMSA 1978 and any applicable federal standards or requirements. Once appointed, the assistant adjutants general shall serve at the pleasure of the adjutant general; their performance will be reviewed annually, in January, by the adjutant general; and if relieved, an assistant adjutant general shall revert to the rank previously held or to such higher rank to which promoted and federally recognized while serving as assistant adjutant general. The adjutant general may designate one federally recognized assistant adjutant general as deputy adjutant general. The deputy adjutant general shall serve on full-time active status for the state. In the incapacity or absence from the state of the adjutant general, the deputy adjutant general shall act in the adjutant general's stead. In the incapacity or absence from the state of both the adjutant general and the deputy adjutant general, the governor may call any assistant adjutant general to active service for the state. The assistant adjutants general shall perform all duties that may be required of them by the adjutant general. The adjutant general may delegate in writing to any of the assistant adjutants general such authorities and responsibilities as the adjutant general deems appropriate, consistent with the constitutions, laws and regulations of the state and of the United States. Assistant adjutants general, when on active status for the state, shall receive the same pay and allowances as are prescribed by federal law and regulations for members of the active military in the grade of brigadier general, unless a different rate of pay and allowances are specified in a general appropriation act of the New Mexico legislature.

I. The adjutant general shall appoint individuals to serve as directors of the five subordinate civil divisions, except as stated in Section 20-9-1 NMSA 1978. The qualifications of each person so appointed shall meet the specific standards required for such appointment within Chapter 20 NMSA 1978 and any applicable federal standards or requirements.

J. There shall be allowed to the adjutant general a contingent and entertainment fund of two thousand five hundred dollars (\$2,500) annually, plus such additional appropriations for carrying out the functions of the office as the legislature shall deem proper.

**History:** 1978 Comp., § 20-3-2, enacted by Laws 1987, ch. 318, § 17; 2018, ch. 6, § 2; 2021, ch. 55, § 4.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-3-2 NMSA 1978, as enacted by

Laws 1961, ch. 198, § 3, relating to staff officers and aides-de-camp, and enacted a new section, effective April 10, 1987.

**The 2021 amendment**, effective June 18, 2021, revised the composition of the department of military affairs; in Subsection A, deleted former Paragraph A(3), which stated "one subordinate civil division, the civil air patrol division", and redesignated former Paragraph A(4) as Paragraph A(3), in Paragraph A(3), changed "four" to "five", and after "subordinate", deleted "support agencies" and added "civil divisions", added a new Subparagraph A(3)(c) and redesignated former Subparagraphs A(3)(c) and A(3)(d) as Subparagraphs A(3)(d) and A(3)(e), respectively, and in Subparagraph A(3)(d), after "state programs", deleted "office" and added "division"; and in Subsection I, after "directors of the", deleted "one civil

division and as head of each of the four support agencies" and added "five subordinate civil divisions".

**The 2018 amendment**, effective July 1, 2018, removed the position of vice-deputy adjutant general, authorized the governor to call any assistant adjutant general to active service for the state, changed "he" and "him" to "the adjutant general" throughout, and made technical revisions; at the end of Paragraph A(3), added "and"; in Subsection H, after the first occurrence of "deputy adjutant general", deleted "and another federally recognized assistant adjutant general as vice-deputy adjutant general", and after "the governor may call", deleted "the vice-deputy" and added "any assistant"; and in Subsection J, after "entertainment fund of", deleted "twenty-five hundred dollars (\$2,500)" and added "two thousand five hundred dollars (\$2,500)".

## 20-3-3 to 20-3-10. Repealed.

**Repeals.** — Laws 1987, ch. 318, § 98A repealed 20-3-3 to 20-3-10 NMSA 1978, as enacted by Laws 1925, ch. 113, §§ 18, 23, 25, 26, 38 and Laws 1961, ch. 198, §§ 7 and 8,

relating to salaries, officers, promotions, retirement and call to active duty, effective April 10, 1987.

# ARTICLE 4

## National Guard

Sec.

- 20-4-1. Standards for appointment, promotion, termination.
- 20-4-2. Administration of oaths.
- 20-4-3. Pay and allowances.
- 20-4-4. Members not liable for acts in performance of duty.
- 20-4-5. Workmen's compensation.
- 20-4-6. Discrimination prohibited; penalty.
- 20-4-7. Military leave for national guard and reserves.
- 20-4-7.1. Servicemembers Civil Relief Act benefits; Uniformed Services Employment and Reemployment Rights Act; federal or state active duty.

20-4-7.2. Legislative findings and purpose.

Sec.

- 20-4-7.3. Service members' life insurance reimbursement fund created; purpose; appropriation.
- 20-4-8. Exemptions; jury duty and civil process; equipment.
- 20-4-9. Members of the national guard, state hiring preference.
- 20-4-10. Members of the national guard considered state employees.
- 20-4-11. Survivors' benefit; tuition payment.
- 20-4-12. Repealed.
- 20-4-13. National guard scholarship fund.
- 20-4-14. Resident tuition.

## 20-4-1. Standards for appointment, promotion, termination.

A. The standards for commissioning, warranting, enlisting; for promotion and demotion in grade or rank; and for assignment, transfer, discharge and retirement of members of the national guard shall be established by regulations promulgated by the adjutant general. Such regulations shall substantially conform these requirements to the laws and regulations of the United States relating to the national guard of the United States.

B. The regulations concerning discharge shall include a provision that a commissioned or warrant officer can be discharged only:

- (1) upon removal of federal recognition by the national guard bureau;
- (2) upon transfer by request of the officer to another military reserve component of the United States;
- (3) upon resignation duly accepted by the governor;
- (4) for absence without leave for more than ninety days;
- (5) upon recommendation of a federal recognition board or other state efficiency board approved by the governor; or
- (6) after a court-martial imposing a sentence of dismissal, if the sentence of dismissal is approved by the governor.

C. Discharge certificates shall reflect the character of the member's service. They shall conform as closely as practicable to discharge certificates of the United States military forces.



**History:** 1978 Comp., § 20-4-1, enacted by Laws 1987, ch. 318, § 18.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-4-1 NMSA 1978, as enacted by Laws 1961, ch. 198, § 11, relating to accountability for money and property, and enacted a new section, effective April 10, 1987.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — What circumstances constitute laches barring federal judicial review of allegedly wrongful discharge from military service, 100 A.L.R. Fed. 821.

## 20-4-2. Administration of oaths.

All commissioned and warrant officers of the national guard and of the active and reserve military forces of the United States are hereby authorized and empowered to administer oaths and affirmations when directed by proper authority in all matters pertaining to and concerning the national guard, including the administration of oaths and affirmations in the enlistment of soldiers therefor.

**History:** 1978 Comp., § 20-4-2, enacted by Laws 1987, ch. 318, § 19.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-4-2 NMSA 1978, as enacted by Laws 1961, ch. 198, § 12, relating to organization funds, and enacted a new section, effective April 10, 1987.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53 Am. Jur. 2d Military, and Civil Defense § 7.

Validity of governmental requirement of oath of allegiance or loyalty, 18 A.L.R.2d 268.

6 C.J.S. Armed Services § 290.

## 20-4-3. Pay and allowances.

A. Members of the national guard, when on state-ordered duty for any period, shall receive the same basic pay and allowances as are prescribed by federal laws and regulations for members of the national guard on active federal service of like grade and length of service. Notwithstanding the provisions of this subsection, enlisted members of the national guard in the pay grades of E1 through E5, when on state-ordered duty for any period, shall receive not less than the minimum daily rate of pay received by a pay grade of E6 on active military service in the armed forces of the United States.

B. Members of the national guard who are on full-time active status for the state as adjutant general or as members of his staff may enter upon periods of active duty for training in the armed forces of the United States without loss of state pay, seniority or other employment benefits, when such active duty for training has been approved by the governor as commander-in-chief.

**History:** 1978 Comp., § 20-4-3, enacted by Laws 1987, ch. 318, § 20; 2001, ch. 268, § 1; 2001, ch. 271, § 1.

**The 2001 amendment,** effective July 1, 2001, inserted the last sentence of Subsection A:

Laws 2001, ch. 268, § 1 and Laws 2001, ch. 271, § 1, both effective July 1, 2001, enacted identical amendments to this section. The section was set out as amended by Laws 2001, ch. 271, § 1. See 12-1-8 NMSA 1978.

#### ANNOTATIONS

**Scope of state's power for public defense.** — The state's power to provide for the public defense embraces

consideration of preparedness as well as execution, and the governor may authorize money to equip and quarter the national guard. *State ex rel. Charlton v. French*, 1940-NMSC-010, 44 N.M. 169, 99 P.2d 715.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53 Am. Jur. 2d Military, and Civil Defense § 169 et seq.

Constitutionality of statute providing for payments to public officers or employees who enter military service of the United States or their dependents, 145 A.L.R. 1156.

Workmen's compensation: person in military or naval service, 150 A.L.R. 1456.

6 C.J.S. Armed Services § 293.

## 20-4-4. Members not liable for acts in performance of duty.

Whenever a member of the national guard is on state-ordered active duty or while on other state duty reasonably requested by competent military authority, he shall not incur personal civil liability for acts performed in the line of the duty, and the state shall defend and indemnify against any such claims as are brought, and the state shall be substituted as a party defendant for the member.

**History:** 1978 Comp., § 20-4-4, enacted by Laws 1987, ch. 318, § 21.

## 20-4-5. Workmen's compensation.

Whenever a member of the national guard is on state-ordered duty or while on other state duty reasonably requested by competent military authority or while traveling directly to or from said duty, he is a workman under the Workmen's Compensation Act and the department of military affairs is his employer. The average weekly wage of a member of the national guard shall be computed as seven times the daily pay and allowances and the value of rations and quarters supplied him while on state duty.

**History:** 1978 Comp., § 20-4-5, enacted by Laws 1987, ch. 318, § 22.

**Compiler's notes.** — Laws 1987, ch. 235, § 1 amended 52-1-1 NMSA 1978, formerly the short title of the Workmen's Compensation Act, to read: "Chapter 52, Article 1 NMSA 1978 shall be known and may be cited as the 'Workers' Compensation Act'".

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53 Am. Jur. 2d Military, and Civil Defense § 169 et seq.

**Workmen's compensation:** person in military or naval service, 150 A.L.R. 1456.

6 C.J.S. Armed Services § 293.

## 20-4-6. Discrimination prohibited; penalty.

No employer or agent thereof shall refuse to hire or penalize or discharge from employment any person because of membership in the national guard or prevent the member from performing any military service he may be called upon to perform by proper authority. Willful violation of this section shall be a misdemeanor.

**History:** 1978 Comp., § 20-4-6, enacted by Laws 1987, ch. 318, § 23.

**Cross references.** — For penalty provision, see 20-11-6 NMSA 1978.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity and construction of state statutes requiring employers to compensate employees for absences occasioned by military service, 8 A.L.R.4th 704.

## 20-4-7. Military leave for national guard and reserves.

All state, county, municipal, school district and other public employees who are members of organized units of the army or air national guard or army, air force, navy, marine or coast guard reserves shall be given not to exceed fifteen working days' military leave with pay per federal fiscal year when they are ordered to duty for training, such leave to be in addition to other leave or vacation time with pay to which such employees are otherwise entitled. The governor may grant any member of the national guard or reserves who is a state employee additional military leave with pay in excess of that allowed above, not to exceed fifteen working days per federal fiscal year, for periods of active duty for training when he deems that such training will benefit the state by enabling that employee to better perform the duties required in his state occupation.

**History:** 1978 Comp., § 20-4-7, enacted by Laws 1987, ch. 318, § 24.

**Temporary provisions.** — Laws 1992, ch. 7, §§ 1 and 2, effective May 20, 1992, recognized the service of school district employees called to active duty by the New Mexico national guard or the United States armed forces reserves to serve in the Persian Gulf War and provided for employment compensation for those who served.

### ANNOTATIONS

**Legislative objective.** — The legislative objective in enacting this section was to insure that public employees who were members of organized military reserve units should not be deprived of the annual leave to which they were otherwise entitled, by reason of their absence under orders on military training. 1957-58 Op. Att'y Gen. No. 58-173.

**Employee members of organized units eligible.** — All state, county and municipal employees who are members of organized units are eligible for the additional

military leave provided in this section. 1953-54 Op. Att'y Gen. No. 53-5762.

**Effect on employees of conservancy district.** — Employees of a conservancy district are entitled to up to 15 days military leave and pay each year. 1959-60 Op. Att'y Gen. No. 59-54.

**On permanent employees.** — Regardless of the duration of employment, permanent employees are entitled to such military leave with pay. 1959-60 Op. Att'y Gen. No. 60-196.

**No restriction is placed upon the time of service** rendered by permanent employees before this leave accrues. 1959-60 Op. Att'y Gen. No. 60-196.

**Temporary employees not eligible.** — A temporary employee of the state is not entitled to military training leave provided by statute. 1957-58 Op. Att'y Gen. No. 58-173.

**Pay entitled to.** — A permanent employee is entitled to pay for his active military duty in addition to that for his vacation. 1959-60 Op. Att'y Gen. No. 60-196.



**Full salary required.** — This section requires that the governmental unit pay the full salary to the employee regardless of the amount of money drawn by him while on active military duty. Thus, it would be illegal for a governmental unit to pay an employee only the difference between his military pay and the top limits of pay which he

regularly draws from the military unit. 1953-54 Op. Att'y Gen. No. 53-5762.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity and construction of state statutes requiring employers to compensate employees for absences occasioned by military service, 8 A.L.R.4th 704.

## 20-4-7.1. Servicemembers Civil Relief Act benefits; Uniformed Services Employment and Reemployment Rights Act; federal or state active duty.

A. The rights, benefits and protections of the federal Servicemembers Civil Relief Act shall apply to a member of the national guard of this state or any other state or territory of the United States ordered to state active duty for a period of thirty or more consecutive state duty days or to any federally funded duty performed in an operational role for homeland security in accordance with 32 U.S.C. 502. The federally funded duty is in addition to and different from any federally funded unit training, assembly or drill pursuant to Section 20-4-7 NMSA 1978.

B. The rights, benefits and protections of the federal Uniformed Services Employment and Reemployment Rights Act of 1994 shall apply to a member of the national guard of this state or any other state or territory of the United States ordered to federal or state active duty.

**History:** Laws 2004, ch. 37, § 1; 2017, ch. 26, § 1.

**Cross references.** — For the federal Servicemembers Civil Relief Act, see 50 U.S.C. App. §571.

For the federal Uniformed Services Employment and Reemployment Rights Act, see 38 U.S.C. § 4301 et seq.

**The 2017 amendment,** effective July 1, 2017, extended the benefits of both the Servicemembers Civil Relief Act and the Uniformed Services Employment and Reemployment Rights Act to members of the national guard in this state or any other state or territory of the United States, and removed the requirement of thirty or more consecutive days of service to qualify for the Uniformed Services Employment and Reemployment Rights Act, and changed "Servicemembers" to "Servicemembers"; in Subsections A and B, added "of this state or any other state or territory of the United States"; and in Subsection B, after "state active duty", deleted "for a period of thirty or more consecutive days".

### ANNOTATIONS

**The New Mexico legislature has waived sovereign immunity with respect to federal USERRA claims against the state.** — The legislature may waive New Mexico's immunity to federal causes of action that congress creates through the exercise of its Article I powers. By enacting 20-4-7.1 NMSA 1978, the legislature clearly and unambiguously indicated its intent to make state entities amenable to suits asserting claims under the federal Uniformed Services Employment and Reemployment Rights Act in state courts. *Ramirez v. CYFD*, 2016-NMSC-016, *rev'd* 2014-NMCA-057, 326 P.3d 474.

Where plaintiff was terminated from a state agency after resuming employment with the state agency following a deployment to Iraq with the New Mexico national guard, plaintiff was not barred by state sovereign

immunity from bringing a suit against the state under the federal Uniformed Services Employment and Reemployment Rights Act, because in enacting 20-4-7.1(B) NMSA 1978, the legislature guaranteed both the substantive antidiscrimination right and the right of action against a state employer to members of the national guard ordered to federal or state active duty for a period of thirty or more consecutive days, and in so doing, waived New Mexico's immunity to suit. *Ramirez v. CYFD*, 2016-NMSC-016, *rev'd* 2014-NMCA-057, 326 P.3d 474.

**Sovereign immunity barred USERRA claim against the state.** — Article I, Section 8, Clause 11 of the United States Constitution, known as the War Powers Clause, does not authorize Congress to subject the state to private suits for damages in state courts pursuant to the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. §§ 4301 to 4335, absent the state's consent and the legislature has not waived the state's constitutional immunity to private USERRA suits for damages. *Ramirez v. State ex rel. CYFD*, 2014-NMCA-057, *rev'd* by 2016-NMSC-016.

Where plaintiff, who was a member of the New Mexico national guard, was employed by the department; plaintiff was deployed to Iraq; upon plaintiff's return from active duty, plaintiff was reemployed by the department in plaintiff's previous position; plaintiff's working relations with plaintiff's supervisors deteriorated and plaintiff's employment was terminated; and filed a suit under Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. §§ 4301 to 4335, alleging that the department discriminated against plaintiff and terminated plaintiff because of plaintiff's military service, plaintiff's claim was barred by state sovereign immunity. *Ramirez v. State ex rel. CYFD*, 2014-NMCA-057, *rev'd* by 2016-NMSC-016.

## 20-4-7.2. Legislative findings and purpose.

A. The legislature finds that:

(1) the national guard has a proud tradition of military service with thousands of New Mexicans having answered the call of the nation and served in the national guard;



(2) there have been instances in which the dependents of members of the national guard have been left without adequate financial resources when a national guard member has been killed while on active duty;

(3) members of the national guard are now being asked to serve extended periods of active duty in combat areas;

(4) members of the national guard are eligible for life insurance policies up to the maximum amount allowable through the federal servicemembers' group life insurance program; and

(5) members of the national guard provide New Mexico and its citizens valuable benefits through their service inside this state and through their recently extended periods of active duty in combat areas outside of New Mexico, and in exchange for these extended periods of active duty they should receive assistance with their premiums for the federal servicemembers' group life insurance program.

B. The purpose of creating and funding the service members' life insurance reimbursement fund is to provide a benefit to members of the national guard in exchange for and in recognition of their assumption of extended periods of active duty in combat areas, in addition to their increased contributions to the safety and welfare of the citizens of the state of New Mexico.

**History:** Laws 2005, ch. 2, § 1; 2015, ch. 149, § 1.

The 2015 amendment, effective April 10, 2015, made members of the New Mexico national guard eligible for life insurance policies "for up to the maximum amount allowable" through the federal servicemembers' group life insurance program; deleted "New Mexico" throughout the section; and in Subsection A, Paragraph (4), after

"insurance policies", deleted "that are currently limited" and added "up", and after "to", deleted "two hundred fifty thousand dollars (\$250,000)" and added "the maximum amount allowable".

**Applicability.** — Laws 2005, ch. 2, § 4 made the provisions of Laws 2005, ch. 2, § 1 applicable to premiums paid on or after February 2, 2005.

### **20-4-7.3. Service members' life insurance reimbursement fund created; purpose; appropriation.**

A. The "service members' life insurance reimbursement fund" is created as a nonreverting fund in the state treasury. The fund shall consist of legislative appropriations to the fund; gifts, grants, donations and bequests to the fund; and income from investment of the fund. Expenditures from the fund shall be made on warrants drawn by the secretary of finance and administration signed by the adjutant general of the department of military affairs or the adjutant general's authorized representative.

B. The fund shall be administered by the department of military affairs, and money in the fund is appropriated to the department of military affairs for the purpose of reimbursing eligible members of the New Mexico national guard for premiums paid for benefits under the servicemembers' group life insurance program pursuant to 38 U.S.C. Section 1965 et seq., as amended.

C. The department of military affairs shall adopt rules necessary to determine eligibility for reimbursement from the service members' life insurance reimbursement fund and to implement a reimbursement program.

D. Nothing in this section is intended to alter, amend or change the eligibility or applicability of the servicemembers' group life insurance program pursuant to 38 U.S.C. Section 1965 et seq., as amended, or any rights, responsibilities or benefits thereunder.

**History:** Laws 2005, ch. 2, § 2; 2007, ch. 197, § 1.

The 2007 amendment, effective June 15, 2007, made the service members' life insurance reimbursement fund a nonreverting fund.

**Applicability.** — Laws 2005, ch. 2, § 4 made the provisions of Laws 2005, ch. 2, § 2 applicable to premiums paid on or after February 2, 2005.

### **20-4-8. Exemptions; jury duty and civil process; equipment.**

A. Members of the national guard shall not be subject to misdemeanor arrest, jury duty or to other civil process while going to, remaining at or returning from any place at which the member is required to perform military duty. This exemption shall not preclude the proper issuance of traffic citations, or temporary delays which do not materially impede the timely performance of military duty, or arrest for driving while intoxicated.



B. Uniforms, arms and equipment required by law or regulations to be owned by members of the national guard and all uniforms, arms, equipment or other property of the state or the United States issued to members of the national guard shall be exempt from all suits, distresses, executions or sales for debt or payment of taxes.

**History:** 1978 Comp., § 20-4-8, enacted by Laws 1987, ch. 318, § 25.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Military, and Civil Defense § 377 et seq.

Public policy as grounds for exemptions from service of process, 85 A.L.R. 1340, 94 A.L.R. 1475.

Exemption of members of armed forces from service of civil process, 137 A.L.R. 1372, 149 A.L.R. 1455, 150 A.L.R. 1419, 151 A.L.R. 1454, 153 A.L.R. 1419, 156 A.L.R. 1449, 158 A.L.R. 1450.

6 C.J.S. Armed Services § 293.

### 20-4-9. Members of the national guard, state hiring preference.

While serving in the national guard, applicants for state employment shall be awarded veterans' preference status and points to the same extent as discharged veterans of federal military service.

**History:** 1978 Comp., § 20-4-9, enacted by Laws 1987, ch. 318, § 26.

### 20-4-10. Members of the national guard considered state employees.

Members of the national guard shall be considered to be state employees for the purpose of eligibility to purchase and participate in group insurance coverages afforded other state employees.

**History:** 1978 Comp., § 20-4-10, enacted by Laws 1987, ch. 318, § 27.

### 20-4-11. Survivors' benefit; tuition payment.

The surviving spouse and all surviving minor children of a member of the national guard who dies in line of duty while serving on state military status shall be provided free tuition up to one baccalaureate degree or similar vocational certification at any state-sponsored university, college or institute of learning.

**History:** 1978 Comp., § 20-4-11, enacted by Laws 1987, ch. 318, § 28.

### 20-4-12. Repealed.

**Repeals.** — Laws 2021, ch. 55, § 12 repealed 20-4-12 NMSA 1978, as enacted by Laws 1987, ch. 318, § 29, relating to military last will and testament for national

guard and reserves, effective June 18, 2021. For provisions of former section, see the 2020 NMSA 1978 on *NMOneSource.com*.

### 20-4-13. National guard scholarship fund.

The adjutant general shall maintain and administer a scholarship fund for the benefit of enlisted members of the national guard who have demonstrated potential to become commissioned officers. The fund shall consist of such money and assets as the legislature shall appropriate and as shall be donated from private sources. No less than half of the annual expenditures of the fund shall be for the benefit of national guard enlisted members enrolled in a commissioning program at the New Mexico Military Institute and the remainder in such programs at other educational institutions within the state.

**History:** 1978 Comp., § 20-4-13, enacted by Laws 1987, ch. 318, § 30.

**Cross references.** — For the New Mexico military institute, see 21-12-1 NMSA 1978 et seq.

## 20-4-14. Resident tuition.

An active member of the national guard and the member's spouse and children shall be deemed in-state residents for purposes of determining tuition and fees at all state institutions of higher learning.

**History:** 1978 Comp., § 20-4-14, enacted by Laws 1987, ch. 318, § 31; 2005, ch. 168, § 2.

**Cross references.** — For resident tuition of members of armed forces, see 21-4-4.5 NMSA 1978.

**The 2005 amendment,** effective June 17, 2005, provided that the spouse and children of a member of the national guard shall be deemed in-state residents.

# ARTICLE 5

## State Defense Force

Sec.

20-5-1. New Mexico state defense force established; not in federal service; definitions.

20-5-2. Regulations.

20-5-3. Composition; enlistment; appointment.

20-5-4. Administration of oaths.

20-5-5. Standing cadre; composition of units.

20-5-6. Uniform; rank precedence and command.

20-5-7. Discipline.

20-5-8. Discharge; dismissal.

Sec.

20-5-9. Arms and equipment; facilities.

20-5-10. Training.

20-5-11. Members not liable for acts in performance of duty.

20-5-12. Repealed.

20-5-13. Discrimination prohibited; penalty.

20-5-14. Military leave.

20-5-15. Exemptions; process; uniforms and equipment.

20-5-16. State defense force; workers' compensation.

## 20-5-1. New Mexico state defense force established; not in federal service; definitions.

A. The "New Mexico state defense force" is established as an element of the militia in the department of military affairs. The members and organizations of the former New Mexico state guard are transferred to the New Mexico state defense force on April 10, 1987.

B. Nothing in Chapter 20 NMSA 1978 shall be construed as authorizing the New Mexico state defense force or any part thereof to be called, ordered or in any manner drafted by federal authorities into the military service of the United States, but no person by reason of the person's enlistment or appointment in the state defense force shall be exempted from military service under any law of the United States.

C. The following definitions apply to the duty statuses under which members of the state defense force serve:

(1) "militia duty" means the performance of actual military service for the state in time of need when called by the governor or adjutant general following mobilization of the national guard. It may be performed by the standing cadre of the state defense force at any time so ordered upon mobilization of the national guard. It may be performed by the unorganized militia following its call by the governor pursuant to Subsection B of Section 20-2-6 NMSA 1978, in which case it shall include the post-call training of the New Mexico state defense force pursuant thereto; and

(2) "cadre duty" means the normal service and training performed by the standing cadre of the state defense force in anticipation and support of militia duty, including organization, administration and other pre-call matters.

**History:** 1978 Comp., § 20-5-1, enacted by Laws 1987, ch. 318, § 32; 2021, ch. 55, § 5.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-5-1 NMSA 1978, as enacted

by Laws 1925, ch. 113, § 53, relating to exemption from arrest, and enacted a new section, effective April 10, 1987.

**The 2021 amendment,** effective June 18, 2021, in Subsection A, after "defense force on", changed "the effective date of this act" to "April 10, 1987".



## ANNOTATIONS

6 C.J.S. Armed Services § 288 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53 Am. Jur. 2d Military, and Civil Defense §§ 3, 7, 29 et seq., 40, 64, 70.

**20-5-2. Regulations.**

The adjutant general shall prescribe regulations governing the recruiting, organization, administration, equipment, facilities, training and discipline of the state defense force. Such regulations shall, to the extent practicable, conform to regulations governing the army national guard and shall be consistent with federal law and regulations pertaining to state defense forces.

**History:** 1978 Comp., § 20-5-2, enacted by Laws 1987, ch. 318, § 33.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-5-2 NMSA 1978, as enacted

by Laws 1925, ch. 113, § 55, relating to exemption from execution, and enacted a new section, effective April 10, 1987.

**20-5-3. Composition; enlistment; appointment.**

A. The state defense force shall consist of persons eighteen years or older voluntarily appointed or voluntarily enlisted therein and such additional members of the unorganized militia as therein may be appointed, enlisted, enrolled or inducted as provided by law.

B. The officers of the state defense force shall be appointed by the governor and serve at the governor's pleasure. They shall be chosen from the public and private leadership bases within local communities so as to best enable the community to efficiently muster and lead its people and protect its assets and well-being.

**History:** 1978 Comp., § 20-5-3, enacted by Laws 1987, ch. 318, § 34; 2021, ch. 55, § 6.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-5-3 NMSA 1978, as enacted by Laws 1925, ch. 113, § 56, relating to right-of-way on streets or highways, and enacted a new section, effective April 10, 1987.

**The 2021 amendment,** effective June 18, 2021, removed the maximum age of volunteers to serve on the state defense force; and in Subsection A, after "consist of persons", deleted "between the ages of", after "eighteen", deleted "and sixty-four", after "years", added "or older", and deleted "Volunteer members may be retained beyond age sixty-four with their consent by direction of the adjutant general".

## ANNOTATIONS

**State representative serving in force.** — A New Mexico state representative may not serve in the New Mexico State Defense Force, because the offices of legislator and state defense force member are incompatible; service in both capacities would create a conflict of interest. 1988 Op. Att'y Gen. No. 88-71.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53 Am. Jur. 2d Military and Civil Defense §§ 3, 7, 29 et seq., 40, 64, 70.

6 C.J.S. Armed Services § 288 et seq.

**20-5-4. Administration of oaths.**

All commissioned officers of the national guard and of the state defense force, and such other persons or officials as the adjutant general shall prescribe, are hereby authorized and empowered to administer oaths and affirmations in all matters pertaining to and concerning the state defense force and to administer oaths and affirmations in the enlistment of soldiers therefor.

**History:** 1978 Comp., § 20-5-4, enacted by Laws 1987, ch. 318, § 35.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-5-4 NMSA 1978, as enacted by Laws 1925, ch. 113, § 57, relating to exemption from tolls, and enacted a new section, effective April 10, 1987.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity of governmental requirement of oath of allegiance or loyalty, 18 A.L.R.2d 268.

6 C.J.S. Armed Services § 290.

## 20-5-5. Standing cadre; composition of units.

A standing cadre of officers and enlisted members is authorized. The composition of units and force structure shall be as recommended by the adjutant general and approved by the governor.

**History:** 1978 Comp., § 20-5-5, enacted by Laws 1987, ch. 318, § 36.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-5-5 NMSA 1978, as enacted by Laws 1925, ch. 113, § 58, relating to exemption from jury duty, and enacted a new section, effective April 10, 1987.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53 Am. Jur. 2d Military, and Civil Defense §§ 3, 32.  
6 C.J.S. Armed Services § 288 et seq.

## 20-5-6. Uniform; rank precedence and command.

A. The state defense force shall be uniformed. The adjutant general shall by regulation prescribe the uniform and insignia of the state defense force, which uniform and insignia shall include distinctive devices identifying it as the uniform of the state defense force and distinguishing it from the national guard. When in uniform, members of the state defense force will reasonably conform to the dress and appearance standards of the national guard. The wearing of permanent military decorations earlier awarded is authorized.

B. The grade structure of the state defense force shall to the extent practicable be the same as that prescribed for the army national guard.

C. The senior line officer without distinction as to component present in any organization or formation of the state defense force shall command, unless the adjutant general shall designate otherwise.

**History:** 1978 Comp., § 20-5-6, enacted by Laws 1987, ch. 318, § 37; 2021, ch. 55, § 7.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-5-6 NMSA 1978, as enacted by Laws 1972, ch. 42, § 1, relating to duty as workman, and enacted a new section, effective April 10, 1987.

**The 2021 amendment,** effective June 18, 2021, removed from the governor the duty to prescribe the uniform

and insignia of the state defense force, and required the adjutant general to do so by regulation; and in Subsection A, after the second occurrence of "The", changed "governor" to "adjutant general".

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 6 C.J.S. Armed Services § 289.

## 20-5-7. Discipline.

A. The discipline of the state defense force shall, to the extent practicable, conform to that of the army national guard.

B. When performing militia duty, members of the state defense force are subject to the Code of Military Justice, Chapter 20, Article 12 NMSA 1978.

C. Standards of conduct applicable to the army national guard are applicable to members of the state defense force when performing militia duty or cadre duty.

**History:** 1978 Comp., § 20-5-7, enacted by Laws 1987, ch. 318, § 38.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Military, and Civil Defense § 250 et seq.  
6 C.J.S. Armed Services § 295.

## 20-5-8. Discharge; dismissal.

A. Upon expiration of the term of service for which appointed or enlisted, a member of the state defense force shall be entitled to a discharge; provided that no member shall be discharged by reason of expiration of his term of service while in the active service of the state.

B. A member of the state defense force may be dismissed or discharged prior to the expiration of his term of service by sentence of a court-martial or for misconduct, inefficiency, unsatisfactory



participation, personal hardship; or for such other cause as the adjutant general finds and the governor approves. Discharge proceedings shall, as nearly as practicable, follow the laws, rules and procedures prescribed for the army national guard.

C. Discharge certificates shall reflect the character of the member's service. They shall conform as closely as practicable to discharge certificates of the army national guard.

**History:** 1978 Comp., § 20-5-8, enacted by Laws 1987, ch. 318, § 39.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — What circumstances constitute laches barring federal judicial review of allegedly wrongful discharge from military service, 100 A.L.R. Fed. 821.

### 20-5-9. Arms and equipment; facilities.

A. The state defense force, to the extent practicable, shall be equipped as needed for training and for actual state service.

B. To the extent available and permitted by federal law, armories and other facilities of the national guard and other state facilities may be utilized for the storage and maintenance of arms, equipment and supplies of the state defense force and for the assembly, drill and instruction of its members.

**History:** 1978 Comp., § 20-5-9, enacted by Laws 1987, ch. 318, § 40.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 6 C.J.S. Armed Services § 296.

### 20-5-10. Training.

A. The adjutant general shall promulgate regulations governing the training of the state defense force, including its standing cadre.

B. To the extent permitted by law, officers and members of the national guard may be detailed to train and instruct the standing cadre of the state defense force. Members of its standing cadre may attend service schools and other courses of training or instruction conducted by state or federal agencies in cadre duty status. Such training shall be paid for only to the extent allowed in Subsection B of Section 20-5-9 NMSA 1978.

**History:** 1978 Comp., § 20-5-10, enacted by Laws 1987, ch. 318, § 41; 1989, ch. 337, § 2.

The 1989 amendment, effective June 16, 1989, deleted "and may coordinate and train with the civil emergency

preparedness division of the department of military affairs" following "federal agencies" in the second sentence of Subsection B.

### 20-5-11. Members not liable for acts in performance of duty.

Members of the state defense force shall not incur personal civil liability for acts performed in the line of militia duty or cadre duty or in travel directly to or from said duty, and the state shall defend and indemnify against any such claims as are brought, and the state shall be substituted as a party defendant for the member.

**History:** 1978 Comp., § 20-5-11, enacted by Laws 1987, ch. 318, § 42.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Military, and Civil Defense § 362 et seq.

Officers or privates in military service as "officers" or "employees" within statute waiving state's immunity from liability for torts, 129 A.L.R. 911.

Civil and criminal liability of militiamen, 135 A.L.R. 10, 147 A.L.R. 1429, 151 A.L.R. 1463, 153 A.L.R. 1432, 154 A.L.R. 1457, 158 A.L.R. 1462.

Service of civil process, exemption of members of armed forces from, 137 A.L.R. 1372, 149 A.L.R. 1455, 150 A.L.R. 1419, 151 A.L.R. 1454, 153 A.L.R. 1419, 156 A.L.R. 1449, 158 A.L.R. 1450.

Service of process on person in military service by serving person at civilian abode or residence, or leaving copy there, 46 A.L.R.2d 1239.

6 C.J.S. Armed Services §§ 297, 298.

## 20-5-12. Repealed.

**Repeals.** — Laws 1993, ch. 193, § 14 repealed 20-5-12 NMSA 1978, as enacted by Laws 1987, ch. 318, § 43, relating to workmen's compensation for members of the state defense force, effective June 18, 1993. For provisions of former section, see the 1992 NMSA 1978 on *NMOneSource.com*.

## 20-5-13. Discrimination prohibited; penalty.

No employer or agent thereof shall refuse to hire, penalize or discharge from employment any person because of membership in the state defense force or prevent the member from performing any duty he may be called upon to perform by proper authority. Willful violation of this section shall be a misdemeanor.

**History:** 1978 Comp., § 20-5-13, enacted by Laws 1987, ch. 318, § 44. to compensate employees for absences occasioned by military service, 8 A.L.R.4th 704.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity and construction of state statutes requiring employers

## 20-5-14. Military leave.

All state, county, municipal, school district and other public employees who are members of the state defense force shall be given not to exceed fifteen working days military leave with pay per federal fiscal year when they are ordered by the adjutant general to cadre duty with such organized units, such leave to be in addition to other leave or vacation time with pay to which such employees are otherwise entitled. The governor may grant any member of the state defense force who is a state employee additional military leave with pay, in excess of that allowed above, not to exceed fifteen working days per year for periods of cadre duty for training when he deems that such training will benefit the state by enabling that employee to better perform the duties required in his state occupation.

**History:** 1978 Comp., § 20-5-14, enacted by Laws 1987, ch. 318, § 45.

**Cross references.** — For penalty provision, see 20-11-6 NMSA 1978.

### ANNOTATIONS

**Legislative objective.** — The legislative objective in enacting this section was to insure that public employees who were members of organized military reserve units should not be deprived of the annual leave to which they were otherwise entitled, by reason of their absence under orders on military training. 1957-58 Op. Att'y Gen. No. 58-173.

**Employee members of organized units eligible.** — All state, county and municipal employees who are members of organized units are eligible for the additional military leave provided in this section. 1953-54 Op. Att'y Gen. No. 53-5762.

**Effect on employees of conservancy district.** — Employees of a conservancy district are entitled to up to 15 days military leave and pay each year. 1959-60 Op. Att'y Gen. No. 59-54.

**On permanent employees.** — Regardless of the duration of employment, permanent employees are entitled to such military leave with pay. 1959-60 Op. Att'y Gen. No. 60-196.

**No restriction is placed upon the time of service** rendered by permanent employees before this leave accrues. 1959-60 Op. Att'y Gen. No. 60-196.

**Temporary employees not eligible.** — A temporary employee of the state is not entitled to military training leave provided by statute. 1957-58 Op. Att'y Gen. No. 58-173.

**Pay entitled to.** — A permanent employee is entitled to pay for his active military duty in addition to that for his vacation. 1959-60 Op. Att'y Gen. No. 60-196.

**Full salary required.** — This section requires that the governmental unit pay the full salary to the employee regardless of the amount of money drawn by him while on active military duty. Thus, it would be illegal for a governmental unit to pay an employee only the difference between his military pay and the top limits of pay which he regularly draws from the military unit. 1953-54 Op. Att'y Gen. No. 53-5762.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity and construction of state statutes requiring employers to compensate employees for absences occasioned by military service, 8 A.L.R.4th 704.



## 20-5-15. Exemptions; process; uniforms and equipment.

A. Members of the state defense force shall not be subject to misdemeanor arrest, jury duty or to other civil process while going to, remaining at or returning from any place at which the member is required to perform militia duty. This exemption shall not preclude the proper issuance of traffic citations, or temporary delays which do not materially impede the timely performance of militia duty, or arrest for driving while intoxicated.

B. Uniforms, arms and equipment required by law or regulations to be owned by members of the state defense force and all uniforms, equipment or other property of the state or the United States issued to members of the state defense force shall be exempt from all suits, distresses, executions or sales for debt or payment of taxes.

**History:** 1978 Comp., § 20-5-15, enacted by Laws 1987, ch. 318, § 46.

## 20-5-16. State defense force; workers' compensation.

A. When a member of the state defense force is on state-ordered militia duty, the member is a worker under the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978] and the department of military affairs is the member's employer.

B. Members of the state defense force, while performing cadre duty, may be utilized by the adjutant general to assist the national guard with training exercises or other cadre duties.

C. The average weekly wage of a member of the state defense force shall be computed at the pay earned in the member's civilian capacity. Disability benefits to a member of the state defense force shall be limited to medical benefits and two-thirds of the member's civilian pay if the member is unable to work.

D. A member of the state defense force shall not be considered a worker under the Workers' Compensation Act when performing cadre duty.

E. As used in this section:

(1) "cadre duty" means the normal service and training of the standing cadre of the state defense force in anticipation and support of militia duty, including organization, administration and other pre-call matters; and

(2) "militia duty" means the performance of actual military service for the state in time of need when called by the governor or adjutant general following mobilization of the national guard. If performed by the unorganized militia following its call by the governor pursuant to Section 20-2-6 NMSA 1978, it shall include the post-call training of the New Mexico state defense force as required by that call.

**History:** Laws 2003, ch. 111, § 1; 2021, ch. 55, § 8.

The 2021 amendment, effective June 18, 2021, authorized members of the state defense force to be utilized by the adjutant general to assist the national guard with

training exercises or other cadre duties; added "cadre duty"; and added a new Subsection B and redesignated former Subsections B through D as Subsections C through E, respectively.

## ARTICLE 6

### Reserved

(Repealed by Laws 1987, ch. 318, § 98.)

## 20-6-1, 20-6-2. Repealed.

**Repeals.** — Laws 1987, ch. 318, § 98A repealed 20-6-1 and 20-6-2 NMSA 1978, as enacted by Laws 1925, ch. 113,

§§ 75 and 76, relating to payments and allowances to national guard, effective April 10, 1987.

## ARTICLE 7

### Civil Air Patrol

Sec.

20-7-1. Creation of civil air patrol division.

20-7-2. Budget.

20-7-3. Regulations.

Sec.

20-7-4. Cooperation with other agencies authorized.

20-7-5. Military leave.

20-7-6 to 20-7-23. Repealed.

#### 20-7-1. Creation of civil air patrol division.

There is created the civil air patrol division within the department of military affairs. The director of the civil air patrol division shall be the duly appointed commanding officer of the civil air patrol, New Mexico wing, who shall assist the adjutant general.

**History:** 1978 Comp., § 20-7-1, enacted by Laws 1987, ch. 318, § 47.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-7-1 NMSA 1978, as enacted

by Laws 1953, ch. 86, § 1, relating to short title of State Armory Board Act, and enacted a new section, effective April 10, 1987.

#### 20-7-2. Budget.

The civil air patrol division shall submit its budget requests to the adjutant general.

**History:** 1978 Comp., § 20-7-2, enacted by Laws 1987, ch. 318, § 48.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-7-2 NMSA 1978, as amended

by Laws 1953, ch. 86, § 2, relating to construction and operation of facilities, and enacted a new section, effective April 10, 1987.

#### 20-7-3. Regulations.

The adjutant general may prescribe regulations for the civil air patrol division.

**History:** 1978 Comp., § 20-7-3, enacted by Laws 1987, ch. 318, § 49.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-7-3 NMSA 1978, as amended

by Laws 1953, ch. 86, § 3, relating to state armory board, and enacted a new section, effective April 10, 1987.

#### 20-7-4. Cooperation with other agencies authorized.

The civil air patrol division is authorized to fully cooperate with any department or agency of the United States government or any department or agency of the state in order that the objectives of the civil air patrol division may be more fully realized.

**History:** 1978 Comp., § 20-7-4, enacted by Laws 1987, ch. 318, § 50.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-7-4 NMSA 1978, as amended

by Laws 1953, ch. 86, § 4, relating to local armory boards, and enacted a new section, effective April 10, 1987.

#### 20-7-5. Military leave.

Members of the civil air patrol shall be permitted military leave pursuant to Section 20-4-7 NMSA 1978 not to exceed fifteen working days per year for official duties as assigned by the director of the civil air patrol division of the department of military affairs or an incident commander of an active mission.

**History:** 1978 Comp., § 20-7-5, enacted by Laws 1987, ch. 318, § 51; 2020, ch. 56 § 1.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-7-5 NMSA 1978, as amended



by Laws 1953, ch. 86, § 5, relating to local armory boards, and enacted a new section, effective April 10, 1987.

**The 2020 amendment**, effective July 1, 2020, authorized members of the Civil Air Patrol to use military leave for official duties as assigned by the director of the civil air patrol or an incident commander of an active mission, instead of strictly for search and rescue missions; and after "fifteen working days per year for", deleted "search and rescue missions" and added "official duties as assigned by the director of the civil air patrol division of the department of military affairs or an incident commander of an active mission".

#### ANNOTATIONS

**Legislative objective.** — The legislative objective in enacting this section was to insure that public employees who were members of organized military reserve units should not be deprived of the annual leave to which they were otherwise entitled, by reason of their absence under orders on military training. 1957-58 Op. Att'y Gen. No. 58-173.

**Employee members of organized units eligible.** — All state, county and municipal employees who are members of organized units are eligible for the additional military leave provided in this section. 1953-54 Op. Att'y Gen. No. 53-5762.

**Effect on employees of conservancy district.** — Employees of a conservancy district are entitled to up

to 15 days military leave and pay each year. 1959-60 Op. Att'y Gen. No. 59-54.

**On permanent employees.** — Regardless of the duration of employment, permanent employees are entitled to such military leave with pay. 1959-60 Op. Att'y Gen. No. 60-196.

**No restriction is placed upon the time of service** rendered by permanent employees before this leave accrues. 1959-60 Op. Att'y Gen. No. 60-196.

**Temporary employees not eligible.** — A temporary employee of the state is not entitled to military training leave provided by statute. 1957-58 Op. Att'y Gen. No. 58-173.

**Pay entitled to.** — A permanent employee is entitled to pay for his active military duty in addition to that for his vacation. 1959-60 Op. Att'y Gen. No. 60-196.

**Full salary required.** — This section requires that the governmental unit pay the full salary to the employee regardless of the amount of money drawn by him while on active military duty. Thus, it would be illegal for a governmental unit to pay an employee only the difference between his military pay and the top limits of pay which he regularly draws from the military unit. 1953-54 Op. Att'y Gen. No. 5762.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity and construction of state statutes requiring employers to compensate employees for absences occasioned by military service, 8 A.L.R.4th 704.

### 20-7-6 to 20-7-23. Repealed.

**Repeals.** — Laws 1987, ch. 318, § 98A repealed 20-7-6 to 20-7-23 NMSA 1978, as enacted by Laws 1925, ch. 113, §§ 87 to 89; and Laws 1953, ch. 86, §§ 8 to 22, relating to

bonds, reports, leases, board fund, and employees and expenses, effective April 10, 1987.

## ARTICLE 8

### Armories

Sec.

20-8-1. Creation; composition.

20-8-2. Definitions.

20-8-3. Powers and responsibilities.

20-8-4. Local armory boards; members.

Sec.

20-8-5. State armory board fund.

20-8-6. State armory board building and improvement bonds.

20-8-7 to 20-8-11. Repealed.

### 20-8-1. Creation; composition.

There is created the state armory board, a body corporate, whose members shall be appointed within thirty days of the effective date of the New Mexico Military Code. The members of the board shall be the adjutant general, as chairman; the director of the state programs office of the department of military affairs, as executive director; one commissioned officer of the army national guard; the command sergeant major of the army national guard; and three members-at-large who shall not be members of the national guard. Discretionary appointments to the board and designation of one appointed member as its secretary-treasurer shall be made by the adjutant general with the concurrence of the governor and shall be for a term of two years, except that two initial appointments shall be for three years. Members shall serve without compensation but shall be paid per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978].

**History:** 1978 Comp., § 20-8-1, enacted by Laws 1987, ch. 318, § 52.

**Repeals and reenactments.** — Laws 1987, ch. 318, § 52 repealed former 20-8-1 NMSA 1978, as enacted by

Laws 1931, ch. 123, § 1, relating to distinguished service medal, and enacted a new section, effective April 10, 1987.

**Compiler's notes.** — The phrase "effective date of the New Mexico Military Code" means April 10, 1987, the effective date of Laws 1987, Chapter 318.

## 20-8-2. Definitions.

A. "Armory" means any building, training area, warehouse, vehicle storage compound, organizational maintenance shop or other facility and the lands appurtenant thereto used by the national guard for the storage and maintenance of arms or military equipment or the administration or training of the national guard and state defense force personnel.

B. "Armory rental" means the casual rental of all or part of an armory facility to an individual or organization for a limited and specified purpose, duration and fee, which use is not in conflict with the ongoing occupancy and use of the armory by the national guard or state defense force.

C. "Local armory" means a particular armory by the name designation of the municipality or county commonly associated with it, including the armory building proper and any appurtenant facilities co-located with it.

D. "Armory board council" means the advisory body comprised of the chairmen of all local armory boards, serving ex officio, and of the members of the state armory board, chaired by the adjutant general, and convened semi-annually by the call of the state armory board to aid and advise that board in the formation of its regulations and policies.

**History:** 1978 Comp., § 20-8-2, enacted by Laws 1987, ch. 318, § 53; 1989, ch. 337, § 3.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-8-2 NMSA 1978, as enacted by Laws 1931, ch. 123, § 2, relating to long service medal,

and enacted a new 20-8-2 NMSA 1978, effective April 10, 1987.

**The 1989 amendment,** effective June 16, 1989, in Subsection A, deleted "army" preceding "national guard" in two places.

## 20-8-3. Powers and responsibilities.

The state armory board shall be empowered to:

- A. act on behalf of the state in the exercise of its powers and responsibilities;
- B. hold title to armories in its name on behalf of the state;
- C. employ and maintain or retain technical, legal, administrative and clerical personnel, including an architect or engineer, a construction manager and a finance manager as deemed necessary by the board within its appropriated budget or federal reimbursement funds, as approved by itself and the department of finance and administration;
- D. have control and supervision over the acquisition, construction, replacement, repair, alteration, improvement, furnishing, equipping, maintenance and operation of all armories and over all funds appropriated or obtained for those purposes;
- E. acquire property deemed necessary for military purposes by purchase, exchange, lease, grant, gift or condemnation;
- F. disregard the requirements of Sections 13-6-3, 15-3-20 and 15-3-23 NMSA 1978;
- G. borrow money for acquiring, constructing, replacing, repairing, altering, improving, furnishing, equipping and operating armories, as provided in Chapter 20, Article 8 NMSA 1978;
- H. enter into contracts on behalf of the state with the United States or any of its agencies for the purpose of participating in any joint federal-state military construction for the purpose of receiving federal funds for military construction;
- I. sell or exchange armory property when it determines the property is no longer necessary or suitable for military purposes; lease the property if its non-necessity or unsuitability is determined to be temporary, but that any such lease shall be revocable at will should the adjutant general determine and declare military necessity and suitability, without liability against the state or the board being occasioned by the revocation; or to donate all or part of an armory property to the state, to a county or to a municipality pursuant to new or replacement armory acquisition or construction in the state;
- J. guide, direct and supervise the local armory boards, the armory board council and the state armory board fund;



- K. delegate to local armory boards such powers as it deems appropriate, retaining the responsibility for proper supervision and accountability of the delegated powers;
- L. regulate and audit armory rentals contracted by local armory boards;
- M. submit an annual report to the governor accounting for all state appropriated funds received and disbursed by it; and
- N. meet quarterly, or at the more frequent call of the adjutant general. The adjutant general shall prescribe and issue regulations which he and the board deem appropriate for the operations of armories and for the exercise of powers by and the fulfillment of responsibilities of the board stated in Chapter 20, Article 8 NMSA 1978.

**History:** 1978 Comp., § 20-8-3, enacted by Laws 1987, ch. 318, § 54; 1989, ch. 337, § 4.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-8-3 NMSA 1978, as enacted by Laws 1931, ch. 123, § 3, relating to 100% drill attendance medal, and enacted a new 20-8-3 NMSA 1978, effective April 10, 1987.

**The 1989 amendment,** effective June 16, 1989, in Subsection A, corrected the misspelling of "responsibilities" and, in Subsection C, substituted "the department of finance and administration" for "the legislative finance committee".

#### ANNOTATIONS

**Legislative intent.** — The legislature intends that the maintenance of buildings should be controlled by the state armory board, which, in turn, applies to the legislature for the necessary funds by appropriation. 1957-58 Op. Att'y Gen. No. 57-155.

**Generally.** — The state armory board may own (in the name of the state), rent or lease facilities necessary for the conduct of training and the storage of national guard property. Further, the board may acquire property in the name of the state "by purchase, grant, gift or condemnation, and is authorized to sell or exchange such property when said board determines it to be no longer necessary or suitable for military purchases." 1957-58 Op. Att'y Gen. No. 57-156.

**Authority to lease.** — The state armory board has statutory authority to lease property for its statutory purposes. The governing statute clearly contemplates control by the board of property "rented or leased by the state"; and the authority "to acquire property deemed necessary for

military purposes . . . by purchase, grant, gift or condemnation" is not to be read as excluding the exercise of the lesser power to lease. 1957-58 Op. Att'y Gen. No. 58-231.

**Extent of authority.** — In any case where authority is granted for the leasing or renting of property, it may be logically implied that such authority extends to the ordinary requirements for maintaining the premises in a condition not different from that appreciated at the time of taking possession. 1957-58 Op. Att'y Gen. No. 57-156.

**Federal and state construction and use of armory permissible.** — The state armory board may lawfully contract with the United States for the construction of an armory at the expense of the state and federal government jointly, the armory to be used jointly by the New Mexico national guard and other components of the armed forces reserves. 1957-58 Op. Att'y Gen. No. 58-235.

**Property not subject to paving assessment.** — Real property owned by the state armory board is not subject to a paving assessment by a municipality for a street paving project adjoining such property. 1959-60 Op. Att'y Gen. No. 59-161.

**Authorization as state contracting officer.** — The state armory board is authorized to act, or appoint someone to act, as a state contracting officer. 1955-56 Op. Att'y Gen. No. 56-6547.

**Control where joint utilization.** — An armory was built for joint utilization by the New Mexico national guard and reserve components of the armed forces pursuant to 10 U.S.C. § 2231 et seq., and the control over such armory would be vested in the state armory board. 1959-60 Op. Att'y Gen. No. 59-166.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 6 C.J.S. Armed Services § 288 et seq.

## 20-8-4. Local armory boards; members.

There are created local armory boards for each local armory. The management and control of each local armory shall be the responsibility of its local armory board subject to the guidance, direction and supervision of the state armory board. The senior commander of the national guard units occupying the armory, as chairman; one enlisted member serving in the armory as secretary-treasurer; and one resident of the locality who is not a member of the national guard, shall constitute the board for that locality. Discretionary appointments to each board shall be made by the adjutant general and shall be for a term of two years. Members shall serve without compensation but shall be paid per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978]. Each local armory board shall:

- A. manage and control its local armory subject to the guidance, supervision and direction of the state armory board and such regulations as the state armory board may promulgate;
- B. maintain a local checking account;
- C. administer and contract for armory rentals as it deems appropriate within regulations promulgated by the state armory board;
- D. administer and account to the state armory board for all revenues therefrom;

- E. transmit all revenues, less actual and reasonable expenses of the board and operations costs of its armory rentals, to the state armory board fund quarterly or more frequently;
- F. report to the adjutant general annually, in September, on the physical condition of its local armory including recommendations for improvements, repair and maintenance; and
- G. participate in the semi-annual meeting of the armory board council.

**History:** 1978 Comp., § 20-8-4, enacted by Laws 1987, ch. 318, § 55.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-8-4 NMSA 1978, as enacted

by Laws 1963, ch. 69, § 1, relating to medal of valor, and enacted a new section, effective April 10, 1987.

## 20-8-5. State armory board fund.

A. All net revenues derived from any armory rentals shall be deposited quarterly or more frequently by all local armory boards with the state armory board which shall keep such money on deposit with the state treasurer in a separate fund to be known as the "state armory board fund". Money deposited in this fund is appropriated for the use of the state armory board in carrying out the purposes of Chapter 20, Article 8 NMSA 1978. All expenditures by the state armory board shall be upon vouchers signed by the secretary-treasurer of the board and paid out of the fund upon warrants drawn by the secretary of finance and administration.

B. The state armory board fund shall also be the repository for all money and interest received by the state armory board in the exercise of its powers and responsibilities as stated in Chapter 20, Article 8 NMSA 1978.

**History:** 1978 Comp., § 20-8-5, enacted by Laws 1987, ch. 318, § 56; 1989, ch. 337, § 5.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-8-5 NMSA 1978, as enacted by Laws 1963, ch. 69, § 2, relating to medal of merit, and enacted a new section, effective April 10, 1987.

**The 1989 amendment,** effective June 16, 1989, added the Subsection A designation, inserted "state armory" in the last sentence of Subsection A, and added Subsection B.

## 20-8-6. State armory board building and improvement bonds.

A. For the purpose of erecting, altering, improving, furnishing and equipping any necessary buildings or structures or acquiring any necessary lands, as provided by Chapter 20, Article 8 NMSA 1978, the state armory board is authorized to borrow money as provided in this section.

B. Whenever the state armory board, by the affirmative vote of the majority of its members duly entered in the minutes of the board, determines by resolution that it is necessary to acquire, construct, replace, repair, alter, improve, furnish or equip any armory and the resolution has been submitted to and approved by the state board of finance, the state armory board is empowered and authorized to issue and sell state armory board building and improvement bonds subject to the terms of Chapter 20, Article 8 NMSA 1978.

C. The bonds shall be in such form and denominations as the state armory board shall determine, due and payable not later than twenty years from date of issue. The bonds shall be payable in consecutive order commencing not later than two years from date of issue.

D. The bonds may be sold at public or private sale at the discretion of the state armory board; provided, however, that no sale shall be made for less than the par value of the bonds plus accrued interest from the last preceding interest date to the date of delivery of the bonds. Before delivery of the bonds to the purchaser, all matured interest coupons shall be detached and canceled. The state treasurer may, with the approval of the state board of finance and other officials whose approval may be required by law for the investment of public funds, purchase the bonds at par and accrued interest to date of delivery of the investment. The bonds may be accepted at their par value by all public officials in this state as security for the repayment of all deposits of public money of this state, or of any county, municipality or public institution thereof, and as security for the faithful performance of any obligations or duty, to guarantee the performance of which the officials are authorized by law to accept a deposit of the bonds of this state or of the United States.



E. Proceeds from the sale of the bonds shall be paid to the state treasurer and shall be placed by the state treasurer in a separate fund to be known as the "state armory board building and improvement fund". This fund shall be used and paid out only for the specific purposes in Chapter 20, Article 8 NMSA 1978 upon order of the state armory board or upon vouchers signed by the secretary-treasurer of the board and paid out upon warrants issued by the secretary of finance and administration, except such portion thereof as may have been received on account of accrued interest on the bonds to date of delivery, which amount shall be placed in the "state armory board interest and retirement fund" for the liquidation of the bonds as provided in Chapter 20, Article 8 NMSA 1978. The cost of preparing, advertising and selling bonds, including any necessary expense for legal opinions thereon, shall be paid out of the proceeds of the sale of the bonds.

F. Upon issuance of these bonds by the state armory board, the state treasurer shall establish, for the payment of the principal and interest thereof, a fund to be known as the "state armory board interest and retirement fund", into which fund the state armory board shall cause to be placed a sum not less than the amount necessary to pay the interest and maturing principal of the bonds for the ensuing twelve months and annually thereafter shall continue to place in the fund a sufficient amount to pay principal and interest maturing in the succeeding twelve months.

G. For the faithful and prompt payment of all interest and principal of these bonds as and when they shall mature according to the tenor thereof, the issue thereof shall constitute an irrevocable pledge by the state armory board of so much of each year's income from the buildings, lands and properties under the control of the board, in the hands of the state treasurer or from the state armory board fund, as shall be needed to provide the state armory board interest and retirement fund for the ensuing year and at all times fully and faithfully to keep the fund in not less than the amount necessary to pay the interest and principal maturing as provided in this section. In addition, the issue of the bonds shall constitute an irrevocable pledge by the state armory board of so much of each year's income from those buildings, lands and other facilities as may be necessary to fully protect the state armory board interest and retirement fund for the ensuing year and keep the fund at all times in proper amount as provided in this section.

H. It is the duty of the state treasurer, where bonds have been issued pursuant to Chapter 20, Article 8 NMSA 1978, to forward to the bank at which the bonds are payable, prior to the date on which any coupons or any principal amount of any bonds shall mature, out of the state armory board interest and retirement fund a sufficient sum of money to meet the coupons and maturing bonds as they become due, plus any service which the bank shall be entitled to receive for its services unless the state armory board shall have forwarded those funds from the state armory board fund.

I. In the event the state armory board should find it advisable to issue bonds under Chapter 20, Article 8 NMSA 1978 in more than one series or at different times for any of the purposes set forth in that article, in each series of bonds, the bonds shall be designated by the letters "A", "B" or in some other designation to the end that each series shall be kept separate, and all of the requirements of that article shall apply to and be faithfully followed, done and carried out as to each series. The state armory board has no power to issue bonds under Chapter 20, Article 8 NMSA 1978 when the aggregate interest and principal requirements for any year, together with the aggregate interest and principal requirements for all outstanding bonds of the state armory board for each year, exceeds the amount of the income from the buildings, lands and facilities under the board's control received by the board and deposited with the state treasurer for the fiscal year next preceding the fiscal year in which any bonds of the state armory board are authorized to be issued by resolution of the board adopted pursuant to Chapter 20, Article 8 NMSA 1978.

J. Bonds issued under the provisions of Chapter 20, Article 8 NMSA 1978 and the income thereupon, being for the sole purposes specified in that article, shall forever be and remain free and exempt from taxation by the state or any subdivision thereof.

K. None of the funds derived from the sale of bonds issued under the provisions of Chapter 20, Article 8 NMSA 1978, except so much thereof as shall be necessary to defray the costs of the issuance of the bonds and the accrued interest from the date thereof to the time of delivery, shall ever be used or expended for any purpose other than those for which the authority to issue the bonds is given by that article.



L. No bonds shall be finally issued and sold under the provisions of Chapter 20, Article 8 NMSA 1978 until approval of the issue has been given by the state board of finance in a regular or called meeting.

M. All bonds of the same issue under Chapter 20, Article 8 NMSA 1978 shall have a prior and paramount lien upon the income from the buildings, lands and facilities under the control of the state armory board, over and ahead of all bonds or any securities secured by a pledge of that income which may be subsequently authorized and over and ahead of any claims or other obligations of any nature against that income subsequently arising or subsequently incurred. All bonds of the same series issued under Chapter 20, Article 8 NMSA 1978 shall be equally and rateably secured without priority by reason of number, date of bonds, sale, execution or delivery by lien on that income and the state armory board interest and retirement fund in accordance with the terms of Chapter 20, Article 8 NMSA 1978.

**History:** 1978 Comp., § 20-8-6, enacted by Laws 1987, ch. 318, § 57; 1989, ch. 337, § 6.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-8-6 NMSA 1978, as enacted by Laws 1973, ch. 120, § 1, relating to good conduct medal, and enacted a new section, effective April 10, 1987.

**The 1989 amendment,** effective June 16, 1989, in Subsection A, deleted "hereby" preceding "authorized"

and substituted "as provided in this section" for "as hereinafter provided"; in Subsection G, inserted "or from the state armory board fund" in the first sentence; in Subsection H, added "unless the state armory board shall have forwarded those funds from the state armory board fund"; in Subsection M, inserted "state armory board" near the end of the second sentence; and made minor stylistic changes.

## 20-8-7 to 20-8-11. Repealed.

**Repeals.** — Laws 1987, ch. 318, § 98A repealed 20-8-7 to 20-8-11 NMSA 1978, as enacted by Laws 1945, ch. 115, § 2, Laws 1973, ch. 120, §§ 2 to 4, and Laws 1979, ch. 129,

§ 1, relating to medals and citations, effective April 10, 1987.

## ARTICLE 9

### Property and Funds

Sec. 20-9-1. Property and fiscal officer.  
20-9-2. Accountability for money and property.  
20-9-3. Unit funds.

Sec. 20-9-4. Recovery of property; criminal and civil liability.  
20-9-5. Security for property.  
20-9-6 to 20-9-8. Repealed.

## 20-9-1. Property and fiscal officer.

In the event of a vacancy, the governor shall nominate, with the advice of the adjutant general, a United States property and fiscal officer from the New Mexico national guard whose appointment shall be made by the chief of the national guard bureau or other authority charged with responsibility for such approval under the laws of the United States. His duties shall be the superintendence of all funds and property of the United States entrusted or allotted to the militia or national guard as required of him by the laws of the United States relating to the militia or national guard or regulations promulgated thereunder, together with such additional related duties as the governor or adjutant general may require of him by appropriate regulations or orders. His military salary, allowances and maximum rank shall be in accordance with the regulations of the appropriate authorities of the United States and the laws of the United States relating to the militia or national guard and the appointment of such officers.

**History:** 1978 Comp., § 20-9-1, enacted by Laws 1987, ch. 318, § 58.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-9-1 NMSA 1978, as enacted by Laws 1925, ch. 113, § 79, relating to unauthorized disposition of military property, and enacted a new section, effective April 10, 1987.

## ANNOTATIONS

**Generally.** — The property and fiscal officers not only protect the federal government's interests, but also aid the states in disbursing to them the allocations of the federal government to state national guards. 1964 Op. Att'y Gen. No. 64-69.



**Payment of officer.** — The property and fiscal officer appointed pursuant to this section must be paid by this state or by the United States from funds allocated to the national guard of this state. 1964 Op. Att'y Gen. No. 64-69.

**Control of officer.** — There can be no doubt of the control over the officer by the state executive. 1964 Op. Att'y Gen. No. 64-69.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 6 C.J.S. Armed Services § 291.

## 20-9-2. Accountability for money and property.

The adjutant general, with the concurrence of the governor as commander in chief, shall promulgate such regulations as are necessary to provide for the accountability of state and federal property which shall provide procedures and standards for ascertaining individual pecuniary liability for restitution and for hardship remission of indebtedness where appropriate. Proceeds collected therefrom shall be paid over to the adjutant general for distribution as may be required by appropriate state or federal law or regulation. When loss or damage occurs and a determination of no pecuniary liability is made, the authority making the determination will direct a settlement of accounts without penalty or assessment. The adjutant general may accomplish the settlement of accounts for lost money or lost or damaged property of the United States allotted or entrusted to the militia or national guard by payment from the funds appropriated to the adjutant general when such a settlement cannot be accomplished by other means within a reasonable time so as not to jeopardize the national guard's entitlement to continue to receive allotments of federal funds, equipment, or supplies.

**History:** 1978 Comp., § 20-9-2, enacted by Laws 1987, ch. 318, § 59.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-9-2 NMSA 1978, as enacted by Laws 1925, ch. 113, § 78, relating to arrest of officers and men, and enacted a new section, effective April 10, 1987.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 6 C.J.S. Armed Services § 291.

## 20-9-3. Unit funds.

Each unit or detachment of the national guard shall keep a unit general welfare fund composed of any funds earned by the unit or its members, funds contributed to the unit or to its welfare fund or fines or forfeitures imposed under the Code of Military Justice [Chapter 20, Article 12 NMSA 1978] against unit members when allocated to the fund by the adjutant general. Each unit general welfare fund shall be held in a local commercial bank account and shall be expended for the general welfare of the members of the unit. Accountability for general welfare funds shall be in accordance with regulations to be prescribed by the adjutant general. The unit general welfare fund shall be separate and apart from any other fund maintained by the unit which is funded by allocations from federal sources. In the event of reorganization, deactivation, redesignation or reassignment of units, the adjutant general shall order such disposition of that unit's general welfare fund as will best benefit the members or former members of the unit so affected.

**History:** 1978 Comp., § 20-9-3, enacted by Laws 1987, ch. 318, § 60.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-9-3 NMSA 1978, as enacted by Laws 1925, ch. 113, § 80, relating to authority of post commanders, and enacted a new section, effective April 10, 1987.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 6 C.J.S. Armed Services § 291.

## 20-9-4. Recovery of property; criminal and civil liability.

Any person who retains, after written demand by the United States property and fiscal officer or his designee, any arms, uniforms, equipment or other military property which belongs to the state or the United States or who thereafter possesses, purchases, sells, pawns or pledges such property shall be guilty of a misdemeanor and shall be civilly liable to the United States property and fiscal officer for three times the original value of the property in damages. The attorney general or his designee shall prosecute all such matters referred to him on a sworn statement of charges by the

United States property and fiscal officer. Money recovered shall be deposited by the United States property and fiscal officer to the appropriate fund or account for the purchase of similar replacement property.

**History:** 1978 Comp., § 20-9-4, enacted by Laws 1987, ch. 318, § 61.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-9-4 NMSA 1978, as enacted by Laws 1925, ch. 113, § 90, relating to suppression of unlawful assembly, and enacted a new section, effective April 10, 1987.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Military, and Civil Defense § 362 et seq. 6 C.J.S. Armed Services § 297.

### 20-9-5. Security for property.

The adjutant general may prescribe regulations for the obtaining of collateral to guarantee the return of arms, uniforms, equipment or other military property issued to members of the national guard or the state defense force in an amount at least equal to the value of the property issued and for such duration as is deemed appropriate. Such collateral may include cash, surety bonds, certificates of title or other good and valuable consideration. Property with investment value shall be deposited at interest, that interest to be paid to the member with return of the collateral upon proper return of the property in serviceable condition, fair wear and tear excepted.

**History:** 1978 Comp., § 20-9-5, enacted by Laws 1987, ch. 318, § 62.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-9-5 NMSA 1978, as enacted by

Laws 1925, ch. 113, § 91, relating to bond premium payments, and enacted a new section, effective April 10, 1987.

### 20-9-6 to 20-9-8. Repealed.

**Repeals.** — Laws 1987, ch. 318, § 98A repealed 20-9-6 to 20-9-8 NMSA 1978, as enacted by Laws 1921, ch. 128, §§ 1 and 2 and Laws 1953, ch. 70, relating to prohibition

on discharge of employees or preventing performance of military duties and training leave for public employees, effective April 10, 1987.

## ARTICLE 10

### Awards, Medals and Ribbons

- |  |  |
|--|--|
| Sec. 20-10-1. Awards authorized.                           | Sec. 20-10-11. Outstanding unit citation.          |
| 20-10-2. Awards boards.                                    | 20-10-12. Recompiled.                              |
| 20-10-3. Awards fund.                                      | 20-10-12.1. Emergency service ribbon.              |
| 20-10-4. Order of precedence.                              | 20-10-12.2. Counter-drug service ribbon.           |
| 20-10-5. Medal of valor with palm.                         | 20-10-12.3. Community service ribbon.              |
| 20-10-6. Medal of valor.                                   | 20-10-12.4. Physical fitness ribbon.               |
| 20-10-7. Special MacArthur service medal.                  | 20-10-12.5. Service ribbon and long-service medal. |
| 20-10-8. Distinguished service medal.                      | 20-10-13. Good conduct medal.                      |
| 20-10-9. Medal of merit.                                   | 20-10-14. Perfect attendance ribbon.               |
| 20-10-9.1. Cold war medal.                                 | 20-10-15. Academy service ribbon.                  |
| 20-10-9.2. Outstanding enlisted leader of the year ribbon. | 20-10-16. Devices.                                 |
| 20-10-10. Outstanding service medal.                       | 20-10-17 to 20-10-42. Repealed.                    |

#### 20-10-1. Awards authorized.

There are established and authorized within Chapter 20, Article 10 NMSA 1978 awards for presentation to units and members of the national guard and the New Mexico state defense force and, where indicated, for presentation to other persons for recognized service to the national guard or New Mexico state defense force, to the state or to the United States.



**History:** 1978 Comp., § 20-10-1, enacted by Laws 1987, ch. 318, § 63.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-10-1 NMSA 1978, as enacted

by Laws 1941, ch. 9, § 16, relating to short title of State Guard Act, and enacted a new section, effective April 10, 1987.

## 20-10-2. Awards boards.

A. The adjutant general shall appoint the members of awards boards for the army national guard and the air national guard, which shall each meet not less than quarterly to review recommendations for state and federal awards and decorations submitted by their respective unit commanders and others. The army national guard awards board shall also review and act on recommendations for such awards and decorations relating to the state defense force and shall include one or more members of the state defense force appointed by the adjutant general whenever considering such matters.

B. The adjutant general may by regulation delegate award authority to battalion commanders, group commanders, or equivalent, of the national guard, for members of their command, for the following awards and their subsequent devices:

- (1) such United States awards and decorations as are permitted to be so delegated in United States military regulations;
- (2) the outstanding service medal;
- (3) the long service medal;
- (4) the good conduct medal; and
- (5) the perfect attendance ribbon.

**History:** 1978 Comp., § 20-10-2, enacted by Laws 1987, ch. 318, § 64.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-10-2 NMSA 1978, as enacted

by Laws 1941, ch. 9, § 1, relating to authority and name of guard, and enacted a new section, effective April 10, 1987.

## 20-10-3. Awards fund.

There is established an awards fund which shall be under the control of the adjutant general, the military personnel officers of the army and air national guard, and the director of the state programs office of the department of military affairs. The awards fund shall promptly arrange for suitable presentations to award recipients. The fund is authorized to make such reasonable expenditures from sources provided or authorized so as to procure and distribute state medals, ribbons and devices consistent with Chapter 20, Article 10 NMSA 1978. The fund shall procure sufficient quantities [quantities] of awards to allow recipients to purchase from the board replacements for lost or soiled awards. The fund may charge a reasonable sum for replacement or miniature awards, with proceeds being retained in the awards fund for future procurement of awards. Moneys in the awards fund shall be maintained in a checking account and shall not revert annually to the state treasury.

**History:** 1978 Comp., § 20-10-3, enacted by Laws 1987, ch. 318, § 65.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-10-3 NMSA 1978, as enacted by Laws 1941, ch. 9, § 2, relating to organization of guard, and enacted a new section, effective April 10, 1987.

## 20-10-4. Order of precedence.

The rank order of precedence of awards is their order of appearance in Chapter 20, Article 10 NMSA 1978. In the wearing or display of awards, the precedence afforded the awards and decorations of the United States, of other nations and of state national guards will be observed; military awards of other states may be worn commensurate with those authorized in Chapter 20, Article 10 NMSA 1978, in reasonable order of precedence.

**History:** 1978 Comp., § 20-10-4, enacted by Laws 1987, ch. 318, § 66.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-10-4 NMSA 1978, as enacted

by Laws 1941, ch. 9, § 3, relating to pay and allowances, and enacted a new section, effective April 10, 1987.

## 20-10-5. Medal of valor with palm.

The governor may award a medal of valor with palm and with accompanying ribbon to any member of the national guard or state defense force who distinguishes himself by an extraordinary act of personal bravery and heroism, at the risk of his own life, above and beyond the call of duty.

**History:** 1978 Comp., § 20-10-5, enacted by Laws 1987, ch. 318, § 67.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-10-5 NMSA 1978, as enacted

by Laws 1941, ch. 9, § 4, relating to requisitions and buildings, and enacted a new section, effective April 10, 1987.

## 20-10-6. Medal of valor.

The governor may award a medal of valor with accompanying ribbon to any member of the national guard or state defense force who distinguishes himself by an uncommon act of valor, not necessarily at the risk of his own life, under circumstances where refraining from so acting would not have subjected the recipient to criticism.

**History:** 1978 Comp., § 20-10-6, enacted by Laws 1987, ch. 318, § 68.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-10-6 NMSA 1978, as enacted

by Laws 1941, ch. 9, § 5, relating to use outside state, and enacted a new section, effective April 10, 1987.

## 20-10-7. Special MacArthur service medal.

The special MacArthur service medal has been given with appreciation to known members or their survivors of the 200th coast artillery who were residents of the state at the time they entered the services of the United States and served under General Douglas MacArthur in the Philippine islands. It may be awarded to later-discovered eligible veterans or their survivors by the adjutant general.

**History:** 1978 Comp., § 20-10-7, enacted by Laws 1987, ch. 318, § 69.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-10-7 NMSA 1978, as enacted

by Laws 1941, ch. 9, § 6, relating to permission to forces of other states, and enacted a new section, effective April 10, 1987.

## 20-10-8. Distinguished service medal.

The governor may award a distinguished service medal with accompanying ribbon to any member of the national guard or state defense force who distinguishes himself by an unselfish, untiring and exceptionally meritorious period of service or act resulting in extraordinary benefit to the state or to the United States.

**History:** 1978 Comp., § 20-10-8, enacted by Laws 1987, ch. 318, § 70.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-10-8 NMSA 1978, as enacted by Laws 1941, ch. 9, § 7, relating to federal service, and enacted a new section, effective April 10, 1987.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 6 C.J.S. Armed Services § 293.

## 20-10-9. Medal of merit.

The adjutant general may award a medal of merit with accompanying ribbon to any person who, while serving in any capacity with or in the national guard or state defense force, shall render prolonged and meritorious service to the state or the United States.



**History:** 1978 Comp., § 20-10-9, enacted by Laws 1987, ch. 318, § 71.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-10-9 NMSA 1978, as enacted

by Laws 1941, ch. 9, § 8, relating to civil groups, and enacted a new section, effective April 10, 1987.

History: 1978 Comp., § 20-10-9, enacted by Laws 1987, ch. 318, § 71.

### 20-10-9.1. Cold war medal.

The New Mexico state defense force commander may award the New Mexico state defense force cold war medal to a member of the state defense force who has received a cold war recognition certificate. The cold war recognition certificate recognizes all members of the armed forces and qualified federal government civilian personnel who faithfully and honorably served the United States during the cold war era from September 2, 1945 to December 26, 1991.

**History:** 1978 Comp., § 20-10-9.1, enacted by Laws 2016, ch. 6, § 1.

**Effective dates.** — Laws 2016, ch. 6 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

### 20-10-9.2. Outstanding enlisted leader of the year ribbon.

The adjutant general may award the outstanding enlisted leader of the year ribbon to a member of the national guard of New Mexico who has been officially selected as the New Mexico outstanding soldier of the year, airman of the year or first sergeant of the year. This ribbon is established to recognize those members who have performed above and beyond their peer group in their profession, on- or off-duty, and in their communities, reflecting great credit upon themselves and the national guard within the calendar year of the award.

**History:** 1978 Comp., § 20-10-9.2, enacted by Laws 2016, ch. 6, § 2.

**Effective dates.** — Laws 2016, ch. 6 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

### 20-10-10. Outstanding service medal.

The adjutant general may award an outstanding service medal with accompanying ribbon to any person who, while serving in any capacity with or as a member of the national guard or state defense force, performs the service required or requested of him through the exertion of extra effort and in a manner that brings credit to himself, to his unit and to the state, either over a period of time or on a specific occasion.

**History:** 1978 Comp., § 20-10-10, enacted by Laws 1987, ch. 318, § 72.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-10-10 NMSA 1978, as enacted

by Laws 1941, ch. 9, § 9, relating to disqualifications, and enacted a new section, effective April 10, 1987.

### 20-10-11. Outstanding unit citation.

The governor may award an outstanding unit citation of appropriate design with accompanying individual ribbon to any recognized unit of the national guard or state defense force which, through outstanding effort of all its members, has excelled in the performance of its duty and mission for a period of service in a manner that clearly exceeds that of other units, within or without the state, similar in composition or mission. In extraordinary circumstances a "V" device may be awarded to denote valor exemplified by the unit.

**History:** 1978 Comp., § 20-10-11, enacted by Laws 1987, ch. 318, § 73.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-10-11 NMSA 1978, as enacted

by Laws 1941, ch. 9, § 10, relating to officers, and enacted a new section, effective April 10, 1987.

## 20-10-12. Recompiled.

**Recompilations.** — Laws 2016, ch. 6, § 6 recompiled former 20-10-12 NMSA 1978 as 20-10-12.5 NMSA 1978, effective May 18, 2016.

### 20-10-12.1. Emergency service ribbon.

The adjutant general shall award the emergency service ribbon to any member of the New Mexico national guard who, after January 1, 2000, honorably performs duty when an emergency situation has been declared by the governor. The duty must be in direct support of the declared state of emergency and the guardmember must be in duty status, on orders in either pay or non-pay status, at the time the service is rendered.

**History:** Laws 2002, ch. 44, § 1.

**Effective dates.** — Laws 2002, ch. 44 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 15, 2002, 90 days after adjournment of the legislature.

### 20-10-12.2. Counter-drug service ribbon.

The adjutant general may award the counter-drug service ribbon to recognize soldiers and airmen of the national guard of New Mexico who have provided outstanding support to state, local and federal law enforcement officers on counter-drug operations in New Mexico since August 1989 and have served a minimum of ninety consecutive days performing counter-drug support missions in accordance with national guard regulations.

**History:** 1978 Comp., § 20-10-12.2, enacted by Laws 2016, ch. 6, § 8.

**Effective dates.** — Laws 2016, ch. 6 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

### 20-10-12.3. Community service ribbon.

The adjutant general may award the community service ribbon to a member of the national guard of New Mexico or New Mexico state defense force for substantial or particularly meaningful community service above and beyond the duties required. A member's community service must contribute to the well-being of the civilian community, including the military family community. Service must be significant in nature and produce tangible results. There is not a specific time period of community service that must be performed to qualify for the award. Actions performed in accordance with regular duty requirements are not to be considered for the award. Community service may not result in a personal gain for the service member.

**History:** 1978 Comp., § 20-10-12.3, enacted by Laws 2016, ch. 6, § 4.

**Effective dates.** — Laws 2016, ch. 6 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

### 20-10-12.4. Physical fitness ribbon.

A. The adjutant general may present a physical fitness ribbon to a currently assigned member of the national guard of New Mexico who:

- (1) scores two hundred seventy or above for three consecutive years when taking all components of the army physical fitness training and meets the body fat standards for official record; or
- (2) scores ninety or above for three consecutive years when taking all components of the air force fitness assessment for official record.



B. Subsequent three-year periods of service shall be acknowledged by the presentation and wearing of an affixed device signifying in arabic numerals the number of such awards to the member.

**History:** 1978 Comp., § 20-10-12.4, enacted by Laws 2016, ch. 6, § 5.

**Effective dates.** — Laws 2016, ch. 6 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

## 20-10-12.5. Service ribbon and long-service medal.

A. The adjutant general shall present a service ribbon to those members of the national guard and state defense force who have completed five years of honorable service in the national guard or state defense force. This service ribbon shall be of identical design to the ribbon of the long service medal.

B. The adjutant general shall present a long service medal to those members of the national guard and state defense force who have completed ten years of honorable service in either the national guard or the state defense force. The medal and accompanying ribbon shall have an appropriate numeral device affixed signifying total years of service beyond ten in increments of five.

**History:** 1978 Comp., § 20-10-12, enacted by Laws 1987, ch. 318, § 74; recompiled as § 20-10-12.5 by Laws 2016, ch. 6, § 6.

**Recompilations.** — Laws 2016, ch. 6, § 6 recompiled former 20-10-12 NMSA 1978 as 20-10-12.5 NMSA 1978, effective May 18, 2016.

## 20-10-13. Good conduct medal.

The adjutant general may award a good conduct medal with accompanying ribbon to any enlisted member of the national guard or state defense force who completes a three-year period of service free from unauthorized absence, reprimand, court-martial or other disciplinary action and free from any civilian conviction. Subsequent three-year periods of service shall be acknowledged by the presentation and wearing of an affixed device signifying in arabic numerals the number of such awards to the member.

**History:** 1978 Comp., § 20-10-13, enacted by Laws 1987, ch. 318, § 75.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-10-13 NMSA 1978, as enacted

by Laws 1941, ch. 9, § 12, relating to freedom from arrest and process, and enacted a new section, effective April 10, 1987.

## 20-10-14. Perfect attendance ribbon.

The adjutant general may present a perfect attendance ribbon to those members commissioned, warranted and enlisted of the national guard or state defense force who for the calendar year have had a perfect drill and annual training attendance. Unit commanders shall forward a list of all qualifying nominees to the awards board each January for the preceding calendar year. Subsequent annual periods of service shall be acknowledged by the presentation and wearing of an affixed device signifying in arabic numerals the number of such awards to the member.

**History:** 1978 Comp., § 20-10-14, enacted by Laws 1987, ch. 318, § 76.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-10-14 NMSA 1978, as enacted

by Laws 1941, ch. 9, § 13, relating to labor clause, and enacted a new section, effective April 10, 1987.

## 20-10-15. Academy service ribbon.

The adjutant general may present an academy service ribbon to those enlisted members of the national guard or state defense force who have successfully completed a noncommissioned officer

educational system course or noncommissioned officer academy. An arabic numeral shall reflect successful completion of higher level courses.

**History:** 1978 Comp., § 20-10-15, enacted by Laws 1987, ch. 318, § 77.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-10-15 NMSA 1978, as enacted

by Laws 1941, ch. 9, § 18, relating to exemption from jury duty, and enacted a new section, effective April 10, 1987.

## 20-10-16. Devices.

A. Except as specifically stated above, the second and subsequent award of any medal shall be noted by written citation and by presentation and wearing of a bronze oak leaf cluster in lieu of a second or subsequent medal. A silver oak leaf cluster shall substitute for five bronze oak leaf clusters.

B. All medals awarded may be worn on military ceremonial or mess uniforms in miniature format, which shall be procured by the awards fund and shall be available for purchase by recipients.

**History:** 1978 Comp., § 20-10-16, enacted by Laws 1987, ch. 318, § 78.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-10-16 NMSA 1978, as enacted

by Laws 1941, ch. 9, § 19, relating to powers of governor, and enacted a new section, effective April 10, 1987.

## 20-10-17 to 20-10-42. Repealed.

**Repeals.** — Laws 1987, ch. 318, § 98A repealed 20-10-17 to 20-10-42 NMSA 1978, as enacted by Laws 1941, ch. 9, §§ 20 to 45, relating to cooperation with civil authority,

organization and training, officers, and discipline and court-martial, effective April 10, 1987.

# ARTICLE 11

## Offenses

Sec.

20-11-1. Failure to appear; penalty.  
20-11-2. Hindering national guard; penalty.  
20-11-3. Interference with enrolling officer; penalty.  
20-11-4. Wrongful possession of military property; penalty.  
20-11-5. Wrongful wearing of uniform; penalty.

Sec.

20-11-5.1. Misrepresentation of military service; penalty.  
20-11-6. Employment discrimination prohibited; penalty.  
20-11-7. Peace officers' neglect or refusal to act; penalty.  
20-11-8 to 20-11-120. Repealed.

## 20-11-1. Failure to appear; penalty.

A. Any person in the unorganized militia ordered by the governor into active service in the national guard or state defense force pursuant to the powers enumerated in Chapter 20 NMSA 1978 and notified of the order to service who fails to appear without justification within the time prescribed in the notice to the place which ordered, shall be guilty of a misdemeanor.

B. Any person failing to appear as stated in Subsection A of this section and whose failure to appear is willful and with the intent to avoid or evade military service shall be guilty of a fourth degree felony.

**History:** 1978 Comp., § 20-11-1, enacted by Laws 1987, ch. 318, § 79.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-11-1 NMSA 1978, as enacted by Laws 1975, ch. 269, § 1, relating to short title of Code of Military Justice, and enacted a new section, effective April 10, 1987.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 6 C.J.S. Armed Services §§ 295, 298.



## 20-11-2. Hindering national guard; penalty.

The commanding officer of any part of the national guard or state defense force called into the active service of the state, when performing any military duty in any street or highway, may require any persons to yield the right-of-way to the national guard or state defense force provided that the carriage of United States mail, the legitimate functions of the police and the progress and operations of ambulances, fire engines and emergency vehicles shall not be interfered with. All persons who hinder, delay or obstruct the national guard or state defense force in the active service of the state or who attempt to do so, are guilty of a misdemeanor.

**History:** 1978 Comp., § 20-11-2, enacted by Laws 1987, ch. 318, § 80.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-11-2 NMSA 1978, as enacted

by Laws 1975, ch. 269, § 2, relating to definitions, and enacted a new section, effective April 10, 1987.

## 20-11-3. Interference with enrolling officer; penalty.

Any person who shall wilfully obstruct an enrolling or enlisting officer in the performance of his duty is guilty of a misdemeanor.

**History:** 1978 Comp., § 20-11-3, enacted by Laws 1987, ch. 318, § 81.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-11-3 NMSA 1978, as enacted by Laws 1975, ch. 269, § 3, relating to persons subject to Code, and enacted a new section, effective April 10, 1987.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 6 C.J.S. Armed Services §§ 295, 298.

## 20-11-4. Wrongful possession of military property; penalty.

Any person who commits the offense described in Section 20-9-4 NMSA 1978 is guilty of a misdemeanor.

**History:** 1978 Comp., § 20-11-4, enacted by Laws 1987, ch. 318, § 82.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-11-4 NMSA 1978, as enacted by Laws 1975, ch. 269, § 4, relating to jurisdiction, and enacted a new section, effective April 10, 1987.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 6 C.J.S. Armed Services § 298.

## 20-11-5. Wrongful wearing of uniform; penalty.

Any unauthorized person wearing a military uniform or facsimile thereof with the intent to impersonate a person with military authority is guilty of a misdemeanor; but if this offense is committed in time of war or following a declaration of martial law, the offender shall be guilty of a fourth degree felony.

**History:** 1978 Comp., § 20-11-5, enacted by Laws 1987, ch. 318, § 83.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-11-5 NMSA 1978, as enacted

by Laws 1975, ch. 269, § 5, relating to applicability of Code, and enacted a new section, effective April 10, 1987.

### 20-11-5.1. Misrepresentation of military service; penalty.

Misrepresentation of military service consists of a person misrepresenting that person's self as having served or currently serving in the United States armed forces for the intentional taking of anything of value based on the person's military service. Whoever commits misrepresentation of military service is guilty of a misdemeanor.

**History:** Laws 2018, ch. 5, § 1.

**Effective date.** — Laws 2018, ch. 5, § 2 made Laws 2018, ch. 5, § 1 effective July 1, 2018.

## 20-11-6. Employment discrimination prohibited; penalty.

Any person who wilfully violates Section 20-4-6 or Section 20-5-14 NMSA 1978 is guilty of a misdemeanor.

**History:** 1978 Comp., § 20-11-6, enacted by Laws 1987, ch. 318, § 84.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-11-6 NMSA 1978, as enacted

by Laws 1975, ch. 269, § 6, relating to judge advocates and legal officers, and enacted a new section, effective April 10, 1987.

## 20-11-7. Peace officers' neglect or refusal to act; penalty.

Any peace officer who neglects or refuses to obey, execute or return the process of a military court or the order of a commanding officer pursuant to Section 20-12-12 NMSA 1978 or makes a false return on such process or order is guilty of a misdemeanor.

**History:** 1978 Comp., § 20-11-7, enacted by Laws 1987, ch. 318, § 85.

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-11-7 NMSA 1978, as enacted by Laws 1975, ch. 269, § 7, relating to apprehension, and enacted a new section, effective April 10, 1987.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 6 C.J.S. Armed Services § 298.

## 20-11-8 to 20-11-120. Repealed.

**Repeals.** — Laws 1987, ch. 318, § 98A repealed 20-11-8 to 20-11-120 NMSA 1978, as enacted by Laws 1975, ch. 269, §§ 8 to 20, relating to Code of Military Justice, effective April 10, 1987.

# ARTICLE 12

## Code of Military Justice

Sec.

- 20-12-1. Short title.
- 20-12-2. Adoption of Uniform Code of Military Justice; Manual for Courts-Martial, United States, 1984; United States military regulations and directives; decisions of United States court of military appeals and courts of military review; limitations and exceptions.
- 20-12-3. Persons subject to the code; applicability of the code.
- 20-12-4. Convening authorities; nonjudicial punishment authorities.
- 20-12-5. Judge advocates.
- 20-12-6. Limitation on punishments.
- 20-12-7. Advice; reviews and appeals; extraordinary writs.
- 20-12-8. Confinement.
- 20-12-9. Reductions in grade.
- 20-12-10. Forfeitures or fines.
- 20-12-11. Nonjudicial punishment.
- 20-12-12. Absence without leave; confinement during period of duty.
- 20-12-13. Accessory after the fact.
- 20-12-14. Conviction of lesser included offense.
- 20-12-15. Attempts.
- 20-12-16. Conspiracy.
- 20-12-17. Solicitation.
- 20-12-18. Fraudulent enlistment, appointment or separation.

Sec.

- 20-12-19. Unlawful enlistment, appointment or separation.
- 20-12-20. Desertion.
- 20-12-21. Absence without leave.
- 20-12-22. Missing movement.
- 20-12-23. Contempt toward officials.
- 20-12-24. Disrespect toward superior commissioned officer.
- 20-12-25. Assaulting or wilfully disobeying superior commissioned officer.
- 20-12-26. Insubordinate conduct toward warrant officer, noncommissioned officer or petty officer.
- 20-12-27. Failure to obey order or regulation.
- 20-12-28. Cruelty and maltreatment.
- 20-12-29. Mutiny or sedition.
- 20-12-30. Resistance, breach of arrest and escape.
- 20-12-31. Releasing prisoner without proper authority.
- 20-12-32. Unlawful detention.
- 20-12-33. Noncompliance with procedural rules.
- 20-12-34. Misbehavior before the enemy.
- 20-12-35. Subordinate compelling surrender.
- 20-12-36. Improper use of countersign.
- 20-12-37. Forcing a safeguard.
- 20-12-38. Captured or abandoned property.
- 20-12-39. Aiding the enemy.
- 20-12-40. Misconduct as prisoner.
- 20-12-41. Spies.
- 20-12-42. Espionage.
- 20-12-43. False official statements.



Sec.	Sec.
20-12-44. Military property of the United States; loss, damage, destruction or wrongful disposition.	20-12-61. Burglary.
20-12-45. Property other than military property of United States; waste, spoilage or destruction.	20-12-62. Housebreaking.
20-12-46. Improper hazarding of vessel.	20-12-63. Perjury.
20-12-47. Drunken or reckless driving.	20-12-64. Frauds against the United States.
20-12-48. Drunk on duty.	20-12-65. Conduct unbecoming an officer and a gentleman.
20-12-49. Murder.	20-12-66. Wrongful use and possession of controlled substances.
20-12-50. Manslaughter.	20-12-67. Misbehavior of sentinel.
20-12-51. Rape and other sex crimes.	20-12-68. Repealed.
20-12-52. Larceny and wrongful appropriation.	20-12-69. Malingering.
20-12-53. Robbery.	20-12-70. Riot or breach of peace.
20-12-54. Forgery.	20-12-71. Provoking speeches or gestures.
20-12-55. Making, drawing or uttering check, draft or order without sufficient funds.	20-12-72. Principals.
20-12-56. Maiming.	20-12-73. General article.
20-12-57. Repealed.	20-12-74. Prohibited activities with military recruit or trainee by person in position of special trust; consent not a defense.
20-12-58. Arson.	20-12-75. Wearing unauthorized insignia, decoration, badge, ribbon, device or lapel button.
20-12-59. Assault.	
20-12-60. Extortion.	

## 20-12-1. Short title.

Chapter 20, Article 12 NMSA 1978 may be cited as the "Code of Military Justice".

**History:** 1978 Comp., § 20-12-1, enacted by Laws 1987, ch. 318, § 86.

## 20-12-2. Adoption of Uniform Code of Military Justice; Manual for Courts-Martial, United States, 1984; United States military regulations and directives; decisions of United States court of military appeals and courts of military review; limitations and exceptions.

The Uniform Code of Military Justice, Title 10, Chapter 47, United States Code; the Manual for Courts-Martial, United States, 1984, (Executive Order No. 12437 (13 April 1984), as amended); the regulations and directives of the United States military forces made applicable to the national guard; and the decisions of the United States court of military appeals and of the armed services courts of military review are adopted as the Code of Military Justice, the Manual for Courts-Martial, the regulations and the precedential case law of this state on military justice matters, respectively, except as hereinafter limited or stated within Chapter 20, Article 12 NMSA 1978. These documents shall be reasonably construed and applied so as to achieve and effect the high level of order and discipline necessary for the military forces of the state. Time standards other than periods of limitations and pretrial confinement may be waived by convening authorities or military judges where such standards would be impracticable within the traditional operations of militia forces. Where regulations and procedures for the United States army differ from those of the United States air force, the army national guard and the state defense force shall observe the regulations and procedures of the United States army and the air national guard shall observe the regulations and procedures of the United States air force. References therein and in Sections 20-12-13 through 20-12-73 NMSA 1978 to "the United States" shall mean "the state" where such meaning has reasonable application. References to "the president" or to "the secretary" (meaning the secretary of the army or the secretary of the air force) shall mean "the governor". The adjutant general may by regulation prescribe practical changes or variances from the procedural provisions of the Uniform Code of Military Justice, from the Manual for Courts-Martial or from service regulations subservient thereto.

**History:** 1978 Comp., § 20-12-2, enacted by Laws 1987, ch. 318, § 87; 1989, ch. 397, § 7.

**Cross references.** — For the Uniform Code of Military Justice, see 10 U.S.C. § 801 et seq.

**The 1989 amendment**, effective June 16, 1989, in the third sentence from the end, inserted "and in

Sections 20-12-13 through 20-12-73 NMSA 1978"; and added the last two sentences.

### 20-12-3. Persons subject to the code; applicability of the code.

The Code of Military Justice applies to all members of the national guard when not in federal service under Title 10, United States Code and to all members of the state defense force when performing militia duty. The code has territorial applicability both within and without the state. The code has applicability at all times, provided that either the member is in a duty status or, if not in a duty status, that there is a connection between the act or omission constituting the offense and the efficient functioning of the military forces; however, this grant of military jurisdiction shall not preclude or limit civilian jurisdiction over an offense, which is limited only by the prohibition of double jeopardy.

**History:** 1978 Comp., § 20-12-3, enacted by Laws 1987, ch. 318, § 88; 1989, ch. 337, § 8.

**The 1989 amendment**, effective June 16, 1989, inserted "either the member is in a duty status or, if not in a duty status, that" in the last sentence.

Civilian offenses; comment note on courts-martial jurisdiction over members of armed forces for "civilian" offenses, 14 A.L.R. Fed. 152.

6 C.J.S. Armed Services § 288.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Military and Civil Defense §§ 283 et seq., 289.

### 20-12-4. Convening authorities; nonjudicial punishment authorities.

A. A general, special or summary court-martial may be convened by the governor or by the adjutant general.

B. A special or summary court-martial may be convened by the assistant adjutant general of the army national guard, as to all members of the army national guard; by the land component commander, as to members of the land component commander's command; by the commanding officer of any brigade-level headquarters, as to members of the commanding officer's command; by the assistant adjutant general of the air national guard, as to all members of the air national guard; by the assistant adjutant general of the state defense force, as to all members of the state defense force; and to the commanders of such equivalent level commands as may be organized in the future.

C. A summary court-martial may be convened by a battalion commander, group commander or equivalent, as to all members of the commander's command.

D. Nonjudicial punishment authority is conferred upon all general, special or summary court-martial convening authorities and upon company, battery and squadron commanders or equivalent, as to members of their command.

**History:** 1978 Comp., § 20-12-4, enacted by Laws 1987, ch. 318, § 89; 2018, ch. 6, § 3; 2021, ch. 55, § 9.

**The 2021 amendment**, effective June 18, 2021, authorized the land component commander to convene a special or summary court-martial as to members of the state defense force under the command of the land component commander; and in Subsection B, after "army national guard", added "by the land component commander, as to members of the land component commander's command", after the first occurrence of "commanding", deleted "general" and added "officer", and after the second occurrence of "commanding", deleted "general's" and added "officer's".

**The 2018 amendment**, effective July 1, 2018, updated the designation of special or summary court-martial

convening authorities; in Subsection B, after "by the commanding general of", deleted "the 111th air defense artillery brigade" and added "any brigade-level headquarters", after "as to members of", deleted "his" and added "the commanding general's", and after "command", deleted "by the commanding officer of troop command, as to all members of his command"; and in Subsection C, after "all members of", deleted "his" and added "the commander's".

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Military, and Civil Defense § 260 et seq.

6 C.J.S. Armed Services §§ 295, 298.

### 20-12-5. Judge advocates.

A. The adjutant general may appoint commissioned officers of the national guard and of the state defense force who are members of the bar of the supreme court of New Mexico as judge advocates. One judge advocate shall be designated by the adjutant general as the state judge advocate.



The remaining senior judge advocate of each of the army national guard, the 111th air defense artillery brigade, the air national guard and the state defense force shall be designated as the staff judge advocate for their respective component, but this designation shall not preclude their assignment as military judge, trial counsel or defense counsel to other components in individual cases where they have not earlier participated. All other judge advocates shall be designated as assistant staff judge advocates. Designation as a judge advocate may be as a primary military specialty or as an additional duty, with their concurrence, for line officers who are members of the bar of the supreme court of New Mexico.

B. Judge advocates shall make frequent inspections in the field in supervision of the administration of military justice. Judge advocates of one component may participate in the administration of military justice in other components. Appointment as a judge advocate by the adjutant general shall substitute for Article 27(b)(2), Uniform Code of Military Justice certification.

C. The adjutant general, with the concurrence of the state judge advocate, shall appoint one military judge from the army national guard and one military judge from the air national guard. To the extent practicable, military judges will hear cases from components other than their own. Appointment as military judge shall not preclude assignment of judge advocate duties which are not in conflict with those of a military judge. A judge advocate's performance of duty as a military judge shall not be the subject of comment in any effectiveness, fitness or efficiency report beyond a statement that the officer is designated as military judge.

D. Federally recognized judge advocates of other active and reserve military components may, with their concurrence, serve as judge advocates for national guard and the state defense force when so requested and detailed by the state judge advocate.

**History:** 1978 Comp., § 20-12-5, enacted by Laws 1987, ch. 318, § 90.

**Cross references.** — For Article 27(b)(2) of the Uniform Code of Military Justice, see 10 U.S.C. § 827(b)(2).

are required for a military judge in the New Mexico national guard other than being appointed a judge advocate, which requires only membership in the New Mexico bar and an officer's commission in the national guard. *State v. Baca*, 1993-NMCA-084, 116 N.M. 19, 859 P.2d 487.

#### ANNOTATIONS

**Qualifications of this article do not apply for military judges in national guard; no special qualifications**

### 20-12-6. Limitation on punishments.

A. Except when the militia is in actual service in time of war or public danger, no punishment imposed by court martial shall exceed that prescribed for a misdemeanor. Imposition of a punitive discharge or a forfeiture of pay or a fine in addition to confinement shall not be deemed to make the offense a felony.

B. Subject to the limitation in Subsection A of this section and the jurisdictional punishment limitation for a special or a summary court-martial, the Maximum Punishment Chart, Manual for Courts-Martial, United States, 1984, Appendix 12, shall establish the maximum punishment for a specific offense.

**History:** 1978 Comp., § 20-12-6, enacted by Laws 1987, ch. 318, § 91; 1989, ch. 337, § 9.

**The 1989 amendment**, effective June 16, 1989, substituted "danger" for "damage" in the first sentence of Subsection A.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — What circumstances constitute laches barring federal judicial review of allegedly wrongful discharge from military service, 100 A.L.R. Fed. 821.

### 20-12-7. Advice; reviews and appeals; extraordinary writs.

A. The advice of the staff judge advocate prescribed by Article 34, Uniform Code of Military Justice and the review required by Article 64, Uniform Code of Military Justice shall be accomplished by the state judge advocate or his designee.

B. Appeals shall be taken according to the rules of appellate procedure applying to criminal cases tried in the district courts.

C. The action of the convening authority as to an approved sentence shall continue in effect while an appeal is pending.

D. Extraordinary writs may issue from the New Mexico supreme court upon such grounds as the United States court of military appeals may similarly act in federal courts-martial, following the New Mexico rules of appellate procedures applicable thereto.

**History:** 1978 Comp., § 20-12-7, enacted by Laws 1987, ch. 318, § 92; 1989, ch. 337, § 10.

**Cross references.** — For Articles 34 and 64 of the Uniform Code of Military Justice, referred to in Subsection A, see 10 U.S.C. §§ 834 and 864, respectively.

**The 1989 amendment,** effective June 16, 1989, in the catchline, added "extraordinary writs"; in Subsection A, added "or his designee"; substituted present Subsection

B for the provisions of former Subsections B to E, which specified review procedures; and added Subsections C and D.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Military, and Civil Defense §§ 269, 270, 338.

### 20-12-8. Confinement.

In a sentence which includes confinement, the convening authority shall prescribe the place of confinement which may be a federal military confinement facility, the county correctional facility where the accused's unit is headquartered or where the accused resides or to the state commissioner of corrections. The confinement facility shall bear the costs of confinement from general appropriations made for confinement of state prisoners.

**History:** 1978 Comp., § 20-12-8, enacted by Laws 1987, ch. 318, § 93.

### 20-12-9. Reductions in grade.

In a sentence or approved nonjudicial punishment which includes a reduction in enlisted grade or a suspended reduction in enlisted grade, the imposing authority need not have promotion authority to the grade from which the accused is reduced.

**History:** 1978 Comp., § 20-12-9, enacted by Laws 1987, ch. 318, § 94.

### 20-12-10. Forfeitures or fines.

In a sentence or approved nonjudicial punishment which includes forfeiture of pay or a fine, the adjutant general shall designate the military purpose to which the funds may be applied which may include the state armory board fund, a local armory board fund or the awards fund. A cash collection may be substituted for a forfeiture of pay with the consent of the accused.

**History:** 1978 Comp., § 20-12-10, enacted by Laws 1987, ch. 318, § 95.

### 20-12-11. Nonjudicial punishment.

A. The rules and procedures for the imposition of nonjudicial punishment shall be as prescribed in Article 15, Uniform Code of Military Justice and in the Manual for Courts-Martial, United States, 1984, Part V, except as stated to the contrary in Subsection D of Section 20-12-4 NMSA 1978 and as follows in this section.

B. Cognizance of and punishment for unexcused absence from unit training assembly, drill or annual training at the prescribed times by an enlisted member following a first such offense with documented warning may be punished nonjudicially as follows:



(1) the accused's unit commander shall inform the accused of his intent to impose the punishment prescribed herein by personal service or by certified United States mail, return receipt requested, to the accused's last address of military record;

(2) the accused may not refuse nonjudicial punishment or demand trial by court-martial but may submit matters in defense, extenuation or mitigation, may request a hearing before the commander and may appeal the punishment imposed; and

(3) the punishment imposed shall be limited to a reduction of one grade or a suspended reduction of one grade. If the punishment is suspended, the suspension may be vacated and the punishment ordered executed by personal service or by certified United States mail, return receipt requested, to the accused's last known address of military record.

C. In any nonjudicial punishment action, a fine may be substituted for the equivalent forfeiture.

**History:** 1978 Comp., § 20-12-11, enacted by Laws 1987, ch. 318, § 96; 1989, ch. 337, § 11.

**Cross references.** — For Article 15 of the Uniform Code of Military Justice, see 10 U.S.C. § 815.

**The 1989 amendment,** effective June 16, 1989, in Subsection B, added the second sentence in Paragraph (3); and added Subsection C.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Military and Civil Defense §§ 257, 258, 259. 6 C.J.S. Armed Services §§ 295, 298.

### 20-12-12. Absence without leave; confinement during period of duty.

Any member of the national guard who fails to either report for or remain present for unit training assembly, drill, or annual training when so ordered shall be subject to confinement for the duration of that training assembly or annual training to include nights between days of training. The sheriff or any other peace officer of the county in which the unit is training or where the absent national guard member resides or is found shall, upon request of the unit commander, arrest the absent member and confine him in a suitable facility at county expense until the conclusion of the training period or until the member agrees to present himself for duty. Neglect or unjustified refusal of a requested sheriff or other peace officer to so act shall render the sheriff or peace officer guilty of a misdemeanor in accordance with Section 20-11-7 NMSA 1978.

**History:** 1978 Comp., § 20-12-12, enacted by Laws 1987, ch. 318, § 97.

### 20-12-13. Accessory after the fact.

Any person subject to Chapter 20 NMSA 1978 who, knowing that an offense punishable by that chapter has been committed, receives, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-13, enacted by Laws 1989, ch. 337, § 12.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

### 20-12-14. Conviction of lesser included offense.

An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein.

**History:** 1978 Comp., § 20-12-14, enacted by Laws 1989, ch. 337, § 13.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — When should jury's deliberation proceed from charged offense to lesser-included offense, 26 A.L.R.5th 603.

## 20-12-15. Attempts.

A. An act, done with specific intent to commit an offense under Chapter 20 NMSA 1978, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

B. Any person subject to Chapter 20 NMSA 1978 who attempts to commit any offense punishable by that chapter shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

C. Any person subject to Chapter 20 NMSA 1978 may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

**History:** 1978 Comp., § 20-12-15, enacted by Laws 1989, ch. 337, § 14.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-16. Conspiracy.

Any person subject to Chapter 20 NMSA 1978 who conspires with any other person to commit an offense under that chapter shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-16, enacted by Laws 1989, ch. 337, § 15.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-17. Solicitation.

Any person subject to Chapter 20 NMSA 1978 who solicits or advises another or others to desert in violation of Section 20-12-20 NMSA 1978 or mutiny in violation of Section 20-12-29 NMSA 1978 shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.

Any person subject to this chapter who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of Section 20-12-34 NMSA 1978 or sedition in violation of Section 20-12-29 NMSA 1978 shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, he shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-17, enacted by Laws 1989, ch. 337, § 16.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-18. Fraudulent enlistment, appointment or separation.

Any person who procures his own enlistment or appointment in the armed forces by knowingly false representation or deliberate concealment as to his qualifications for the enlistment or appointment and receives pay or allowances thereunder or procures his own separation from the armed forces by knowingly false representation or deliberate concealment as to his eligibility for that separation shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-18, enacted by Laws 1989, ch. 337, § 17.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.



## 20-12-19. Unlawful enlistment, appointment or separation.

Any person subject to Chapter 20 NMSA 1978 who effects an enlistment or appointment in or a separation from the armed forces of any person who is known to him to be ineligible for that enlistment, appointment or separation because it is prohibited by law, regulation or order shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-19, enacted by Laws 1989, ch. 337, § 18.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-20. Desertion.

A. Any member of the armed forces who:

(1) without authority goes or remains absent from his unit, organization or place of duty with intent to remain away therefrom permanently;

(2) quits his unit, organization or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) without being regularly separated from one of the armed forces enlists or accepts an appointment in the same or another one of the armed forces without fully disclosing the fact that he has not been regularly separated, or enters any foreign armed service except when authorized by the United States; is guilty of desertion.

B. Any commissioned officer of the armed forces who, after tender of his resignation and before notice of its acceptance, quits his post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

C. Any person found guilty of desertion or attempt to desert shall be punished, if the offense is committed in time of war, by death or other punishment as a court-martial may direct, but if the desertion or attempt to desert occurs at any other time, by such punishment, other than death, as a court-martial may direct.

**History:** 1978 Comp., § 20-12-20, enacted by Laws 1989, ch. 337, § 19.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-21. Absence without leave.

Any member of the armed forces who without authority:

A. fails to go to his appointed place of duty at the time prescribed;

B. goes from that place; or

C. absents himself or remains absent from his unit, organization or place of duty at which he is required to be at the time prescribed;

shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-21, enacted by Laws 1989, ch. 337, § 20.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-22. Missing movement.

Any person subject to Chapter 20 NMSA 1978 who through neglect or design misses the movement of a ship, aircraft or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-22, enacted by Laws 1989, ch. 337, § 21.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

**20-12-23. Contempt toward officials.**

Any commissioned officer who uses contemptuous words against the president of the United States, the vice president of the United States, a member of congress, the United States secretary of defense, the secretary of a military department, the secretary of the United States department of transportation or the governor or legislature of any state, territory, commonwealth or possession in which he is on duty or present shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-23, enacted by Laws 1989, ch. 337, § 22.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

**20-12-24. Disrespect toward superior commissioned officer.**

Any person subject to Chapter 20 NMSA 1978 who behaves with disrespect toward his superior commissioned officer shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-24, enacted by Laws 1989, ch. 337, § 23.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

**20-12-25. Assaulting or willfully disobeying superior commissioned officer.**

Any person subject to Chapter 20 NMSA 1978 who strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office or willfully disobeys a lawful command of his superior commissioned officer shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, and if the offense is committed at any other time, by punishment, other than death, as a court-martial may direct.

**History:** 1978 Comp., § 20-12-25, enacted by Laws 1989, ch. 337, § 24.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

**20-12-26. Insubordinate conduct toward warrant officer, noncommissioned officer or petty officer.**

Any warrant officer or enlisted member who:

- A. strikes or assaults a warrant officer, noncommissioned officer or petty officer while that officer is in the execution of his office;
  - B. willfully disobeys the lawful order of a warrant officer, noncommissioned officer or petty officer; or
  - C. treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer or petty officer while that officer is in the execution of his office;
- shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-26, enacted by Laws 1989, ch. 337, § 25.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

**20-12-27. Failure to obey order or regulation.**

Any person subject to Chapter 20 NMSA 1978 who:

- A. violates or fails to obey any lawful general order or regulation;



- B. having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or
  - C. is derelict in the performance of his duties;
- shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-27, enacted by Laws 1989, ch. 337, § 26.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## **20-12-28. Cruelty and maltreatment.**

Any person subject to Chapter 20 NMSA 1978 who is guilty of cruelty toward or oppression or maltreatment of any person subject to his orders shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-28, enacted by Laws 1989, ch. 337, § 27.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## **20-12-29. Mutiny or sedition.**

- A. Any person subject to Chapter 20 NMSA 1978 who:
  - (1) with intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;
  - (2) with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence or other disturbance against that authority is guilty of sedition; or
  - (3) fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place; is guilty of a failure to suppress or report a mutiny or sedition.
- B. A person who is found guilty of attempted mutiny, mutiny, sedition or failure to suppress or report a mutiny or sedition shall be punished by death or other punishment as a court-martial may direct.

**History:** 1978 Comp., § 20-12-29, enacted by Laws 1989, ch. 337, § 28.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## **20-12-30. Resistance, breach of arrest and escape.**

Any person subject to Chapter 20 NMSA 1978 who resists apprehension or breaks arrest or who escapes from custody or confinement shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-30, enacted by Laws 1989, ch. 337, § 29.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## **20-12-31. Releasing prisoner without proper authority.**

Any person subject to Chapter 20 NMSA 1978 who, without proper authority, releases any prisoner committed to his charge or who through neglect or design suffers any such prisoner to escape shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with law.

**History:** 1978 Comp., § 20-12-31, enacted by Laws 1989, ch. 337, § 30.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-32. Unlawful detention.

Any person subject to Chapter 20 NMSA 1978 who, except as provided by law, apprehends, arrests or confines any person shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-32, enacted by Laws 1989, ch. 337, § 31.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-33. Noncompliance with procedural rules.

Any person subject to Chapter 20 NMSA 1978 who is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under that chapter or who knowingly and intentionally fails to enforce or comply with any provision of that chapter regulating the proceedings before, during or after trial of an accused shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-33, enacted by Laws 1989, ch. 337, § 32.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-34. Misbehavior before the enemy.

Any person subject to Chapter 20 NMSA 1978 who before or in the presence of the enemy:

- A. runs away;
  - B. shamefully abandons, surrenders or delivers up any command, unit, place or military property which it is his duty to defend;
  - C. through disobedience, neglect or intentional misconduct endangers the safety of any such command, unit, place or military property;
  - D. casts away his arms or ammunition;
  - E. is guilty of cowardly conduct;
  - F. quits his place of duty to plunder or pillage;
  - G. causes false alarms in any command, unit or place under control of the armed forces;
  - H. willfully fails to do his utmost to encounter, engage, capture or destroy any enemy troops, combatants, vessels, aircraft or any other thing, which it is his duty so to encounter, engage, capture or destroy; or
  - I. does not afford all practicable relief and assistance to any troops, combatants, vessels or aircraft of the armed forces belonging to the United States or their allies when engaged in battle;
- shall be punished by death or other punishment as a court-martial may direct.

**History:** 1978 Comp., § 20-12-34, enacted by Laws 1989, ch. 337, § 33.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-35. Subordinate compelling surrender.

Any person subject to Chapter 20 NMSA 1978 who compels or attempts to compel the commander of any place, vessel, aircraft or other military property, or of any body of members of the armed forces, to give it up to an enemy or to abandon it, or who strikes the colors or flag to any enemy without proper authority, shall be punished by death or other punishment as a court-martial may direct.



**History:** 1978 Comp., § 20-12-35, enacted by Laws 1989, ch. 337, § 34.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## **20-12-36. Improper use of countersign.**

Any person subject to Chapter 20 NMSA 1978 who in time of war discloses the parole or countersign to any person not entitled to receive it or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give shall be punished by death or other punishment as a court-martial may direct.

**History:** 1978 Comp., § 20-12-36, enacted by Laws 1989, ch. 337, § 35.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## **20-12-37. Forcing a safeguard.**

Any person subject to Chapter 20 NMSA 1978 who forces a safeguard shall suffer death or other punishment as a court-martial may direct.

**History:** 1978 Comp., § 20-12-37, enacted by Laws 1989, ch. 337, § 36.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## **20-12-38. Captured or abandoned property.**

A. All persons subject to Chapter 20 NMSA 1978 shall secure all public property taken from the enemy for the service of the United States and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody or control.

B. Any person subject to Chapter 20 NMSA 1978 who:

- (1) fails to carry out the duties prescribed in Subsection A of this section;
  - (2) buys, sells, trades or in any way deals in or disposes of captured or abandoned property, whereby he receives or expects any profit, benefit or advantage to himself or another directly or indirectly connected with himself; or
  - (3) engages in looting or pillaging;
- shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-38, enacted by Laws 1989, ch. 337, § 37.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## **20-12-39. Aiding the enemy.**

Any person who aids or attempts to aid the enemy with arms, ammunition, supplies, money or other things or without proper authority, who knowingly harbors or protects or gives intelligence to or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly, shall suffer death or other punishment as a court-martial or military commission may direct.

**History:** 1978 Comp., § 20-12-39, enacted by Laws 1989, ch. 337, § 38.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-40. Misconduct as prisoner.

Any person subject to Chapter 20 NMSA 1978 who, while in the hands of the enemy in time of war, for the purpose of securing favorable treatment by his captors, acts without proper authority in a manner contrary to law, custom or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners or while in a position of authority over such persons, maltreats them without justifiable cause shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-40, enacted by Laws 1989, ch. 337, § 39.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-41. Spies.

Any person who in time of war is found lurking as a spy or acting as a spy in or about any place, vessel or aircraft, within the control or jurisdiction of any of the armed forces, or in or about any shipyard, any manufacturing or industrial plant or any other place or institution engaged in work in aid of the prosecution of the war by the United States, or elsewhere, shall be tried by a general court-martial or by a military commission and on conviction shall be punished by death.

**History:** 1978 Comp., § 20-12-41, enacted by Laws 1989, ch. 337, § 40.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-42. Espionage.

A. Any person subject to Chapter 20 NMSA 1978 who, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers or transmits, or attempts to communicate, deliver or transmit, to any entity described in Subsection B of this section, either directly or indirectly, any thing described in Subsection C of this section shall be punished as a court-martial may direct, except that if the accused is found guilty of an offense that directly concerns nuclear weaponry, military spacecraft or satellites, early warning systems or other means of defense or retaliation against large scale attack, war plans, communications intelligence or cryptographic information or any other major weapons system or major element of defense strategy, the accused shall be punished by death or other punishment as a court-martial may direct.

B. An "entity" referred to in Subsection A of this section is:

- (1) a foreign government;
- (2) a faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States; or
- (3) a representative, officer, agent, employee, subject or citizen of such a government, faction, party or force.

C. A "thing" referred to in Subsection A of this section is a document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance or information relating to the national defense.

D. No person may be sentenced by court-martial to suffer death for an offense under this section unless:

- (1) the members of the court-martial unanimously find at least one of the aggravating factors set out in Subsection G of this section; and
- (2) the members unanimously determine that any extenuating or mitigating circumstances are substantially outweighed by any aggravating circumstances, including the aggravating factors set out under Subsection G of this section.

E. Findings under this subsection may be based on:

- (1) evidence introduced on the issue of guilt or innocence;



- (2) evidence introduced during the sentencing proceeding; or
- (3) all such evidence.

F. The accused shall be given broad latitude to present matters in extenuation and mitigation.

G. A sentence of death may be adjudged by a court-martial for an offense under this section only if the members unanimously find, beyond a reasonable doubt, one or more of the following aggravating factors:

- (1) the accused has been convicted of another offense involving espionage or treason for which either a sentence of death or imprisonment for life was authorized by statute;
- (2) in the commission of the offense, the accused knowingly created a grave risk of substantial damage to the national security;
- (3) in the commission of the offense, the accused knowingly created a grave risk of death to another person; or
- (4) any other factor that may be prescribed by the president of the United States by regulations.

**History:** 1978 Comp., § 20-12-42, enacted by Laws 1989, ch. 337, § 41.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

### **20-12-43. False official statements.**

Any person subject to Chapter 20 NMSA 1978 who, with intent to deceive, signs any false record, return, regulation, order or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-43, enacted by Laws 1989, ch. 337, § 42.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

### **20-12-44. Military property of the United States; loss, damage, destruction or wrongful disposition.**

Any person subject to Chapter 20 NMSA 1978 who, without proper authority:

- A. sells or otherwise disposes of;
  - B. willfully or through neglect damages, destroys or loses; or
  - C. willfully or through neglect suffers to be lost, damaged, sold or wrongfully disposed of;
- any military property of the United States, shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-44, enacted by Laws 1989, ch. 337, § 43.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

### **20-12-45. Property other than military property of United States; waste, spoilage or destruction.**

Any person subject to Chapter 20 NMSA 1978 who willfully or recklessly wastes, spoils or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-45, enacted by Laws 1989, ch. 337, § 44.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-46. Improper hazarding of vessel.

A. Any person subject to Chapter 20 NMSA 1978 who willfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces shall suffer death or punishment as a court-martial may direct.

B. Any person subject to Chapter 20 NMSA 1978 who negligently hazards or suffers to be hazarded any vessel of the armed forces shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-46, enacted by Laws 1989, ch. 337, § 45.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-47. Drunken or reckless driving.

Any person subject to Chapter 20 NMSA 1978 who operates any vehicle while drunk, or in a reckless or wanton manner, or while impaired by a substance described in Section 20-12-66 NMSA 1978 shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-47, enacted by Laws 1989, ch. 337, § 46.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-48. Drunk on duty.

Any person subject to Chapter 20 NMSA 1978 other than a sentinel or look-out who is found drunk on duty shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-48, enacted by Laws 1989, ch. 337, § 47.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-49. Murder.

Any person subject to Chapter 20 NMSA 1978 who, without justification or excuse, unlawfully kills a human being, when he:

- A. has a premeditated design to kill;
- B. intends to kill or inflict great bodily harm;
- C. is engaged in an act which is inherently dangerous to others and evinces a wanton disregard of human life; or
- D. is engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, robbery or aggravated arson;

is guilty of murder, and shall suffer punishment as a court-martial may direct, except that if found guilty under Subsection A or D of this section, he shall suffer death or imprisonment for life as a court-martial may direct.

**History:** 1978 Comp., § 20-12-49, enacted by Laws 1989, ch. 337, § 48.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity and construction of "extreme indifference" murder statute, 7 A.L.R.5th 758.

## 20-12-50. Manslaughter.

A. Any person subject to Chapter 20 NMSA 1978 who, with an intent to kill or inflict great bodily harm, unlawfully kills a human being in the heat of sudden passion caused by adequate provocation is guilty of voluntary manslaughter and shall be punished as a court-martial may direct.



B. Any person subject to Chapter 20 NMSA 1978 who, without an intent to kill or inflict great bodily harm, unlawfully kills a human being:

- (1) by culpable negligence; or
- (2) while perpetrating or attempting to perpetrate an offense, other than those named in Subsection D of Section 20-12-49 NMSA 1978, directly affecting the person; is guilty of involuntary manslaughter and shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-50, enacted by Laws 1989, ch. 337, § 49.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-51. Rape and other sex crimes.

A. Any person subject to Chapter 20 NMSA 1978 is guilty of rape and shall be punished as a court-martial may direct if the person commits a sexual act upon another person by:

- (1) using unlawful force against that other person;
- (2) using force causing or likely to cause death or grievous bodily harm to any person;
- (3) threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm or kidnapping;
- (4) first rendering that other person unconscious; or
- (5) administering to that other person by force or threat of force, or without the knowledge or consent of that person, a drug, intoxicant or other similar substance and thereby substantially impairing the ability of that other person to appraise or control conduct.

B. Any person subject to Chapter 20 NMSA 1978 is guilty of sexual assault and shall be punished as a court-martial may direct if the person commits a sexual act upon another person:

- (1) by threatening or placing that other person in fear;
- (2) by making a fraudulent representation that the sexual act serves a professional purpose;
- (3) by inducing a belief by any artifice, pretense or concealment that the person is another person;
- (4) without the consent of the other person;
- (5) when the person knows or reasonably should know that the other person is asleep, unconscious or otherwise unaware that the sexual act is occurring; or
- (6) when the other person is incapable of consenting to the sexual act due to: 1) impairment by any drug, intoxicant or other similar substance, and that condition is known or reasonably should be known by the person; or 2) a mental disease or defect or physical disability, and that condition is known or reasonably should be known by the person.

C. Any person subject to Chapter 20 NMSA 1978 is guilty of aggravated sexual contact and shall be punished as a court-martial may direct if the person commits or causes sexual contact upon or by another person if to do so would violate Subsection A of this section had the sexual contact been a sexual act.

D. Any person subject to Chapter 20 NMSA 1978 is guilty of abusive sexual contact and shall be punished as a court-martial may direct if the person commits or causes sexual contact upon or by another person if to do so would violate Subsection B of this section had the sexual contact been a sexual act.

E. In a prosecution under this section, in proving that a person made a threat, it need not be proven that the person actually intended to carry out the threat or had the ability to carry out the threat.

F. An accused may raise any applicable defenses available under Chapter 20 NMSA 1978 or the rules for court-martial. Marriage is not a defense for any conduct at issue in any prosecution under this section.

G. An expression of lack of consent through words or conduct means that there is no consent. Lack of verbal or physical resistance does not constitute consent. Submission resulting from the use of force, threat of force or placing another person in fear also does not constitute consent. A current or previous dating or social or sexual relationship by itself or the manner of dress of the

person involved with the accused in the conduct at issue does not constitute consent. A sleeping, unconscious or incompetent person cannot consent. A person cannot consent to force causing or likely to cause death or grievous bodily harm or to being rendered unconscious. A person cannot consent while under threat or in fear or under the circumstances described in Subsection B of this section. All the surrounding circumstances are to be considered in determining whether a person gave consent.

H. As used in this section:

- (1) "consent" means a freely given agreement to the conduct at issue by a competent person;
- (2) "force" means:
  - (a) the use of a weapon;
  - (b) the use of such physical strength or violence as is sufficient to overcome, restrain or injure a person; or
  - (c) inflicting physical harm sufficient to coerce or compel submission by the victim;
- (3) "grievous bodily harm" means serious bodily injury. Grievous bodily harm includes fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs and other severe bodily injuries. It does not include minor injuries such as a black eye or a bloody nose;
- (4) "incapable of consenting" means the person is:
  - (a) incapable of appraising the nature of the conduct at issue; or
  - (b) physically incapable of declining participation in, or communicating unwillingness to engage in, the sexual act at issue;
- (5) "sexual act" means:
  - (a) the penetration, however slight, of the penis into the vulva, anus or mouth;
  - (b) contact between the mouth and the penis, vulva, scrotum or anus; or
  - (c) the penetration, however slight, of the vulva or penis or anus of another by any part of the body or any object, with an intent to abuse, humiliate, harass or degrade any person or to arouse or gratify the sexual desire of any person;
- (6) "sexual contact" means touching, or causing another person to touch, either directly or through the clothing, the vulva, penis, scrotum, anus, groin, breast, inner thigh or buttocks of any person, with an intent to abuse, humiliate, harass or degrade any person or to arouse or gratify the sexual desire of any person. Touching may be accomplished by any part of the body or an object;
- (7) "threatening or placing that other person in fear" means a communication or action that is of sufficient consequence to cause a reasonable fear that noncompliance will result in the victim or another person being subjected to the wrongful action contemplated by the communication or action; and
- (8) "unlawful force" means an act of force done without legal justification or excuse.

**History:** 1978 Comp., § 20-12-51, enacted by Laws 1989, ch. 337, § 50; 2021, ch. 67, § 1.

The 2021 amendment, effective June 18, 2021, amended the elements and definitions of certain sex crimes, removed certain marriage exceptions to certain sex crimes, and specifically provided that marriage is not a defense for any conduct at issue in any prosecution under this section; in the heading, after "Rape and", deleted "carnal knowledge" and added "other sex crimes"; in Subsection A, after "Chapter 20 NMSA 1978", deleted "who commits an act of sexual intercourse with a female not his wife, by force and without her consent", after "shall be

punished", deleted "by death or other punishment", and after "may direct", added "if the person commits a sexual act upon another person by", and added Paragraphs A(1) through A(5); in Subsection B, after "Chapter 20 NMSA 1978", deleted "who, under circumstances not amounting to rape, commits an act of sexual intercourse with a female not his wife who has not attained the age of sixteen years is guilty of carnal knowledge" and added "is guilty of sexual assault", after "may direct", added "if the person commits a sexual act upon another person", and added Paragraphs B(1) through B(6); and deleted former Subsection C and added new Subsections C through H.

## 20-12-52. Larceny and wrongful appropriation.

A. Any person subject to Chapter 20 NMSA 1978 who wrongfully takes, obtains or withholds, by any means, from the possession of the owner or of any other person any money, personal property or article of value of any kind:



(1) with intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, steals that property and is guilty of larceny; or

(2) with intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner; is guilty of wrongful appropriation.

B. Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-52, enacted by Laws 1989, ch. 337, § 51.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-53. Robbery.

Any person subject to Chapter 20 NMSA 1978 who with intent to steal takes anything of value from the person or in the presence of another, against his will, by means of force or violence or fear of immediate or future injury to his person or property or to the person or property of a relative or member of his family or of anyone in his company at the time of the robbery is guilty of robbery and shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-53, enacted by Laws 1989, ch. 337, § 52.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-54. Forgery.

Any person subject to Chapter 20 NMSA 1978 who, with intent to defraud:

A. falsely makes or alters any signature, to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice; or

B. utters, offers, issues or transfers such a writing, known by him to be so made or altered; is guilty of forgery and shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-54, enacted by Laws 1989, ch. 337, § 53.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-55. Making, drawing or uttering check, draft or order without sufficient funds.

Any person subject to Chapter 20 NMSA 1978 who:

A. for the procurement of any article or thing of value, with intent to defraud; or

B. for the payment of any past due obligation, or for any other purpose, with intent to deceive; makes, draws, utters or delivers any check, draft or order for the payment of money upon any bank or other depository, knowing at the time that the maker or drawer has not or will not have sufficient funds in, or credit with, the bank or other depository for the payment of that check, draft or order in full upon its presentment, shall be punished as a court-martial may direct. The making, drawing, uttering or delivering by a maker or drawer of a check, draft or order, payment of which is refused by the drawee because of insufficient funds of the maker or drawer in the drawee's possession or control, is prima facie evidence of his intent to defraud or deceive and of his knowledge of insufficient funds in, or credit with, that bank or other depository, unless the maker or drawer pays the holder the amount due within five days after receiving notice, orally or in writing, that the check, draft or order was not paid on presentment. In this section, the word "credit" means an arrangement or understanding, express or implied, with the bank or other depository for the payment of that check, draft or order.

**History:** 1978 Comp., § 20-12-55, enacted by Laws 1989, ch. 337, § 54.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-56. Maiming.

Any person subject to Chapter 20 NMSA 1978 who, with intent to injure, disfigure or disable, inflicts upon the person of another an injury which:

- A. seriously disfigures his person by a mutilation thereof;
  - B. destroys or disables any member or organ of his body; or
  - C. seriously diminishes his physical vigor by the injury of any member or organ;
- is guilty of maiming and shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-56, enacted by Laws 1989, ch. 337, § 55.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-57. Repealed.

**Repeals.** — Laws 2021, ch. 55, § 12 repealed 20-12-57 NMSA 1978, as enacted by Laws 1989, ch. 337, § 56, relating to sodomy, effective June 18, 2021. For provisions

of former section, see the 2020 NMSA 1978 on *NMOneSource.com*.

## 20-12-58. Arson.

A. Any person subject to Chapter 20 NMSA 1978 who willfully and maliciously burns or sets on fire an inhabited dwelling or any other structure, movable or immovable, wherein to the knowledge of the offender there is at the time a human being, is guilty of aggravated arson and shall be punished as a court-martial may direct.

B. Any person subject to Chapter 20 NMSA 1978 who willfully and maliciously burns or sets fire to the property of another, except as provided in Subsection A of this section, is guilty of simple arson and shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-58, enacted by Laws 1989, ch. 337, § 57.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-59. Assault.

A. Any person subject to Chapter 20 NMSA 1978 who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct.

B. Any person subject to Chapter 20 NMSA 1978 who:

- (1) commits an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm; or
  - (2) commits an assault and intentionally inflicts grievous bodily harm with or without a weapon;
- is guilty of aggravated assault and shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-59, enacted by Laws 1989, ch. 337, § 58.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.



## 20-12-60. Extortion.

Any person subject to Chapter 20 NMSA 1978 who communicates threats to another person with the intention thereby to obtain anything of value or any acquittance, advantage or immunity is guilty of extortion and shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-60, enacted by Laws 1989, ch. 337, § 59.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-61. Burglary.

Any person subject to Chapter 20 NMSA 1978 who, with intent to commit an offense punishable under Sections 20-12-49 through 20-12-60 NMSA 1978 breaks and enters, in the nighttime, the dwelling house of another, is guilty of burglary and shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-61, enacted by Laws 1989, ch. 337, § 60.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-62. Housebreaking.

Any person subject to Chapter 20 NMSA 1978 who unlawfully enters the building or structure of another with intent to commit a criminal offense therein is guilty of housebreaking and shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-62, enacted by Laws 1989, ch. 337, § 61.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-63. Perjury.

Any person subject to Chapter 20 NMSA 1978 who in a judicial proceeding or in a course of justice willfully and corruptly:

A. upon a lawful oath or in any form allowed by law to be substituted for an oath, gives any false testimony material to the issue or matter of inquiry; or

B. in any declaration, certificate, verification or statement under penalty or perjury as permitted under Section 1746 of Title 28, United States Code, subscribes any false statement material to the issue or matter of inquiry;

is guilty of perjury and shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-63, enacted by Laws 1989, ch. 337, § 62.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-64. Frauds against the United States.

Any person subject to Chapter 20 NMSA 1978:

A. who, knowing it to be false or fraudulent:

(1) makes any claim against the United States or any officer thereof; or

(2) presents to any person in the civil or military service thereof, for approval or payment, any claim against the United States or any officer thereof;

B. who, for the purpose of obtaining the approval, allowance or payment of any claim against the United States or any officer thereof:

(1) makes or uses any writing or other paper knowing it to contain any false or fraudulent statements;

(2) makes any oath to any fact or to any writing or other paper knowing the oath to be false; or

(3) forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;

C. who, having charge, possession, custody or control of any money, or other property of the United States, furnished or intended for the armed forces thereof, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which he receives a certificate of receipt; or

D. who, being authorized to make or deliver any paper certifying the receipt of any property of the United States furnished or intended for the armed forces thereof, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States, shall, upon conviction, be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-64, enacted by Laws 1989, ch. 337, § 63.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-65. Conduct unbecoming an officer and a gentleman.

Any commissioned officer, cadet or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-65, enacted by Laws 1989, ch. 337, § 64.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-66. Wrongful use and possession of controlled substances.

A. Any person subject to Chapter 20 NMSA 1978 who wrongfully uses, possesses, manufactures, distributes, imports into the customs territory of the United States, exports from the United States or introduces into an installation, vessel, vehicle or aircraft used by or under the control of the armed forces a substance described in Subsection B of this section shall be punished as a court-martial may direct.

B. The substances referred to in Subsection A of this section are the following:

(1) opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid and marijuana and any compound or derivative of any such substance;

(2) any substance not specified in Paragraph (1) of this subsection that is listed on a schedule of controlled substances prescribed by the president of the United States for the purposes of this section; and

(3) any other substance not specified in Paragraph (1) of this subsection or contained on a list prescribed by the president under Paragraph (2) of this subsection that is listed in Schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812).

**History:** 1978 Comp., § 20-12-66, enacted by Laws 1989, ch. 337, § 65.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity, construction and application of state or local law prohibiting maintenance of vehicle for purpose of keeping or selling controlled substances, 31 A.L.R.5th 760.



## 20-12-67. Misbehavior of sentinel.

Any sentinel or look-out who is found drunk or sleeping upon his post, or leaves it before he is regularly relieved, shall be punished, if the offense is committed in time of war, by death or other punishment as a court-martial may direct, but if the offense is committed at any other time, by punishment other than death as a court-martial may direct.

**History:** 1978 Comp., § 20-12-67, enacted by Laws 1989, ch. 337, § 66.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-68. Repealed.

**Repeals.** — Laws 2021, ch. 55, § 12 repealed 20-12-68 NMSA 1978, as enacted by Laws 1989, ch. 337, § 67, relating to dueling, effective June 18, 2021. For provisions

of former section, see the 2020 NMSA 1978 on *NMOneSource.com*.

## 20-12-69. Malingering.

Any person subject to Chapter 20 NMSA 1978 who for the purpose of avoiding work, duty or service:

- A. feigns illness, physical disablement, mental lapse or derangement; or
  - B. intentionally inflicts self-injury;
- shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-69, enacted by Laws 1989, ch. 337, § 68.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-70. Riot or breach of peace.

Any person subject to Chapter 20 NMSA 1978 who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-70, enacted by Laws 1989, ch. 337, § 69.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-71. Provoking speeches or gestures.

Any person subject to Chapter 20 NMSA 1978 who uses provoking or reproachful words or gestures toward any other person subject to that chapter shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-71, enacted by Laws 1989, ch. 337, § 70.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-72. Principals.

Any person subject to Chapter 20 NMSA 1978 who:

- A. commits an offense punishable by Chapter 20 NMSA 1978 or aids, abets, counsels or procures its commission; or

B. causes an act to be done which if directly performed by him would be punishable by Chapter 20 NMSA 1978;  
is a principal.

**History:** 1978 Comp., § 20-12-72, enacted by Laws 1989, ch. 337, § 71.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-73. General article.

Though not specifically mentioned in Chapter 20 NMSA 1978, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces and crimes and offenses not capital, of which persons subject to Chapter 20 NMSA 1978 may be guilty, shall be taken cognizance of by a general, special or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court.

**History:** 1978 Comp., § 20-12-73, enacted by Laws 1989, ch. 337, § 72.

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## 20-12-74. Prohibited activities with military recruit or trainee by person in position of special trust; consent not a defense.

A. Any person subject to Chapter 20 NMSA 1978 shall be punished as a court-martial may direct if the person:

- (1) is an officer or noncommissioned officer;
- (2) is in a training leadership position with respect to a specially protected junior member of the armed forces; and
- (3) knew, or reasonably should have known, that the person was engaged in prohibited sexual activity with a specially protected junior member of the armed forces.

B. Any person subject to Chapter 20 NMSA 1978 shall be punished as a court-martial may direct if the person is a military recruiter and knew, or reasonably should have known, that the person was engaged in prohibited sexual activity with:

- (1) an applicant for military service; or
- (2) a specially protected junior member of the armed forces who is enlisted under a delayed entry program.

C. Any person subject to Chapter 20 NMSA 1978 shall be punished as a court-martial may direct if the person:

- (1) is a commissioned, warrant or noncommissioned officer;
- (2) is in a training leadership position with respect to a specially protected member of the armed forces; and
- (3) engaged in prohibited sexual activity with a person that the person knew, or reasonably should have known, was a specially protected junior member of the armed forces.

D. Any person subject to Chapter 20 NMSA 1978 shall be punished as a court-martial may direct if the person:

- (1) is a commissioned, warrant or noncommissioned officer;
- (2) is performing duties as a military recruiter; and
- (3) engaged in prohibited sexual activity with a person that the person knew, or reasonably should have known, was an applicant for military service; or
- (4) engaged in prohibited sexual activity with a person that the person knew, or reasonably should have known, was a specially protected junior member of the armed forces who is enlisted under a delayed entry program.

E. Consent is not a defense to prosecution pursuant to this section.



F. The maximum punishment of prosecution pursuant to this section shall be a dishonorable discharge, forfeiture of all pay and allowances received on or after the effective date of the sentence and confinement for less than one year.

G. As used in this section:

(1) "applicant for military service" means a person who, under regulations prescribed by the secretary concerned, is an applicant for original enlistment or appointment in the armed forces;

(2) "military recruiter" means a person who, under regulations prescribed by the secretary concerned, has the primary duty to recruit persons for military service;

(3) "prohibited sexual activity" means, as specified in regulations prescribed by the secretary concerned, inappropriate physical intimacy under circumstances described in such regulations;

(4) "regulations prescribed by the secretary concerned" means rules, regulations, instructions and procedures prescribed by the secretary of the army or secretary of the air force with respect to soldiers or airmen of the national guard;

(5) "specially protected junior member of the armed forces" means a member of the armed forces who is:

(a) assigned to, or is awaiting assignment to, basic training or other initial active duty for training, including a member who is enlisted under a delayed entry program;

(b) a cadet, an officer candidate or a student in any other officer qualification program; or

(c) in any program that, by regulation prescribed by the secretary concerned, is identified as a training program for initial career qualification; and

(6) "training leadership position" means, with respect to a specially protected junior member of the armed forces, any drill instructor position or other leadership position in a basic training program, an officer candidate school, a reserve officers' training corps unit, a training program for entry into the armed forces or any program that, by regulation prescribed by the secretary concerned, is identified as a training program for initial career qualification.

**History:** Laws 2021, ch. 55, § 10.

IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

**Effective dates.** — Laws 2021, ch. 55 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

## **20-12-75. Wearing unauthorized insignia, decoration, badge, ribbon, device or lapel button.**

A. Any person subject to Chapter 20 NMSA 1978 shall be punished as a court-martial may direct if the person:

(1) is not authorized to wear an insignia, decoration, badge, ribbon, device or lapel button; and

(2) wrongfully wears such insignia, decoration, badge, ribbon, device or lapel button upon the person's uniform or civilian clothing.

B. The maximum punishment of prosecution pursuant to this section shall be:

(1) for the wrongful wearing of the medal of honor, distinguished service cross, navy cross, air force cross, silver star, purple heart or a valor device on any personal award, a dishonorable discharge, forfeiture of all pay and allowances received on or after the effective date of the sentence and confinement for less than one year; or

(2) for all other violations of this section, a bad conduct discharge, forfeiture of all pay and allowances and confinement for no more than six months.

C. As used in this section, "wrongful" means that the conduct is done without legal justification or excuse. Actual knowledge that the person was or is not authorized to wear the item in question is required. Knowledge may be proved by circumstantial evidence.

**History:** Laws 2021, ch. 55, § 11.

IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

**Effective dates.** — Laws 2021, ch. 55 contained no effective date provision, but, pursuant to N.M. Const., art.

## ARTICLE 13

### Senior Master Sergeant Jessey Baca Military Airborne Hazards and Open Burn Pit Registry

Sec.  
20-13-1. Short title.

Sec.  
20-13-2. Military airborne hazards and open burn pit registry; creation; duties.

#### 20-13-1. Short title.

This act may be cited as the "Senior Master Sergeant Jessey Baca Military Airborne Hazards and Open Burn Pit Registry Act".

History: Laws 2015, ch. 94, § 1.

Effective dates. — Laws 2015, ch. 94, § 3 made Laws 2015, ch. 94, § 1 effective July 1, 2015.

#### 20-13-2. Military airborne hazards and open burn pit registry; creation; duties.

For the purposes of outreach, education and advocacy for New Mexico service members and veterans who have been exposed to open burn pit smoke or other airborne hazards during their service in operation Iraqi freedom, operation enduring freedom, operation new dawn, the Gulf War 1990-1991 or other conflicts or theaters that may subsequently be identified, the secretary of veterans' services shall:

A. identify a subject-matter expert at the United States department of veterans affairs who has the ability and capacity to assist veterans seeking medical care or assistance with the department of veterans affairs' claims process;

B. make available to veterans the most current medical studies and recommendations with regards to inhalation of toxic substances due to exposure to open burn pits; and

C. establish and maintain a public information program to educate and inform service members, veterans and their families regarding:

(1) how to sign up and use the United States department of veterans affairs burn pit registry and information regarding the veterans health administration's presumptive conditions or diseases believed to have been caused by exposure to open burn pits;

(2) the types of treatment offered by the veterans health administration that are available for any conditions or diseases caused by exposure to open burn pits and care offered outside the veterans health administration that have been approved for medical use;

(3) how to document medical conditions that may be related to exposure to open burn pits and how to apply for a service-connected disability through the United States department of veterans affairs; and

(4) appealing an existing disability rating decision or requesting an upgrade in disability rating from the United States department of veterans affairs.

History: Laws 2015, ch. 94, § 2.

Effective dates. — Laws 2015, ch. 94, § 3 made Laws 2015, ch. 94, § 2 effective July 1, 2015.



## CHAPTER 21

### State and Private Education Institutions

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## 21-1-1. State institutions; admission requirements to be established by boards of regents.

A. The respective boards of regents of New Mexico state university, New Mexico institute of mining and technology, the university of New Mexico and the New Mexico military institute at Roswell shall determine and fix the standard of requirements for admission to their respective institutions.

B. In determining the standard of requirements for admission to their respective institutions, boards of regents shall not require a student who has completed the requirements of a home-based or nonpublic school educational program and who has submitted test scores that otherwise qualify the student for admission to that institution to obtain or submit proof of having obtained a high school equivalency credential. In determining requirements for admission, boards of regents shall evaluate and treat applicants from home-based educational programs or nonpublic schools fairly and in a nondiscriminatory manner.

**History:** Laws 1912, ch. 83, § 2; Code 1915, § 5162; C.S. 1929, § 130-1312; 1941 Comp., § 55-2801; 1953 Comp., § 73-30-1; 1997, ch. 127, § 1; 2015, ch. 122, § 1.

**Cross references.** — For system of accounting and reporting, see 21-1-32 and 21-1-33 NMSA 1978.

For university of New Mexico, see 21-7-1 through 21-7-25 NMSA 1978.

For New Mexico state university, see 21-8-1 through 21-8-38 NMSA 1978.

For New Mexico institute of mining and technology, see 21-11-1 through 21-11-27 NMSA 1978.

For New Mexico military institute, see 21-12-1 through 21-12-10 NMSA 1978.

**The 2015 amendment**, effective July 1, 2015, replaced the term "general education development certificate" with "high school equivalency credential" in the provision relating to admission requirements in state educational institutions; and in Subsection B, after "otherwise qualify",

deleted "him" and added "the student", and after "proof of having obtained a", deleted "general education development certificate" and added "high school equivalency credential".

**The 1997 amendment**, effective June 20, 1997, rewrote this section heading, designated the existing language as Subsection A, substituted "New Mexico state university, New Mexico institute of mining and technology" for "the New Mexico College of Agriculture and Mechanical Arts, the New Mexico School of Mines" in Subsection A, and added Subsection B.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 2, 7, 8, 17.

Misconduct of college or university student off campus as grounds for expulsion, suspension or other disciplinary action, 28 A.L.R.4th 463.

Standing to challenge college or professional school admissions program which gives preference to minority or disadvantaged applicants; 60 A.L.R. Fed. 612.

14A C.J.S. Colleges and Universities § 4.

### 21-1-1.1. Home school students; admission requirements; public post-secondary educational institutions.

In determining the standard of requirements for admission to any public post-secondary educational institution, the board of regents, governing board or community college board shall not require a student who has completed the requirements of a home-based or nonpublic school educational program and who has submitted test scores that otherwise qualify the student for admission to that institution to obtain or submit proof of having obtained a high school equivalency credential. In determining requirements for admission, the board of regents, governing board or community college board shall evaluate and treat applicants from home-based or nonpublic educational programs fairly and in a nondiscriminatory manner.

**History:** Laws 1999, ch. 182, § 1; 2015, ch. 122, § 2.

The 2015 amendment, effective July 1, 2015, replaced the term "general education development certificate" with "high school equivalency credential" in the provision relating to admission requirements for home school

students to public post-secondary educational institutions; after "otherwise qualify", deleted "him" and added "the student", after "having obtained a", deleted "general" and added "high school", and after "equivalency" deleted "diploma certificate" and added "credential".

### 21-1-1.2. Dual credit for high school and post-secondary classes.

#### A. As used in this section:

- (1) "bureau of Indian education school" means a school located in New Mexico that is under the control of the bureau of Indian education of the United States department of the interior;
- (2) "dual credit course" means a post-secondary course that may be academic or career-technical but not remedial or developmental and specified in a rule promulgated pursuant to Paragraph (1) of Subsection G of this section for which a student simultaneously earns credit toward high school graduation and a post-secondary degree or certificate;
- (3) "dual credit program" means a program offered by a public post-secondary educational institution or tribal college that allows high school students to enroll in dual credit courses;
- (4) "high school" means a school offering one or more of grades nine through twelve or their equivalent and that is a school district, charter school, state-supported school, bureau of Indian education school, private school or home school; and
- (5) "tribal college" means a tribally, federally or congressionally chartered post-secondary educational institution located in New Mexico that is accredited by the north central association of colleges and schools.

B. To be eligible to participate in a dual credit program, the student shall be a school-age person as that term is defined in the Public School Code [Chapter 22 NMSA 1978, except Article 5A] and:

- (1) except as provided in Subsection C of this section, be enrolled in a school district, charter school or state-supported school in one-half or more of the minimum course requirements approved by the public education department for public school students or, if a student in a bureau of Indian education school, private school or home school, be receiving at least one-half of the student's instruction at the student's high school; and
- (2) obtain permission from the student's school counselor, school principal or head administrator of the high school that the student primarily attends prior to enrolling in a dual credit course.

C. A student who has met the eligibility criteria provided for in Subsection B of this section in a fall or winter semester and who has not graduated or earned a high school equivalency credential may take courses for dual credit during the immediately succeeding summer semester.

D. The high school that the student primarily attends shall pay the cost of the required textbooks and other course supplies for the post-secondary course the student is enrolled in through



purchase arrangements with the bookstore at the public post-secondary educational institution or tribal college or through other cost-efficient methods. The student shall return the textbooks and unused course supplies to the high school when the student completes the course or withdraws from the course.

E. A public post-secondary educational institution or tribal college that participates in a dual credit program shall waive all general fees for dual credit courses.

F. The higher education department shall revise procedures in the higher education funding formula to address enrollments in dual credit courses and to encourage institutions to waive tuition for high school students taking those courses.

G. The higher education department and the public education department shall adopt and promulgate rules to implement a dual credit program that specify:

- (1) post-secondary courses that are eligible for dual credit;
- (2) conditions that apply, including:
  - (a) the required academic standing and conduct of students enrolled in dual credit courses;
  - (b) the semesters in which dual credit courses may be taken;
  - (c) the nature of high school credit earned;
  - (d) any caps on the number of courses, location of courses and provision of transcripts; and
  - (e) an appeals process for a student who is denied permission to enroll in a dual credit course;
- (3) accommodations or other arrangements applicable to special education students;
- (4) the contents of the uniform master agreement that govern the roles, responsibilities and liabilities of the high school, the public post-secondary educational institution or tribal college and the student and the student's family;
- (5) provisions for expanding dual credit opportunities through distance learning and other methods;
- (6) the means by which school districts, charter schools and state-supported schools are required to inform students and parents about opportunities to participate in dual credit programs during student advisement, academic support and formulation of annual next step plans, as well as other methods; and
- (7) provisions for collecting and disseminating annual data, including:
  - (a) the number of students taking dual credit courses;
  - (b) the participating high schools, public post-secondary educational institutions and tribal colleges;
  - (c) the courses taken and grades earned;
  - (d) the high school graduation rates for participating school districts, charter schools and state-supported schools;
  - (e) the public post-secondary educational institutions and tribal colleges that participating students ultimately attend; and
  - (f) the cost of providing dual credit courses.

H. The higher education department and the public education department shall evaluate the dual credit program in terms of its accessibility to students statewide and its effect on:

- (1) student achievement in secondary education;
- (2) student enrollment and completion of higher education; and
- (3) high schools, public post-secondary educational institutions and tribal colleges.

I. The departments shall make an annual report, including recommendations, to the governor and the legislative education study committee.

J. The provisions of this section do not apply to the New Mexico military institute.

**History:** Laws 2007, ch. 227, § 1; 2008, ch. 14, § 1; 2010, ch. 36, § 1; 2014, ch. 12, § 1; 2015, ch. 122, § 3.

The 2015 amendment, effective July 1, 2015, replaced the term "general education development certificate" with "high school equivalency credential" in the provision relating to dual credit for high school and post-secondary

classes; and in Subsection C, after "graduated or earned a", deleted "general educational development certificate" and added "high school equivalency credential".

The 2014 amendment, effective July 1, 2014, effective July 1, 2014, provided for dual credit program parity for all high school students; clarified language; in Subsection



A, Paragraph (1), within the quotes, after "Indian education", deleted "high"; in Subsection A, added Paragraph (2); in Subsection A, Paragraph (3), after "means a program", added "offered by a public post-secondary educational institution or tribal college", after "to enroll in", deleted "college-level" and added "dual credit", and after "courses", deleted former language which required that college level courses offered for dual credit be offered by a public post-secondary educational institution or tribal college and that the courses be academic or career-technical, and not remedial or developmental; in Subsection A, added Paragraph (4); in Subsection B, in the introductory sentence, after "the student shall", added the reminder of the sentence, in Subsection B, Paragraph (1), after "enrolled in a", deleted "regular public", after "enrolled in a school", added "district", after "charter school", added "or", after "state-supported school", deleted "or bureau of Indian education high school", and after "public school students", added the remainder of the sentence; in Subsection B, Paragraph (2), after "obtain permission from", deleted "a" and added "the student's", after "head administrator of", deleted "a charter school, state-supported school or bureau of Indian education" and added "the", and after "the high school", added "that the student primarily attends"; in Subsection D, in the first sentence, at the beginning of the sentence, deleted "school district, charter school, state-supported school or bureau of Indian education", and after "that the student", added "primarily", and in the second sentence, after "course supplies to the", deleted "school district, charter school, state-supported school or bureau of Indian education", in Subsection G, Paragraph (4), after "uniform master agreement", deleted former language which required that the uniform master agreement be developed in collaboration with school districts, charter schools, state-supported schools, bureau of Indian education schools, public post-secondary educational institutions and tribal colleges, and after "liabilities of the", deleted "school district, charter school, state-supported school or bureau of Indian education"; in Subsection G, Paragraph (6), after "means by which", deleted "public high" and added "school districts, charter schools and state-supported"; in Subsection G, Paragraph (7), Subparagraph (b), after "participating", deleted "school districts, charter schools, state-supported schools, bureau of Indian education"; in Subsection G, Paragraph (7), Subparagraph (d), after "charter schools", added "and" and after "state-supported

schools", deleted "and bureau of Indian education high schools"; in Subsection H, Paragraph (3), deleted "school districts, charter schools, state-supported schools, bureau of Indian education"; and in Subsection I, after "governor and the", deleted "legislature" and added "legislative education study committee".

**The 2010 amendment**, effective July 1, 2010, added Paragraph (1) of Subsection A; in Subsection A(2), after "educational institution", added "or tribal college"; added Paragraph (3) of Subsection A; in Subsection B(1), after "state-supported school", added "or bureau of Indian education high school"; in Subsection B(2), after "state-supported school", added "or bureau of Indian education high school"; in Subsection D, in the first sentence, after "state-supported school", added "or bureau of Indian education high school" and after "bookstore at the public", changed "post-secondary educational institution or other cost-efficient methods" to "post-secondary educational institution or tribal college or through other cost-efficient methods"; and in the second sentence, after "school district", added "charter school, state-supported school or bureau of Indian education high school"; in Subsection E, after "educational institution" added "or tribal college"; in Subsection G(4), after "state-supported schools", deleted "and the" and added "bureau of Indian education high schools", after "educational institutions", added "and tribal colleges"; after "liabilities of the school district, charter school," changed "or state-supported school; the institution; and the student" to "state-supported school or bureau of Indian education high school; the public post-secondary educational institution or tribal college; and the student"; in Subsection G(7)(b), after "state-supported schools", deleted "and" and added "bureau of Indian education high schools" and after "educational institutions", added "and tribal colleges"; in Subsection G(7)(d), after "charter schools", deleted "and" and after "state-supported schools", added "and bureau of Indian education high schools"; in Subsection G(7)(e), after "educational institutions", added "and tribal colleges"; and in Subsection H(3), after "state-supported schools", deleted "and", and added "bureau of Indian education high schools" and after "educational institutions", added "and tribal colleges".

**The 2008 amendment**, effective May 14 2008, included state-supported schools in the dual credit program and added Subsections C and J.

## 21-1-2. Matriculation and tuition fees.

A. Except as otherwise provided in this section and in Section 21-1-4.3 NMSA 1978 [repealed], the boards of regents of the university of New Mexico, New Mexico state university, New Mexico highlands university, western New Mexico university, eastern New Mexico university, New Mexico military institute and New Mexico institute of mining and technology shall establish and charge matriculation fees and tuition fees as follows:

- (1) each student shall be charged a matriculation fee of not less than five dollars (\$5.00) upon enrolling in each institution;
- (2) each student who is a resident of New Mexico shall be charged a tuition fee of not less than twenty dollars (\$20.00) a year;
- (3) each student who is not a resident of New Mexico shall be charged a tuition fee of not less than fifty dollars (\$50.00) a year;
- (4) each student shall be charged a tuition fee of not less than ten dollars (\$10.00) for each summer session; and
- (5) each student may be charged a tuition fee for extension courses.

B. Except as otherwise provided in this section and in Section 21-1-4.3 NMSA 1978 [repealed], the board of regents of northern New Mexico college shall establish and charge each student a matriculation fee and a tuition fee:



C. The board of regents of each institution may establish and grant gratis scholarships to students who are residents of New Mexico in an amount not to exceed the matriculation fee or tuition and fees, or both. These scholarships are in addition to the lottery tuition scholarships authorized in Section 21-1-4.3 NMSA 1978 [repealed] and shall be granted to the full extent of available funds before lottery tuition scholarships are granted. The number of scholarships established and granted pursuant to this subsection shall not exceed three percent of the preceding fall semester enrollment in each institution and shall not be established and granted for summer sessions. The president of each institution shall select and recommend to the board of regents of the institution, as recipients of scholarships, students who possess good moral character and satisfactory initiative, scholastic standing and personality. Beginning with the fall semester of 2010, a minimum of one-half of the gratis scholarships established and granted by each board of regents each year shall be granted on the basis of financial need, and beginning with the fall semester of 2011, a minimum of two-thirds of the gratis scholarships established and granted by each board of regents each year shall be granted on the basis of financial need.

D. The board of regents or governing board of each institution set out in this subsection may establish and grant, in addition to those scholarships provided for in Subsection C of this section, athletic scholarships for tuition and fees. In no event shall the board of regents of any institution be allowed to award scholarships for tuition and fees for more than the number of athletic scholarships set out in this subsection and in no event shall more than seventy-five percent of the scholarships granted be for out-of-state residents:

(1) the board of regents of the university of New Mexico may grant up to two hundred ninety-three athletic scholarships;

(2) the board of regents of New Mexico state university may grant up to two hundred seventy athletic scholarships;

(3) the boards of regents of New Mexico highlands university, eastern New Mexico university and western New Mexico university may each grant up to one hundred forty athletic scholarships; and

(4) the governing board of New Mexico junior college may grant up to fifty-two athletic scholarships.

E. In the event that the number of athletic scholarships exceeds the number of athletic scholarships permitted that institution by regulations and bylaws of the national collegiate athletic association or the national association of intercollegiate athletics of which that institution is a member, the appropriate board of regents shall reduce the number of authorized tuition scholarships to comply with association rules and regulations.

F. Matriculation fees and tuition fees shall be fixed and made payable as directed by the board of regents of each institution, collected by the officers of each institution and accounted for as are other funds of the institutions. Matriculation fees shall be charged only once for each institution in which a student enrolls.

**History:** 1953 Comp., § 73-30-2, enacted by Laws 1970, ch. 9, § 1; 1977, ch. 327, § 1; 1989, ch. 44, § 3; 1989, ch. 45, § 3; 1989, ch. 68, § 1; 1996, ch. 71, § 1; 1997, ch. 102, § 1; 2000, ch. 52, § 2; 2009, ch. 47, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Section 21-1-4.3 NMSA 1978 was repealed by Laws 2014, ch. 80, § 10, effective March 12, 2014. For provisions of former section, see the 2013 NMSA 1978 on *NMOneSource.com*.

**Repeals and reenactments.** — Laws 1970, ch. 9, § 1, repealed former 73-30-2, 1953 Comp., relating to tuition and matriculation, and enacted a new 73-30-2, 1953 Comp.

**Cross references.** — For tuition payments for residents conscripted into military service, see 21-1-4.1 NMSA 1978.

For the authority of the military institute to charge larger tuition fee, see 21-12-7 NMSA 1978.

For Senior Citizens Reduced Tuition Act, see 21-21D-1 NMSA 1978 et seq.

**The 2009 amendment**, effective June 19, 2009, in Subsection A, deleted "and New Mexico junior college" after "technology"; in Subsection C, at the beginning of the last sentence, deleted "At least thirty-three and one-third percent" and added "Beginning with the fall semester of 2010, a minimum of one-half"; and at the end of the last sentence, added the language following "financial need"; in Subsection D, added "or governing board" after "regents"; and in Paragraph (4) of Subsection D, deleted "board of regents" and added "governing board".

**The 2000 amendment**, effective July 1, 2000, in Subsection C, substituted the second sentence for "Except as provided in Section 21-1-4.3 NMSA 1978" and inserted "pursuant to this subsection" in the present third sentence.

**The 1997 amendment**, effective June 20, 1997, in Subsection E, deleted the former first sentence relating to computing tuition credits using the value of athletic scholarships, substituted "In the event that the number of athletic scholarships exceeds" for "In no event shall the board of regents of any such institution be allowed to establish



scholarships for tuition and fees from more than" and added the language beginning "the appropriate board" at the end of the subsection.

**The 1996 amendment**, effective May 15, 1996, inserted "and in Section 21-1-4.3 NMSA 1978" in Subsections A and B; in Subsection C, substituted "in an amount not to exceed" for "by waiving" in the first sentence and added "Except as provided in Section 21-1-4.3 NMSA 1978" in the second sentence; in Subsection D, substituted "for tuition" for "by waiving tuition" in the first sentence, and "award scholarships for" for "waive the" and "scholarships granted" for "waivers granted" in the second sentence, added "the board of regents of" at the beginning of Paragraphs (2) and (4), and deleted "board" following "college" in Paragraph (4); and, in Subsection E, substituted "scholarships for" for "waivers of" in the first sentence and "establish scholarships for" for "waive the" in the second sentence. Laws 1996, ch. 71 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

#### ANNOTATIONS

**Constitutionality.** — Based on its authority to provide and charge tuition for educational services, a board of regents may, consistently with the antidonation clause, use

public money for scholarships in the form of tuition waivers or reductions if the criteria used to award them are education-related and applied in a reasonable and even-handed manner. 1997 Op. Att'y Gen. No. 97-02.

**Scope of power to grant scholarships.** — The board of regents of the state institution has discretionary power to establish, and to grant, in any one year a number of scholarships not exceeding 2% (now 3%) of the preceding fall semester enrollment, to any students within the institution, regardless of the academic class of such students or their graduate or under graduate status. 1953-54 Op. Att'y Gen. No. 54-6039 (overruled on other grounds 1997 Op. Att'y Gen. No. 97-02).

**All students enrolled for credit may be considered.** — All students enrolled for credit at the college may be considered for computation of scholarships. 1959-60 Op. Att'y Gen. No. 59-76.

**Charges must be for instruction.** — Only those charges which are for instruction may be granted as scholarships. 1959-60 Op. Att'y Gen. No. 59-76.

**Meaning of "tuition".** — The word "tuition" contemplates a charge for instruction as opposed to a charge for student activities, library, room and board and the like. 1959-60 Op. Att'y Gen. No. 59-76.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. Colleges and Universities §§ 19, 20.

14A C.J.S. Colleges and Universities §§ 31, 33.

### 21-1-2.1. Scholarship program established.

A. The department of military affairs shall establish a scholarship program for students who are in the New Mexico national guard. The adjutant general of the department of military affairs shall provide for the administration of the scholarship program and shall establish criteria for scholarship eligibility and award in accordance with rules adopted and promulgated by the department of military affairs. Scholarships awarded may be used at any New Mexico public post-secondary educational institution. Scholarships shall be awarded in an amount and for a duration to be determined by the department.

B. The board of regents of each public post-secondary educational institution shall designate a representative of the institution to coordinate the scholarship program.

**History:** Laws 1996, ch. 64, § 1; 2001, ch. 269, § 1; 2001, ch. 274, § 1.

**The 2001 amendment**, effective June 15, 2001, added Subsection B and the Subsection A designation; in Subsection A, substituted "in the New Mexico national guard" for "New Mexico guard or the New Mexico air national guard" and inserted "in accordance with rules adopted and promulgated by the department of military affairs".

Laws 2001, ch. 269, § 1, effective July 1, 2001, and Laws 2001, ch. 274, § 1, effective June 15, 2001, enacted

identical amendments to this section. The section was set out as amended by Laws 2001, ch. 274, § 1. See 12-1-8 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity, construction, and application of statute, regulation, or policy governing home schooling or affecting rights of home-schooled students, 70 A.L.R.5th 169.

### 21-1-3. State educational institutions; resident students.

A. For the purpose of tuition payment at the resident student rates at state educational institutions enumerated in Article 12, Section 11 of the constitution of New Mexico, "resident student" includes:

(1) any person not otherwise entitled to claim residence who is a member of the armed forces of the United States or armed forces of a foreign country assigned to active duty within the exterior boundaries of this state; and

(2) the spouse or dependent child of any person who qualifies under Paragraph (1) of this subsection.

B. Assignment to active duty within the exterior boundaries of this state may be established by a certificate of assignment from the commanding officer of the person so assigned.



C. For the purpose of tuition payment at resident student rates at New Mexico highlands university, "resident student" may include any person who is a Native American and a citizen of the United States.

D. For the purposes of tuition payment and budget and revenue calculations, the board of regents of any post-secondary, state educational institution enumerated in Article 12, Section 11 of the constitution of New Mexico may determine that "resident student" includes any Texas resident who resides within a one hundred thirty-five mile radius of that institution.

E. For the purpose of tuition payment and budget and revenue calculations, "resident student" includes any student receiving an athletic scholarship from a post-secondary educational institution set forth in Article 12, Section 11 of the constitution of New Mexico.

F. For the purpose of tuition payment and budget and revenue calculations, "resident student" includes a member of an Indian nation, tribe or pueblo located wholly or partially in New Mexico, regardless of the residence of the member prior to acceptance at a post-secondary educational institution enumerated in Article 12, Section 11 of the constitution of New Mexico for either undergraduate or post-graduate enrollment.

**History:** 1953 Comp., § 73-30-2.1, enacted by Laws 1970, ch. 47, § 1; 1976 (S.S.), ch. 42, § 1; 1994, ch. 136, § 1; 1996, ch. 66, § 1; 1997, ch. 102, § 2; 2001, ch. 118, § 1; 2005, ch. 155, § 1.

**The 2005 amendment**, effective June 17, 2005, added Subsection F to define a "resident student" for tuition payment and budget and revenue calculations to include a member of an Indian nation, tribe or pueblo located in whole or in part in New Mexico, regardless of the residence of the member prior to acceptance at a post-secondary educational institution.

**The 2001 amendment**, effective June 15, 2001, inserted "or armed forces of a foreign country" in Paragraph A(1).

**The 1997 amendment**, effective June 20, 1997, added Subsection E.

**The 1996 amendment**, effective May 15, 1996, added Subsection D.

**The 1994 amendment**, effective July 1, 1994, added Subsection C.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 21.

### 21-1-4. Tuition and general fee charges; definitions.

A. The state educational institutions set forth in Article 12, Section 11 of the constitution of New Mexico and their branches, community colleges as provided in Chapter 21, Article 13 NMSA 1978 and technical and vocational institutes as provided in Chapter 21, Article 16 NMSA 1978 shall charge tuition, which is in addition to general or other earmarked fees, as provided by law.

B. "Tuition" means the amount of money charged to students for instructional services, which may be charged per term, per course or per credit. "Tuition" does not include required general or other fees.

C. "General fee" means a fixed sum charged to students for items not covered by tuition and required of such a proportion of all students that the student who does not pay the charge is an exception. General fees include fees for matriculation, library services, student activities, student union services, student health services, debt service and athletics. An institution may charge fees in addition to general fees that are course-specific or that pertain to a smaller proportion of students.

D. During the regular academic year, "full-time student" means a student who is taking twelve or more credit hours in one semester or quarter. Full-time students during the academic year shall be charged tuition at rates provided by law.

E. During the summer session, "full-time student" means a student who is taking at least a minimum number of credit hours, which minimum is in the same proportion to twelve credit hours as the duration and normal credit-hour load of the summer session in the particular institution is to the duration and normal credit-hour load of the institution's regular semester or quarter. Full-time students in the summer session shall be charged tuition at resident and nonresident rates in each institution, which rates shall be in the same proportion to the full-time resident and nonresident rates of that institution for the regular semester or quarter as the minimum number of credit hours is to twelve hours.

F. "Part-time student" means a student who is taking fewer than the minimum number of credit hours in a semester, quarter or summer session required for full-time student status.

Part-time students shall be charged tuition at rates per semester credit hour or quarter credit hour as provided by law.

G. The higher education department shall define resident and nonresident students for the purpose of administering tuition charges in accordance with the constitution and statutes of the state and after consultation with the appropriate officials of the institutions concerned. Each institution shall use the uniform definitions so established in assessing and collecting tuition charges from students.

**History:** 1953 Comp., § 73-30-2.2, enacted by Laws 1971, ch. 235, § 1; 1996, ch. 71, § 2; 2006, ch. 85, § 1.

The 2006 amendment, effective May 17, 2006, in Subsection A, deleted the exception provided in Section 21-1-4.3 NMSA 1978; and added the branches of state educational institutions, community colleges and technical and vocational institutes; added the definition of "tuition" in Subsection B; added the definition of "general fee" in Subsection C; and provided in Subsection F (formerly Subsection D) that part-time students shall be charged per semester credit hour.

The 1996 amendment, effective May 15, 1996, in Subsection A, added "Except as provided in Section 21-1-4.3 NMSA 1978" and substituted "constitution of New Mexico" for "state constitution"; and, in Subsection E, substituted "commission on higher education" for "board of educational finance".

#### ANNOTATIONS

**Who may define "resident".** — Within the scope of the language of the statutes, constitutional provisions and case law, the state board of educational finance (now the commission on higher education) may define "resident" for use by the state universities and colleges in determining which adult individuals are in fact "resident" persons for college tuition purposes. 1964 Op. Att'y Gen. No. 64-26.

**Requisites for residence.** — The requisites for establishing a valid residence for college tuition purposes for an adult person are: (1) actual physical presence in the state,

and (2) a bona fide intention to establish and maintain such residency in the state permanently or indefinitely. 1964 Op. Att'y Gen. No. 64-26.

**Effect of payment of taxes.** — Payment of state taxes may be considered as indicia of mental intent to maintain and keep New Mexico residency. 1964 Op. Att'y Gen. No. 64-26.

**Out-of-state minor marrying New Mexico spouse.** — A minor moving into the state and marrying a spouse from New Mexico does not by the act of marriage alone establish New Mexico residency. 1964 Op. Att'y Gen. No. 64-26.

**Mere temporary absence.** — Once a bona fide residence is established in New Mexico, mere temporary absence from the state would not in and of itself alter residency. 1964 Op. Att'y Gen. No. 64-26.

**Husband's residence governs wife's.** — Generally, the husband's residence governs that of the wife living with him. 1964 Op. Att'y Gen. No. 64-26.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 21.

Validity and application of provisions governing determination of residency for purpose of fixing fee differential for out-of-state students in public college, 56 A.L.R.3d 641.

Absence from or inability to attend school or college as affecting liability for or right to recover payments for tuition or board, 20 A.L.R.4th 303.

14A C.J.S. Colleges and Universities § 31.

### 21-1-4.1. Tuition payments; residents conscripted into military service.

Educational institutions under the exclusive control of the state shall forgive any tuition payments owed by residents of New Mexico enrolled as part-time or full-time students when the student is conscripted, deployed to a remote duty location, or is called into active service as a member of the military reserves or national guard on or after August 1, 1990. Forgiveness of tuition payments under this section shall apply only to tuition payments owed for the semester when a student is conscripted, deployed or called to active military service. When a student has made tuition payments in part or in whole at the time of his conscription, deployment or call to active military service on or after August 1, 1990, the educational institution in receipt of those payments shall give the student a credit for the full amount of the payments when the student re-enrolls in that educational institution at a future date.

**History:** Laws 1991, ch. 236, § 1.

### 21-1-4.2. Repealed.

**Repeals.** — Laws 1994, ch. 136, § 3 repealed 21-1-4.2 NMSA 1978, as enacted by Laws 1994, ch. 136, § 2, relating to the resident status of Native Americans at New

Mexico highlands university, effective July 1, 1999. For provisions of former section, see the 2004 NMSA 1978 on *NMOneSource.com*.



### 21-1-4.3. Repealed.

**Repeals.** — Laws 2014, ch. 80, § 10 repealed 21-1-4.3 NMSA 1978, as enacted by Laws 1996, ch. 71, § 3, relating to authorization of legislative lottery scholarships for

certain educational institutions, effective March 12, 2014. For provisions of former section, see the 2013 NMSA 1978 on *NMOneSource.com*.

### 21-1-4.4. Repealed.

**Repeals.** — Laws 2014, ch. 80, § 10 repealed 21-1-4.4 NMSA 1978, as enacted by Laws 1996, ch. 71, § 4, relating to determination of tuition scholarships and use of lottery

tuition fund, effective March 12, 2014. For provisions of former section, see the 2013 NMSA 1978 on *NMOneSource.com*.

### 21-1-4.5. Resident tuition for veterans of the armed forces of the United States and families of members of the armed forces.

A. A veteran of the armed forces of the United States shall be deemed an in-state resident for purposes of determining tuition and fees at all state institutions of higher learning, provided that the veteran is eligible for veterans' education benefits under federal law. In order for a veteran who is not a resident of New Mexico to receive in-state tuition rates, the veteran shall use the veteran's federal educational benefits at a state public post-secondary institution.

B. A spouse or child of an active member of the armed forces who is assigned to duty in New Mexico shall be deemed an in-state resident for purposes of determining tuition and fees at all state institutions of higher learning.

C. A spouse or child of an active member of the armed forces who is assigned to duty elsewhere immediately following assignment to duty in New Mexico shall be deemed an in-state resident for purposes of determining tuition and fees at all state institutions of higher learning as long as the spouse or child resides continuously in New Mexico.

D. A spouse or child of an active member of the armed forces who dies or is killed shall be deemed an in-state resident for purposes of determining tuition and fees at all state institutions of higher learning if the spouse or child becomes a resident of New Mexico within sixty days of the date of death.

E. A veteran of the armed forces who pays tuition and fees at the rate provided for New Mexico residents under this section is entitled to pay tuition and fees at the rate provided for New Mexico residents in any subsequent term or semester while the veteran is enrolled in a degree or certificate program.

F. If an active member of the armed forces is stationed outside New Mexico and the member's spouse or child establishes residence in New Mexico and files with a state institution of higher learning at which the spouse or child plans to register a letter of intent to establish and continue residing in New Mexico, the spouse or child shall be deemed an in-state resident for purposes of determining tuition and fees at that state institution of higher learning without regard to length of time that the spouse or child has resided in the state.

G. A spouse or child of an active member of the armed forces who pays tuition and fees at the rate provided for New Mexico residents under this section is entitled to pay tuition and fees at the rate provided for New Mexico residents in any subsequent term or semester while the person is continuously enrolled in the same degree or certificate program. For purposes of this subsection, a person is not required to enroll in a summer term to remain continuously enrolled in a degree or certificate program. A person's eligibility to pay tuition and fees at the rate provided for New Mexico residents under this subsection does not terminate because the person is no longer a child or spouse of a member of the armed forces.

H. A spouse or child of a veteran of the armed forces is entitled to pay tuition and fees at the rate provided for New Mexico residents; provided that the spouse or child is eligible for benefits pursuant to the federal Post-9/11 Veterans Educational Assistance Act of 2008 or any other federal law authorizing educational benefits for a veteran and the dependents of a veteran.

I. As used in this section, "armed forces" means the United States army, navy, air force, marine corps or coast guard.

J. As used in this section, "veteran" means a person who:

- (1) was regularly enlisted, drafted, inducted or commissioned in the:
- (a) armed forces of the United States and was accepted for and assigned to active duty in the armed forces of the United States;
  - (b) army reserve, navy reserve, marine corps reserve, air force reserve, coast guard reserve, army national guard or air national guard and was accepted for and assigned to duty for a minimum of six continuous years; or
  - (c) United States public health service commissioned corps or the national oceanic and atmospheric administration commissioned officer corps and served in the capacity of a commissioned officer while on active duty in defense of the United States; and
- (2) was not separated from such service under circumstances amounting to dishonorable discharge.

**History:** Laws 2005, ch. 168, § 1; 2009, ch. 123, § 1; 2015, ch. 151, § 1; 2016, ch. 4, § 2.

**Cross references.** — For the federal Post-9/11 Veterans Educational Assistance Act of 2008, see 38 U.S.C., Part III, §§ 3301 - 3325.

**The 2016 amendment**, effective May 18, 2016, amended the definition of "veteran" for purposes of determining tuition and fees at all state institutions of higher learning; in Subsection J, after "veteran" means a", deleted "person who has been discharged under conditions other than dishonorable from service in the army, navy, marine corps, air force or coast guard of the United

States" and added "person who", and added new Paragraphs (1) and (2).

**The 2015 amendment**, effective June 19, 2015, provided that a spouse or child of a veteran of the armed forces is entitled to pay resident tuition and fees if the spouse or child is eligible for federal educational benefits; added new Subsection H and redesignated the succeeding subsections accordingly; and in Subsection J, after "section", deleted "a".

**The 2009 amendment**, effective June 19, 2009, added Subsections A, E and I.

#### **21-1-4.6. Nondiscrimination policy for admission to any public post-secondary educational institution; nondiscrimination in eligibility for education benefits.**

A. A public post-secondary educational institution shall not deny admission to a student on account of the student's immigration status.

B. Any tuition rate or state-funded financial aid that is granted to residents of New Mexico shall also be granted on the same terms to all persons, regardless of immigration status, who have attended a secondary educational institution in New Mexico for at least one year and who have either graduated from a New Mexico high school or received a high school equivalency credential in New Mexico.

**History:** Laws 2005, ch. 348, § 1; 2015, ch. 122, § 4.

**The 2015 amendment**, effective July 1, 2015, replaced the term "general education development certificate" with "high school equivalency credential" in the provision relating to nondiscrimination policies for admission

to public post-secondary educational institutions; and in Subsection B, after "high school or received a", deleted "general educational development certificate" and added "high school equivalency credential".

#### **21-1-4.7. Foster child tuition and fee waiver eligibility; notification.**

A. The state educational institutions set forth in Article 12, Section 11 of the constitution of New Mexico and their branches, community colleges as provided in Chapter 21, Article 13 NMSA 1978 and technical and vocational institutes as provided in Chapter 21, Article 16 NMSA 1978 shall not charge tuition or fees pursuant to Section 21-1-4 NMSA 1978 to a student for whom the children, youth and families department provides certification that the student was in the legal custody of the children, youth and families department pursuant to the Children's Code [Chapter 32A NMSA 1978] or for whom a New Mexico Indian nation, tribe or pueblo or the United States department of the interior bureau of Indian affairs division of human services provides certification that the student was in the legal custody of a New Mexico Indian nation, tribe or pueblo or the United States department of the interior bureau of Indian affairs division of human services on or after the day of the student's fourteenth birthday, who enrolls in one of the state educational institutions set forth in Article 12, Section 11 of the constitution of New Mexico and



their branches, community colleges as provided in Chapter 21, Article 13 NMSA 1978 and technical and vocational institutes as provided in Chapter 21, Article 16 NMSA 1978 no later than the day of the student's twenty-fifth birthday.

B. The higher education department shall collaborate with the children, youth and families department, the New Mexico Indian nations, tribes or pueblos and the United States department of the interior bureau of Indian affairs division of human services to ensure that middle school and high school students who are or have been in the legal custody of the children, youth and families department, a New Mexico Indian nation, tribe or pueblo or the United States department of the interior bureau of Indian affairs division of human services learn about the provisions of this section.

**History:** Laws 2014, ch. 62, § 1; 2019, ch. 163, § 1.

The 2019 amendment, effective June 14, 2019, provided foster children greater access to tuition and fee waivers at state educational institutions; in Subsection A, deleted paragraph designation "(1)", deleted former

Subparagraph A(1)(a) and subparagraph designation "(b)", after "fourteenth birthday", deleted "and the student's parents' rights were relinquished or terminated at that time", and deleted former Subparagraph A(1)(c) and paragraph designation "(2)".

## 21-1-5. Repealed.

**Repeals.** — Laws 1986, ch. 24, § 11 repealed 21-1-5 NMSA 1978, as enacted by Laws 1971, ch. 235, § 2,

relating to fees, fee increases, and board review, approval and report, effective February 21, 1986.

## 21-1-6. Waiving of nonresident differential in tuition rates on a reciprocal basis with other states.

The commission on higher education [higher education department] shall identify those circumstances where the waiving of the nonresident differential in tuition rates, on a reciprocal basis with other states, including the states of the foreign country contiguous to New Mexico, would enhance educational opportunities for New Mexico residents. Relative to the identified circumstances, the commission [department] shall negotiate with the other states involved with the objective of establishing reciprocal agreements for the waiving of the nonresident differential for New Mexico residents attending institutions in other states in exchange for New Mexico institutions waiving the nonresident differential for residents of the other states. Upon successful completion of the negotiations, the commission [department] may identify those classes and numbers of New Mexico residents whose educational opportunities would be enhanced and the number and classes of nonresident students for whom the nonresident differential is to be waived by the New Mexico institutions and may direct that the institutions grant such waivers. The commission [department] shall establish regulations for the administration of the waivers and for the reporting of the cases in which the waivers are given.

**History:** 1953 Comp., § 73-30-2.4, enacted by Laws 1975, ch. 308, § 1; 1993, ch. 53, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

The 1993 amendment, effective June 18, 1993, substituted "commission on higher education" for "board of educational finance" and inserted "including the states of the foreign country contiguous to New Mexico" in the first sentence; substituted "commission" for "board" three times; and made minor stylistic changes.

## 21-1-7. Removal of faculty members; compensation of secretary and treasurer restricted.

No member of the faculty of any state educational institution shall be removed during the term for which he is elected or appointed, except for cause, following notice and an opportunity for a hearing under rules adopted by the board of regents of his institution. No secretary or treasurer of any state educational institution except those supported in whole or in part by United States appropriation shall receive any compensation as secretary or treasurer.

**History:** Laws 1897, ch. 72, § 5; C.L. 1897, § 4181; Code 1915, § 5163; C.S. 1929, § 130-1313; 1941 Comp., § 55-2803; 1953 Comp., § 73-30-3; 1991, ch. 178, § 1.

The 1991 amendment, effective June 14, 1991, added the present catchline; deleted "president or" preceding "member" and substituted "following notice and an opportunity for a hearing under rules adopted" for "and after trial" in the first sentence; and made minor stylistic changes throughout the section.

#### ANNOTATIONS

**Employee must comply with internal grievance procedures.** — An employee must substantially comply with mandatory internal grievance procedures contained in an employee manual or handbook before filing suit for breach of contract claims based on an alleged failure of an employer to follow its employment policies. *Lucero v. UNM Board of Regents*, 2012-NMCA-055, 278 P.3d 1043, cert. denied, 2012-NMCERT-004.

Where a university manager was terminated by the university; the manager did not follow the grievance process contained in the university's employee handbook by filing a grievance; the handbook governed the manager's employment with the university; and the manager filed an action in district court for breach of contract and wrongful termination alleging that the employee handbook created a contract and that the university breached the contract by failing to abide by the handbook's policies and procedures governing workplace performance, disciplinary action, a harassment-free workplace, employer-employee relations, progressive discipline and by disciplining the manager without just cause, the manager's claims were barred because the manager failed to exhaust the handbook's internal grievance procedures before filing the breach of contract action based on an alleged failure of

the university to follow policies in the handbook. *Lucero v. UNM Board of Regents*, 2012-NMCA-055, 278 P.3d 1043, cert. denied, 2012-NMCERT-004.

**Summary dismissal void.** — An attempted summary dismissal of the president of a university, without formal charges having been made, without giving him an opportunity to be heard, and without any trial whatever, is an absolute nullity. *Eyring v. Board of Regents*, 1954-NMSC-123, 59 N.M. 3, 277 P.2d 550.

**Further action not barred.** — The fact that an attempted dismissal of president was a nullity does not bar the board from further action against the president if conducted according to law. *Eyring v. Board of Regents*, 1954-NMSC-123, 59 N.M. 3, 277 P.2d 550.

**Suit against state.** — A claim for damages because of an alleged malicious breach of contract and the resulting damage to reputation sounds in tort and is really against the state. Such an action may not be maintained against the state without its consent. *Eyring v. Board of Regents*, 1954-NMSC-123, 59 N.M. 3, 277 P.2d 550 (decided prior to enactment of the Tort Claims Act, §§ 41-4-1 et. seq. NMSA 1978).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 11 to 16.

Dismissal or rejection of public schoolteacher because of disloyalty, 27 A.L.R.2d 487.

Elements and measure of damages in action by schoolteacher for wrongful discharge, 22 A.L.R.3d 1047.

Construction and effect of tenure provisions of contract on statute governing employment of college or university faculty member, 66 A.L.R.3d 1018.

Academic peer review privilege in federal court, 85 A.L.R. Fed. 691.

14A C.J.S. Colleges and Universities §§ 16, 19, 25.

### 21-1-7.1. Post-tenure review process required.

A. The boards of regents at all state baccalaureate degree-granting educational institutions are authorized to direct the president of the university to institute a periodic post-tenure review process for all tenured faculty.

B. The boards of regents are authorized to direct the president of the university to establish programs designed to assist faculty members in enhancing their teaching skills.

C. The tenured faculty member shall be subject to review every three to five years based on a review of a number of factors, including the following:

- (1) an evaluation of the faculty member's teaching;
- (2) an evaluation of the faculty member's research and scholarly output; and
- (3) an evaluation of the contributions made by the faculty member in the area of public service to the institution and the community.

D. The boards of regents shall ensure that a peer review is afforded the faculty member and that student evaluations are considered in the evaluation of the tenured faculty member's teaching.

E. In the event a faculty member receives an unfavorable evaluation in the area of the faculty member's teaching, the post-tenure review process shall include:

- (1) a two-year probation and reevaluation period; and
- (2) loss of tenure if, during the subsequent probation and reevaluation period, the faculty member fails to demonstrate improvement in the area of teaching.

**History:** Laws 1995, ch. 150, § 1.

**Emergency clauses.** — Laws 1995, ch. 150, § 4 contained an emergency clause and was approved April 5, 1995.

**Temporary provisions.** — Laws 1995, ch. 150, § 3, effective April 5, 1995, provided that the board of regents of

all state baccalaureate degree-granting educational institutions shall study the options, advantages and disadvantages of developing a procedure for granting tenure based solely on a faculty member's teaching ability.



### 21-1-7.2. Reporting; commission on higher education [higher education department].

Each board of regents shall file annually a report on the post-tenure review process instituted at the institution.

**History:** Laws 1995, ch. 150, § 2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

**Emergency clauses.** — Laws 1995, ch. 150, § 4 contained an emergency clause and was approved April 5, 1995.

### 21-1-7.3. Temporary provisions; tenure study.

The boards of regents of all state baccalaureate degree-granting educational institutions shall study the options, advantages and disadvantages of developing a procedure for granting tenure based solely on a faculty member's teaching ability.

**History:** Laws 1995, ch. 150, § 3.

**Emergency clauses.** — Laws 1995, ch. 150, § 4 contained an emergency clause and was approved April 5, 1995.

### 21-1-8. [Eligibility for retirement pension.]

When any member of the faculty or other employee of any one of said institutions shall have taught or rendered service for not less than twenty (20) years in the schools of this state, the last ten (10) years of which service shall have been rendered at the institution retiring such person, and when such person shall have reached or passed the age of sixty (60) years, he or she shall have the right to request retirement and receive thereafter the full pension provided by this act, and after any such person who has rendered the service hereinabove described shall have reached or passed the age of sixty-five (65) years, the regents or governing body of said institution shall have the right in their discretion to order the retirement of such person with the maximum pension hereinabove set forth; provided, that when any member of the faculty or other employee of any one of said institutions shall have taught or rendered service for not less than twenty-five (25) years in the same institution, such person shall be eligible to request retirement and receive the pension provided when he or she shall have reached or passed the age of fifty-five (55) years.

**History:** Laws 1941, ch. 210, § 3; 1941 Comp., § 55-2806; 1943, ch. 51, § 1; 1945, ch. 131, § 1; 1953 Comp., § 73-30-4.

**Compiler's notes.** — "This act" refers to Laws 1941, ch. 210, §§ 1 to 6. Sections 1; 2, 4 to 6, were repealed by Laws 1945, ch. 50, § 12, leaving 21-1-8 NMSA 1978 the only remaining compiled section.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Effect of section.** — Even though the amendment by Laws 1945, ch. 131, § 1, of this section is successful, Chapter 131 still cannot be given effect as it is not a complete

law, but is rather a provision with respect to the ages of certain persons who under other provisions of the original act (now repealed) were given certain benefits. No person can be retired under Chapter 131. As Laws 1945, ch. 50, is a complete act, eligibility must be determined under that act. 1945-46 Op. Att'y Gen. No. 4883.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 60A Am. Jur. 2d Pensions and Retirement Funds §§ 1614, 1615.

Services included in computing period of service for purpose of teachers' seniority, salary, or retirement benefits, 2 A.L.R.2d 1033.

67 C.J.S. Officers and Public Employees §§ 245, 246; 81A C.J.S. States § 113.

### 21-1-9. [Expenses of members of boards of regents.]

The members of the several boards of the university of New Mexico [New Mexico state university], the New Mexico college of agriculture and mechanic arts [the New Mexico institute of mining and technology], and the New Mexico insane asylum [the New Mexico behavioral institute of Las Vegas] shall be allowed their actual and necessary traveling expenses in going to and returning

from all necessary sessions of their respective boards, and also their necessary expenses while in actual attendance upon the same.

**History:** Laws 1889, ch. 138, § 56; C.L. 1897, § 3633; Code 1915, § 5165; C.S. 1929, § 130-1401; 1941 Comp., § 55-2811; 1953 Comp., § 73-30-5.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

Laws 1889, ch. 138, § 56, read "The members of the several boards of the institutions established by this act shall be. . . ." The 1915 compilers inserted the names of the institutions. However, among the institutions created was the New Mexico school of mines, (now the New Mexico institute of mining and technology) which, although omitted by the 1915 compilers, has been inserted in brackets.

Laws 2005, ch. 313, § 5, changed the name of the Las Vegas medical center to the New Mexico behavioral institute of Las Vegas, effective June 17, 2005. See 23-1-13 NMSA 1978.

New Mexico Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changed the name of the college

of agriculture and mechanic arts to the New Mexico state university.

New Mexico Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changed the name of the New Mexico school of mines to the New Mexico institute of mining and technology.

**Cross references.** — For Per Diem and Mileage Act, see 10-8-1 through 10-8-8 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63A Am. Jur. 2d Public Officers and Employees §§ 460 to 462.

Public officer's right and duties in respect of mileage and other allowances incident to duties of his office but which represented no actual expense or outlay by him, 81 A.L.R. 493.

Allowance of mileage or traveling expenses to officer as affected by use of his own vehicle for transportation, 112 A.L.R. 172.

### 21-1-10. Delegation of authority.

The boards of regents of state educational institutions may delegate authority or functions to officers or subordinate bodies within the state educational institutions as the boards deem proper for the efficient functioning of their respective educational institutions.

**History:** Laws 1889, ch. 138, § 58; C.L. 1897, § 3635; Code 1915, § 5167; C.S. 1929, § 130-1402; 1941 Comp., § 55-2812; 1953 Comp., § 73-30-6; 1995, ch. 167, § 1.

The 1995 amendment, effective June 16, 1995, rewrote this section to the extent that a detailed comparison is impracticable.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 81A C.J.S. States § 226.

### 21-1-11. [Allocation of funds.]

Whenever there shall be any money in the hands of the state treasurer to the credit of any of the specific funds set apart for said institutions deemed sufficient by such board to commence the erection of any of the necessary buildings or improvements or pay the running or other expenses of such institution, the state auditor, on the request in writing of any such boards shall, and it is hereby made his duty, to draw his warrant in favor of the treasurer of said board and institution upon the state treasurer against the specific fund belonging to such institution in such sum, not exceeding the amount on hand in such specific fund at such time, as said board may deem necessary: provided, that any such board shall only draw said money as it may be necessary to disburse the same.

**History:** Laws 1889, ch. 138, § 59; C.L. 1897, § 3636; Code 1915, § 5168; C.S. 1929, § 130-1403; 1941 Comp., § 55-2813; 1953 Comp., § 73-30-7.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 5, 35. 14A C.J.S. Colleges and Universities § 41.

### 21-1-12. [Annual reports; contents.]

All of the managing boards of the said institutions shall annually, on or before the first day of December, make a full and true report in detail under oath, of all their acts and doings during the previous year, their receipts and expenditures, the exact status of their institution and any other information that they may deem proper and useful or which may be called for by the governor,



which said reports shall be made to the governor and he shall transmit the same to the succeeding session of the legislature.

**History:** Laws 1889, ch. 138, § 60; C.L. 1897, § 3637; Code 1915, § 5169; C.S. 1929, § 130-1404; 1941 Comp., § 55-2814; 1953 Comp., § 73-30-8.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools § 62.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

### 21-1-13. [Ex-officio board memberships of governor and superintendent of public instruction.]

The governor of the state and the superintendent of public instruction, if there be one, shall ex officio be advisory members of all boards of the said institutions, but shall not have the right to vote or be eligible to office therein.

**History:** Laws 1889, ch. 138, § 62; C.L. 1897, § 3639; Code 1915, § 5170; C.S. 1929, § 130-1405; 1941 Comp., § 55-2815; 1953 Comp., § 73-30-9.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

**Cross references.** — For management of state educational institutions, see N.M. Const., art. XII, § 13.

### 21-1-14. [Quarterly and special meetings of boards.]

The regular meeting of all said boards shall be held quarterly; provided, that they may hold as many special sessions as they shall deem necessary.

**History:** Laws 1889, ch. 138, § 64; C.L. 1897, § 3641; Code 1915, § 5171; C.S. 1929, § 130-1406; 1941 Comp., § 55-2816; 1953 Comp., § 73-30-10.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

### 21-1-15. [One member of board to reside in adjacent municipality.]

At least one member of the said several boards shall be a resident of the town or city at or near which the institution is located.

**History:** Laws 1889, ch. 138, § 66; C.L. 1897, § 3643; Code 1915, § 5172; C.S. 1929, § 130-1407; 1941 Comp., § 55-2817; 1953 Comp., § 73-30-11.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

### 21-1-16. [Public inspection of board records.]

The records of the said boards shall be open at all reasonable times for the inspection of any citizen.

**History:** Laws 1889, ch. 138, § 67; C.L. 1897, § 3644; Code 1915, § 5173; C.S. 1929, § 130-1408; 1941 Comp., § 55-2818; 1953 Comp., § 73-30-12.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 66 Am. Jur. 2d Records and Recording Laws §§ 12 to 30. 76 C.J.S. Records § 60 et seq.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

### 21-1-16.1. State institutions of higher education; presidential searches.

A. Public records containing the identity of or identifying information relating to an applicant or nominee for the position of president of a public institution of higher education are exempt from inspection under the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978].

B. At least twenty-one days before the date of the meeting of the governing board of a public institution of higher education at which final action is taken on selection of the person for the

position of president of the institution, the governing board shall give public notice of the names of the finalists being considered for the position. The board shall consider in the final selection process at least five finalists. The required notice shall be given by publication in a newspaper of statewide circulation and in a newspaper of countywide circulation in the county in which the institution is located. Publication shall be made once and shall occur at least twenty-one days and not more than thirty days before the described meeting.

C. Postponement of a meeting described in Subsection B of this section for which notice has been given does not relieve the governing body from the requirement of giving notice of a rescheduled meeting in accordance with the provisions of Subsection B of this section.

D. Action taken by a governing body without compliance with the notice requirements of Subsections B and C of this section is void.

E. Nothing in this section prohibits a governing body from identifying or otherwise disclosing the information described in this section.

F. This section may be enforced pursuant to the provisions of the Inspection of Public Records Act.

**History:** Laws 2011, ch. 134, § 23.

**Effective dates.** — Laws 2011, ch. 134, § 25 made Laws 2011, ch. 134, § 23 effective July 1, 2011.

## 21-1-17. Interest in contracts by board members or employees prohibited.

No employee or member of a board of regents of a state educational institution shall have direct or indirect financial interest in any contract for building or improving any of that state educational institution or for the furnishing of supplies or services to that institution except as permitted pursuant to the University Research Park and Economic Development Act [Chapter 21, Article 28 NMSA 1978] or the New Mexico Research Applications Act [53-7B-1 through 53-7B-10 NMSA 1978], or unless it complies with provisions of the Governmental Conduct Act [Chapter 10, Article 16 NMSA 1978] and the Procurement Code [13-1-28 through 13-1-199 NMSA 1978].

**History:** Laws 1889, ch. 138, § 68; C.L. 1897, § 3645; Code 1915, § 5174; C.S. 1929, § 130-1409; 1941 Comp., § 55-2819; 1953 Comp., § 73-30-13; Laws 1986, ch. 24, § 1; 1989, ch. 264, § 28; 1999, ch. 148, § 1; 2009, ch. 66, § 13.

The 2009 amendment, effective April 2, 2009, added "and Economic Development Act" after "University Research Park" and added "or the New Mexico Research Applications Act".

The 1999 amendment, effective June 18, 1999, added "or unless it complies with provisions of the Governmental Conduct Act and the Procurement Code" at the end of the paragraph.

### ANNOTATIONS

**Scope of section.** — Members of boards of state institutions, their employees and officials or employees of

state, or of any institution or agency thereof, are prohibited from becoming interested in any contract for expenditure of public money or for furnishing supplies to institutions of which they are board members or employees. 1931-32 Op. Att'y Gen. No. 32-373 (issued prior to 1999 amendment of section).

**Insurance policies.** — A member of the board of regents of the state school of mines (now New Mexico institute of mining and technology) may not write an insurance policy on buildings of the institution. 1921-22 Op. Att'y Gen. No. 21-3195 (issued prior to 1999 amendment of section).

**Bidding on supplies.** — A firm of which a trustee is a member may not bid on supplies for a state institution. 1917-18 Op. Att'y Gen. No. 17-1978 (issued prior to 1999 amendment of section).

## 21-1-18. [No personal liability for official actions.]

Members of the boards of regents of the educational institutions of the state shall not be held personally liable in any action at law based upon a claim for damages arising out of any act or failure to act of that board of regents.

**History:** 1953 Comp., § 73-30-13.1, enacted by Laws 1957, ch. 156, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

### ANNOTATIONS

**Federal preemption.** — As a matter of federal preemption, this section does not confer immunity to board members from suit under a 42 U.S.C § 1983 claim. *Leach*



*v. N.M. Junior Coll.*, 2002-NMCA-039, 132 N.M. 106, 45 P.3d 46, cert. denied, 132 N.M. 83, 44 P.3d 529 (2002).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15 Am. Jur. 2d Colleges and Universities § 41.

Personal liability of public school executive or administrative officer in negligence action for personal injury or death of student, 35 A.L.R.4th 272.

Validity, construction and application of "hazing" statutes, 30 A.L.R.5th 683.

14A C.J.S. Colleges and Universities § 17.

## 21-1-19. [Oaths of board members; filing.]

Each and every member of the said boards shall, before entering upon their respective duties, take and subscribe an oath to faithfully and honestly discharge their duties in the premises and strictly and impartially perform the same to the best of their several abilities. Said oath shall be filed with the secretary of state.

**History:** Laws 1889, ch. 138, § 69; C.L. 1897, § 3646; Code 1915, § 5175; C.S. 1929, § 130-1410; 1941 Comp., § 55-2820; 1953 Comp., § 73-30-14.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

**Cross references.** — For oath of public officer, see N.M. Const., art. XX, § 1.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 12; 63 Am. Jur. 2d Public Officers and Employees §§ 131, 132.

## 21-1-20. Power to hold property.

All of the said institutions, including the New Mexico military institute, shall be entitled to receive all the benefits and donations made and given to similar institutions of learning and charity in other states and territories of the United States, by the legislation of the congress of the United States, or from private individuals or corporations, and for the benefit of said institutions they shall have power to buy and sell or lease or mortgage realty, and do all things that, in the opinion of the several boards, will be for the best interests of said institutions, and are in the line of its object.

**History:** Laws 1889, ch. 138, § 70; C.L. 1897, § 3647; Code 1915, § 5176; Laws 1921, ch. 177, § 1; C.S. 1929, § 130-1411; 1941 Comp., § 55-2821; 1953 Comp., § 73-30-15.

**Compiler's notes.** — Laws 1937, ch. 95, § 1, ratified and confirmed any and all "deeds, grants and conveyances heretofore made by any city, town or village in this state to the state of New Mexico conveying land or other property for the use of any institution of this state."

**Cross references.** — For restrictions on the sale or other disposition of property by state educational institutions and other state entities, see 13-6-1 et seq. NMSA 1978.

### ANNOTATIONS

**Property conveyance upheld.** — Arms-length conveyance of property from the New Mexico Military Institute to the New Mexico Military Institute Foundation

was proper, and did not violate N.M. Const., art. IX, § 14, prohibiting state aid to private enterprise, where the \$250,000 contract price bore a sufficient relationship to the actual value of the property. 1988 Op. Att'y Gen. No. 88-79.

**Power to sell real property in board of directors.** — The board of directors of state insane asylum (now New Mexico behavioral institute of Las Vegas) has the power to sell real property. 1935-36 Op. Att'y Gen. No. 35-1171.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 32, 33, 35, 37.

Implied power of corporation belonging to one of the three classes, religious, charitable, or educational, to promote, or to accept gifts for objects which more appropriately pertain to the purposes of those in one of the other classes, 121 A.L.R. 1526.

14A C.J.S. Colleges and Universities §§ 10 to 14, 17.

## 21-1-21. Capital expenditures.

No expenditure shall be made by any state educational institution confirmed by Article 12, Section 11 of the state constitution for the purchase of real property or the construction of buildings or other major structures or for major remodeling projects without prior approval of the proposed purchase or construction or remodeling by the board of educational finance and the state board of finance.

**History:** 1953 Comp., § 73-30-15.1, enacted by Laws 1971, ch. 235, § 4.

**Compiler's notes.** — Laws 1937, ch. 95, § 1, ratified and confirmed any and all "deeds, grants and conveyances heretofore made by any city, town or village in this state to

the state of New Mexico conveying land or other property for the use of any institution of this state."

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 35.  
14A C.J.S. Colleges and Universities §§ 10, 11, 14.

### 21-1-21.1. State educational institutions; adequate parking.

The staff architect of a university, or the commission on higher education [higher education department] in the case of state educational facilities that do not employ a staff architect, shall review all plans for the construction or major enlargement of a state educational facility prior to the execution of a contract for such work and shall certify to the state board of finance that adequate parking is provided for the use of staff employed in the facility, students who attend classes or events in the facility and members of the public reasonably expected to enter the facility. If adequate parking is not provided for, no contract may be entered into.

**History:** Laws 2001, ch. 319, § 22.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2001, ch. 319, § 24, made Laws 2001, ch. 319, § 22 effective July 1, 2001.

### 21-1-22. [Nonsectarian operation required.]

All the said institutions shall forever remain strictly nonsectarian in character, and no creed or system of religion shall be taught in any of them.

**History:** Laws 1889, ch. 138, § 71; C.L. 1897, § 3648; Code 1915, § 5177; C.S. 1929, § 130-1412; 1941 Comp., § 55-2822; 1953 Comp., § 73-30-16.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Effect on school for the deaf.** — Neither the constitution nor statutes prohibit religious training given by someone not connected with a state educational institution after school hours. Use of the grounds and property of the institution are subject to control of the governing board. Such religious instruction must be wholly voluntary on the part of the students and entirely dissociated from the curriculum or course of instruction of the institution and its faculty. If use of tax supported institutional

grounds or buildings is permitted to one denomination, the same privilege should be granted to all denominations seeking the privilege, without discrimination. 1947-48 Op. Att'y Gen. No. 5075.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 16 Am. Jur. 2d Constitutional Law §§ 465, 466, 481.

Sectarianism in schools, 5 A.L.R. 866, 141 A.L.R. 1144, 45 A.L.R. 2d 742.

Validity, under state constitution and laws, of issuance by state or state agency of revenue bonds to finance or refinance construction projects at private, religious-affiliated colleges or universities, 95 A.L.R. 3d 1000.

Validity and construction of public school regulation of student distribution of religious documents at school, 136 A.L.R. Fed. 551.

14A C.J.S. Colleges and Universities § 7; 16A C.J.S. Constitutional Law §§ 518 to 521, 523.

### 21-1-23. State higher educational institutions; public funds; limitation upon payment for certain purposes.

Public funds shall not be expended for the purpose of paying compensation to any faculty member or employee of a state higher educational institution for any period of absence from his assigned duties with such state higher educational institution unless the period of absence:

- A. is a holiday or vacation period established in the published calendar of the institution;
- B. comes within the official sick leave or annual leave policies promulgated by the regents of the institution; or
- C. is approved by a designated administrative authority according to procedures established for this purpose by the regents.

**History:** 1953 Comp., § 73-30-32, enacted by Laws 1971, ch. 228, § 2.

**Legislative intent.** — Laws 1971, ch. 228, § 1, provides that it is the intent of this act (Laws 1971, ch. 288) that

the appropriate administrative authority shall insure full service be given by the faculty members and employees of a state higher educational institution in keeping with the published calendar of the institution.



**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. — 15A**  
 Am. Jur. 2d Colleges and Universities § 33.

14A C.J.S. Colleges and Universities § 22; 78 C.J.S. Schools § 221 et seq.

**21-1-24. Graduate programs.**

None of the funds appropriated in the general appropriations act to the state educational institutions confirmed by Article 12, Section 11 of the state constitution may be used for the support of any program or programs of graduate study beyond the level of the bachelor's degree other than programs that were maintained by each institution previous to September 1, 1954, except by explicit approval of each program by the board of educational finance and the state board of finance prior to such use of the funds.

**History: 1953 Comp., § 73-30-33, enacted by Laws 1971, ch. 235, § 3.**

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. — 15A**  
 Am. Jur. 2d Colleges and Universities §§ 1, 32, 35.  
 14A C.J.S. Colleges and Universities §§ 2, 4, 14, 15.

**21-1-25. Repealed.**

**Repeals. —** Laws 1979, ch. 273, § 7, repealed 21-1-25 NMSA 1978, relating to out-of-state travel by personnel of state educational institutions.

**21-1-26. Higher education department; general powers.**

A. The higher education department shall be concerned with the problems of finance of those educational institutions designated in Article 12, Section 11 of the constitution of New Mexico and other public post-secondary educational institutions in the state. The department shall:

(1) be concerned with the adequate financing of these institutions and with the equitable distribution of available funds among them;

(2) receive, adjust and approve the budgets submitted by these institutions prior to the submission of these budgets to the state budget division of the department of finance and administration;

(3) develop and maintain programs, on a regular basis, for the orientation and in-service education of members of the boards of regents of the various educational institutions designated in Article 12, Section 11 of the constitution of New Mexico and the governing bodies of other public post-secondary educational institutions in the state;

(4) analyze the financial impact of each new degree program of each public post-secondary educational institution as part of the department's review of the institution's operating budget; and

(5) exercise such other powers as may be granted it by law.

B. Effective July 1, 2005, all new state-funded baccalaureate, graduate and professional degree programs shall be offered by public four-year educational institutions and all new associate degree programs shall be offered by public post-secondary educational institutions after a timely and thorough consultation with and review by the department.

C. Notwithstanding any other provisions of law, the higher education department may be designated by the governor to administer funds furnished under acts of congress for post-secondary educational institutions, except for funds specifically appropriated or otherwise designated for those educational institutions enumerated in Article 12, Section 11 of the constitution of New Mexico.

D. The higher education department is also charged with oversight of all private post-secondary educational institutions operating within the state.

**History:** 1941 Comp., § 55-2714, enacted by Laws 1951, ch. 190, § 1; 1953 Comp., § 73-29-15; Laws 1964 (1st S.S.), ch. 19, § 1; 1985, ch. 43, § 1; 1986, ch. 24, § 2; 1989, ch. 354, § 1; 1994, ch. 108, § 1; 2005, ch. 289, § 15.

**Cross references.** — For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

For the Higher Education Department Act, see 9-25-1 NMSA 1978 et seq.

For designation of the commission of higher education [higher education department] as the state commission on post-secondary education, see 21-2-3 NMSA 1978.

For powers of the department relating to the Work-Study Act, see 21-21B-3 NMSA 1978 et seq.

**The 2005 amendment**, effective April 7, 2005, deleted the former language in subsection A which created the commission on higher education; provided in Subsection A that the department shall be concerned with other public post-secondary educational institutions in the state; deleted the former provision of Subsection A(2) which provided that the commission was authorized to receive funding for the in-plant development training program and to administer the funds; provided in Subsection A(3) that the department shall provide for the orientation and in-service education of members of the governing bodies of other public post-secondary educational institutions in this state; added Subsection A(4) to provide that the department shall analyze the financial impact of new degree programs in public post-secondary educational institutions as part of the review of their operating budget; added Subsection B to provide that all new state-funded

baccalaureate, graduate and professional degree programs shall be offered by public four-year educational institutions and all new associate degree programs shall be offered by public post-secondary educational institutions after review by the department; changed the reference to the commission on higher education to the department in Subsection C; provides in subsection that the department may administer federal funds for post-secondary educational institutions except funds specifically appropriated or otherwise designated for those educational institutions; and changed "commission on higher education" to "higher education department" in Subsection D.

**The 1994 amendment**, effective July 1, 1994, inserted "on higher education" following "commission" near the beginning of Subsection B and added Subsection C.

#### ANNOTATIONS

**Meaning of "adjust and approve".** — The words "adjust and approve" are not dictatorial but mean that the new board shall have the power to "adjust and approve" the budget within reason and only insofar as the direct appropriation from the legislature is concerned and not upon any moneys derived from lands placed in trust of the board of regents for the school for the deaf. 1951-52 Op. Att'y Gen. No. 51-5468.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity, under state constitution and laws, of issuance by state or state agency of revenue bonds to finance or refinance construction projects at private, religious-affiliated colleges or universities, 95 A.L.R.3d 1000.

### 21-1-26.1. Additional duties.

In addition to the duties imposed upon the higher education department in Chapter 21 NMSA 1978, the department shall perform the same planning and budgeting functions for the university of New Mexico hospital as it performs for other post-secondary educational institutions.

**History:** Laws 1980, ch. 145, § 2; 2005, ch. 289, § 16; 2010, ch. 23, § 7.

**The 2015 amendment**, effective June 19, 2015, made a technical correction; changed "by the Post-Secondary Educational Planning Act" to "in Chapter 21 NMSA 1978".

**The 2005 amendment**, effective April 7, 2005, changed "board of educational finance" to "higher education department" and changed "Bernalillo county medical center" to "university of New Mexico hospital".

### 21-1-26.2. Post-secondary education; adult correctional facilities.

Upon approval by the corrections department in consultation with the higher education department, state-supported post-secondary educational institutions shall receive credit on a full-time equivalency basis for students enrolled in their respective programs within adult correctional facilities. Funding recommendations to implement the provisions of this section shall be developed by the higher education department or the public education department as appropriate in the same manner that funding recommendations for similar programs at other institutions are calculated.

**History:** Laws 1981, ch. 69, § 1; 2005, ch. 289, § 17.

**The 2005 amendment**, effective April 7, 2005, changed "board of educational finance" to "higher education department" and changed "public school finance division of the department of finance and administration" to "public education department".

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 60 Am. Jur. 2d Penal and Correctional Institutions § 100.  
72 C.J.S. Prisons and Rights of Prisoners § 59.

### 21-1-26.3. Verification function.

The higher education department shall annually conduct special verifications of the institutions of higher education. The verifications shall include enrollments, fund balances, compliance with



legislation, comparison of expenditures to budgets and other areas to be determined by the department. Reports on the verifications shall be made annually to the department of finance and administration and the legislative finance committee. The department shall consider the verification findings in making its annual recommendations to the executive and legislature for higher education funding.

**History:** 1978 Comp., § 21-1-26.3, enacted by Laws 1986, ch. 24, § 3; 1999, ch. 173, § 1; 2005, ch. 289, § 18.

The 2005 amendment, effective April 7, 2005, changed "commission on education" to "higher education department".

The 1999 amendment, effective June 18, 1999, substituted "verification" for "audit" in the section heading and throughout the section and made minor stylistic changes.

## 21-1-26.4, 21-1-26.5. Repealed.

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-1-26.4 and 21-1-26.5 NMSA 1978, as enacted by Laws 1989, ch. 381, §§ 1 and 2, relating to legislative findings and

development of a statewide articulation plan, effective June 16, 1995. For provisions of former sections, see the 1994 NMSA 1978 on *NMOneSource.com*.

## 21-1-26.6. Repealed.

**Repeals.** — Laws 1999, ch. 173, § 3 repealed 21-1-26.6 NMSA 1978, as enacted by Laws 1990 (1st S.S.), ch. 4, § 1, relating to indicators of performance of educational institutions in the state, effective June 18, 1999. For provisions

of former section, see the 1998 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, see 21-1-26.7 NMSA 1978.

## 21-1-26.7. Annual accountability report.

A. The higher education department shall submit an annual accountability report to the governor and to the legislature by December 31. Prior to publication, the department shall distribute a draft of the accountability report to all public post-secondary educational institutions and shall allow comment upon the draft report.

B. The department in consultation with each public post-secondary educational institution shall develop and adopt the content and a format for the report, including the following information:

(1) student progress and success disaggregated by gender and by ethnicity and race as follows:

- (a) Caucasian, non-Hispanic;
- (b) Hispanic;
- (c) African American;
- (d) American Indian or Alaska Native;
- (e) Native Hawaiian or other Pacific Islander;
- (f) Asian;
- (g) two or more races; and
- (h) other; provided that if the sample of students in any category enumerated in Sub-

paragraphs (a) through (g) of this paragraph is so small that a student in the sample may be personally identifiable in violation of the federal Family Educational Rights and Privacy Act, the report may combine that sample into the "other" category;

- (2) student access and diversity;
- (3) affordability and cost of educational services;
- (4) public and community service by the institution; and
- (5) faculty, compensation and benefits practices, including:
  - (a) number and percentage of part-time and full-time faculty;
  - (b) per-credit-hour pay rate for full-time instructors or lecturers and per-credit-hour pay rate for part-time faculty;
  - (c) percent salary increase for full-time faculty and percent salary increase for part-time faculty; and
  - (d) description of the institution's policy for offering benefits to full-time faculty and to part-time faculty.

C. The department shall make no funding recommendation, capital outlay recommendation, distribution or certification on behalf of any public post-secondary educational institution that has not submitted the information required pursuant to this section.

**History:** 1978 Comp., § 21-1-26.6, enacted by Laws 1990 (1st S.S.), ch. 4, § 2; 1999, ch. 173, § 2; 2005, ch. 289, § 19; 2007, ch. 150, § 1; 2013, ch. 196, § 1.

**Compiler's notes.** — Laws 1990 (1st S.S.), ch. 4, § 2 enacted this section as 21-1-26.6 NMSA 1978, but the section has been redesignated by the compiler.

**Cross references.** — For the federal Family Educational Rights and Privacy Act of 1974, see 20 U.S.C. § 1232g.

**The 2013 amendment,** effective June 14, 2013, provided for post-secondary educational institution accountability reports, including student achievement disaggregated by certain factors; in Paragraph (1) of Subsection B, in the introductory sentence, after "success", added the remainder of the sentence; and added Subparagraphs (a) through (h) of Paragraph (1) of Subsection B.

**The 2007 amendment,** effective June 15, 2007, added Subparagraphs (a) through (d) of Paragraph (5) of Subsection B.

**The 2005 amendment,** effective April 7, 2005, changed "commission on higher education" to "higher education department".

**The 1999 amendment,** effective June 18, 1999, substituted "accountability report" for "report card" in the section heading and throughout the section; in Subsection A, added "by December 31" at the end of the first sentence and deleted the former second sentence providing that the annual report card be published by November 15; in Subsection B, in the first sentence, inserted "in consultation with the public post-secondary educational institution" and inserted "the content and", deleted part of the former second sentence, relating to information to be submitted by each four-year post-secondary institution, and substituted Paragraphs (1) through (4) for former Paragraphs (1) through (9), relating to specific information to be submitted by each four-year post-secondary institution; deleted former Subsection C, relating to information to be submitted by two-year post-secondary institutions, and redesignated the subsequent subsection accordingly.

**Temporary provisions.** — Laws 2007, ch. 150, § 2 provided that the higher education department shall work with the public post-secondary educational institutions to establish a pay schedule for part-time faculty to be subject to legislative appropriation.

## 21-1-26.8. Repealed.

**Repeals.** — Laws 2005, ch. 321, § 14 repealed 21-1-26.8 NMSA 1978, as enacted by Laws 1995, ch. 144, § 1; relating to creation of health profession advisory committee,

effective June 17, 2005. For provisions of former section, see the 2004 NMSA 1978 on *NMOneSource.com*.

## 21-1-26.9. Limitation; higher education department; review of proposed campuses.

Effective January 1, 1998, no new public post-secondary educational institution, branch campus or off-campus instructional center shall be created except as specifically created by the legislature. The higher education department shall review any proposal for the establishment of a new public post-secondary educational institution or campus and submit its recommendations to the legislature. In reviewing proposals, the department may consider:

- A. provisions for a local mill levy of at least two mills;
- B. population base to provide at least five hundred full-time students;
- C. whether at least fifty percent of the costs of initial construction comes from private or local sources;
- D. governance structure;
- E. means for acquisition of property, including purchase, lease, donations or any other means;
- F. eligibility and level of funding request of the state; and
- G. brokering of extended learning provisions.

**History:** Laws 1998, ch. 61, § 2; 2005, ch. 289, § 20.

**The 2005 amendment,** effective April 7, 2005, changed "commission on higher education" to "higher education department".

## 21-1-26.10. Higher education department; plan for funding significant post-secondary educational infrastructure needs.

The higher education department, in conjunction with the governing bodies of the post-secondary educational institutions and other state educational institutions confirmed in Article 12, Section 11 of the constitution of New Mexico, shall develop and approve a five-year plan for funding



the infrastructure renovation and expansion projects designated by the department as the highest priority of significant needs. The department shall determine the projects and amounts to be funded, with a timetable for the projects and amounts to be funded each year over the five-year period, subject to review and comment by the educational institutions and subject to appropriations.

**History:** Laws 1999 (1st S.S.), ch. 6, § 18; 2005, ch. 289, § 21.

The 2005 amendment, effective April 7, 2005, changed "commission on higher education" to "higher education department"; deleted the former provisions in Subsection A that the five-year plan will be funded with supplemental severance tax bonds and that projects were subject to

the amount of supplemental severance tax bonds issued each year; provided in Subsection A that projects are subject to appropriations; and deleted former Subsection B which provided that the commission on higher education shall administer the proceeds for supplemental severance tax bonds and distribute the proceeds to educational institutions with projects funded with the proceeds.

### **21-1-26.11. Higher education department; additional duties.**

In addition to the duties imposed upon the higher education department by the Post-Secondary Educational Planning Act [Chapter 21, Article 2 NMSA 1978], the department shall plan and budget for the statewide adult basic education program and shall adopt and promulgate rules for all such adult educational programs. The department shall establish a uniform protocol for identifying, communicating with and providing direct and equitable access to funding for eligible agencies, which include:

- A. local educational agencies;
- B. community-based organizations;
- C. volunteer literacy organizations;
- D. post-secondary institutions;
- E. public or private nonprofit agencies;
- F. public libraries;
- G. public housing authorities; and
- H. a consortium of agencies, organizations, institutions, libraries or authorities as described in Section 203 of Public Law 105.

**History:** Laws 2003, ch. 394, § 1; 2005, ch. 289, § 22.

The 2005 amendment, effective April 7, 2005, changed "commission on higher education" to "higher education department".

### **21-1-26.12. Educational needs and guidelines; accountability reports.**

A. The higher education department shall, through consultation with all public post-secondary educational institutions, develop and publish a statement of statewide educational needs and guidelines to assist the institutions in the development or modification of institutional strategic plans. The department may conduct studies of statewide educational needs and make recommendations to the governor, the legislature and public post-secondary educational institutions.

B. All public post-secondary educational institutions, including off-campus instruction programs and learning centers, shall:

- (1) approve and submit accountability reports prepared in accordance with the statewide public agenda; and
- (2) submit budgets for review no later than August 1 each year for the following fiscal year.

**History:** Laws 2005, ch. 289, § 14.

**Effective dates.** — Laws 2005, ch. 289, § 31 made the act effective April 7, 2005.

### **21-1-27. Higher education department; distribution of available funds.**

In its distribution of available funds and its adjustment and approval of budgets, the higher education department shall not, in any event or in any manner, substitute for public funds any

gift, donation, private endowment, patent income or other gratuity received or enjoyed by an institution in determining the adequate financing of an institution under its charge.

**History:** 1953 Comp., § 73-29-15.1, enacted by Laws 1965, ch. 267, § 1; 1986, ch. 24, § 4; 2005, ch. 289, § 23.

The 2005 amendment, effective April 7, 2005, changed "commission on higher education" to "higher education department".

#### ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 15A  
Am. Jur. 2d Colleges and Universities §§ 2, 33, 37.  
14A C.J.S. Colleges and Universities §§ 10, 12.

### 21-1-27.1. Higher education endowment fund created.

A. The "higher education endowment fund" is created in the state treasury. The fund shall consist of appropriations, income from investment of the fund, gifts, grants, donations and bequests.

B. The higher education endowment fund shall be administered by the higher education department. Money shall be disbursed only on warrant of the secretary of finance and administration upon voucher signed by the secretary of higher education or the secretary's authorized representative.

C. Money in the higher education endowment fund is appropriated to the department for distribution to the public post-secondary educational institutions listed in Subsection D of this section that submit proposals and receive award determinations from the department to establish endowments at the institutions for endowment purposes. Endowment purposes shall include:

(1) establishing endowed chairs, lectureships, professorships, research positions, graduate assistantships and faculty development programs that will enhance the quality of public post-secondary education in New Mexico; and

(2) addressing one or more of the governor's initiatives, including research and development initiatives; technology transfer initiatives; science, technology, engineering and mathematics initiatives; health, education, water and agriculture initiatives; and work force development initiatives.

D. Appropriations to the higher education endowment fund shall be distributed to public post-secondary educational institutions as awards made by the department or the higher education endowment committee pursuant to competitive proposals submitted by institutions, as follows:

(1) sixty-two percent of the total amount to be distributed may be awarded to the university of New Mexico, the university of New Mexico health sciences center, New Mexico state university and the New Mexico institute of mining and technology;

(2) twenty percent of the total amount to be distributed may be awarded to the New Mexico military institute and any independent community college, branch community college and technical and vocational institute; and

(3) eighteen percent of the total amount to be distributed may be awarded to New Mexico highlands university, eastern New Mexico university, western New Mexico university and northern New Mexico college.

E. Following an award determination, a public post-secondary educational institution shall not receive a distribution until that institution provides documentation to the department that it has received or will receive matching funds, pursuant to a written gift agreement, for the endowment from nongovernmental sources in an amount equal to at least fifty percent of the award amount. Distributions from the higher education endowment fund are made over a two-year cycle with unmatched balances reverting to the general fund at the end of the second fiscal year. Allocations not matched during the first year of a cycle are made available during the second year of a cycle for supplemental or second round matching by any institution listed in Subsection D of this section.

F. The endowment funds of the institutions shall not be expended but shall be invested by the institutions in accordance with the Uniform Prudent Management of Institutional Funds Act [46-9A-1 through 46-9A-10 NMSA 1978] and the provisions of Section 21-1-38 NMSA 1978. The income from the investments shall be expended only for endowment purposes.

G. The "higher education endowment committee" is created. The committee is composed of the secretaries of higher education, economic development and finance and administration or their designees. The committee shall meet no less than twice per year to review proposals and award determinations to:

(1) determine whether the proposals and award determinations meet endowment purposes;



(2) determine whether the endowment funds are being distributed pursuant to the provisions of this section; and

(3) recommend ways to support or change the endowment purposes award and distribution processes.

H. The department shall establish rules setting forth the procedures for making award determinations and distributing money from the higher education endowment fund pursuant to the provisions of this section.

I. The department shall report annually to the legislative finance committee on award determinations made pursuant to this section. The report shall include the amounts awarded to each institution, the amount of matching funds and their sources and the purposes of the endowments and awards.

**History:** Laws 2002, ch. 31, § 1; 2003, ch. 379, § 1; 2003, ch. 392, § 1; 2007, ch. 364, § 1; 2008, ch. 49, § 1; 2009, ch. 91, § 1; 2011, ch. 44, § 1; 2015, ch. 7, § 1.

**Repeals.** — Laws 2007, ch. 364, § 3 repealed Laws 2003, ch. 379, § 1, effective June 15, 2007.

**The 2015 amendment**, effective July 1, 2015, changed the distribution process and the endowment purposes of the Higher Education Endowment Fund, and limited funds to establish endowments at public post-secondary institutions; deleted Subsection C relating to limits on the use of education endowment funds and the requirement that institutions receiving endowment funds receive matching funds from other than government sources; redesignated former Subsection D as Subsection C; in the present Subsection C, after "department", deleted "to be disbursed" and added "for distribution to the public post-secondary educational institutions listed in Subsection D of this section that submit proposals and receive award determinations from the department to establish endowments at the institutions", after "endowment purposes", inserted a period, added "Endowment purposes shall include:" and designated the next sentence as Paragraph 1 of Subsection C; in the present Paragraph 1 of Subsection C, after "(1)", added "establishing", after "professorships", deleted "scholarships for students" and added "research positions", after "New Mexico", deleted "The department, by rule, shall establish procedures for disbursing money from the fund. Not less than five percent of each institution's total endowment effort resulting from amounts specified in this section shall address" and added "; and", designated a new Paragraph 2 of Subsection C; in the present Paragraph 2 of Subsection C, after "(2)", added "addressing", and after "governor's initiatives", added the remainder of the paragraph; deleted Subsection E, relating to distribution proportions and matching requirements on disbursements of the Higher Education Endowment Fund; added a new Subsection D; added new Subsection E; removed the designation from former Subsection F and added the language from former Subsection F to the present Subsection E; in the present Subsection E, after "Distributions from the higher education endowment fund are made over a", deleted "three year" and added "two-year", after "general fund at the end of the", deleted "third" and added "second", after "fiscal year", deleted "The department shall notify each eligible institution of the specific amount it may match during the first two fiscal years of each three-year cycle.", after "Allocations not matched during the first", deleted "two years" and added "year", after "of", deleted "each" and added "a", after "cycle are made available", added "during the second year of a cycle", after "second round matching by", deleted the remainder of the sentence relating to applications for supplemental distributions from the Higher Education Endowment Fund, and added "any institution listed in Subsection D of this section"; redesignated former Subsection G as Subsection F; in the present Subsection F, after

"investments shall be expended", deleted the remainder of the subsection, relating to the manner in which investments shall be expended, and added "only for endowment purposes"; added new Subsections G and H; redesignated former Subsection H as Subsection I; in the present Subsection I, after "legislative finance committee on", deleted "disbursements" and added "award determinations", after "report shall include the amounts", deleted "disbursed" and added "awarded", after "funds and their", changed "source" to "sources", after "and the", changed "purpose" to "purposes", and after "endowments", added "and awards".

**The 2011 amendment**, effective June 17, 2011, required that investments be made in accordance with the Uniform Prudent Management of Institutional Funds Act and that expenditures be made in accordance with the Uniform Prudent Management of Institutional Funds Act and Section 21-1-38 NMSA 1978.

**The 2009 amendment**, effective July 1, 2009, deleted former Subsection E, which provided for the disbursement of funds until June 30, 2010; deleted former Subsection F, which provided for the matching of remaining funds; added new Subsections E and F; and in Subsection H, deleted "No later than July 1 of 2008, 2009 and 2010" at the beginning of the sentence.

**The 2008 amendment**, effective May 14, 2008, changed the name of the fund from the faculty endowment fund to the higher education endowment fund.

**The 2007 amendment**, effective June 15, 2007, eliminated the provision that money in the endowment shall not revert at the end of any fiscal year; eliminated the provision that money shall be disbursed for chairs, professorships and faculty development programs at four-year institutions; eliminated provisions that specify the dollar amounts of disbursements for chairs, professorships and development programs; expanded the purposes for which disbursements can be made; required at least five percent of each institution's total endowment be used to address the governor's initiatives; changed the list of institutions that are eligible for disbursements until June 30, 2010 in Paragraphs (1) through (3) of Subsection E; added Subsection F; permitted income from investment of endowed funds to be used for lectureships, scholarships, and graduate assistantships; eliminated the list of allotments of disbursements; eliminated the procedure for allocation of insufficient disbursements; and eliminated the additional disbursements for chairs at the University of New Mexico, New Mexico state university and New Mexico institute of mining and technology; and added Subsections F and H.

**The 2003 amendment**, effective June 20, 2003, deleted "Money" at the beginning of the second sentence of Subsection B and inserted "Except as provided in Subsection J of this section, money"; deleted "Disbursements" at the beginning of the first sentence of Subsection H and inserted "Except as provided in Subsection J of this section, disbursements"; and added a new Subsection J.



### 21-1-27.2. Technology enhancement fund created; allocations; application review panels.

A. The "technology enhancement fund" is created in the state treasury. The fund shall consist of appropriations, income from investment of the fund, gifts, grants, donations and bequests. Money in the fund shall not revert at the end of any fiscal year. The fund shall be administered by the commission on higher education [higher education department]. Money in the fund shall be used to provide matching funds to state research universities to support innovative applied research that advances knowledge and creates new products and production processes in the fields of agriculture, biotechnology, biomedicine energy, materials science, microelectronics, water resources, aerospace, telecommunications, manufacturing science and similar research areas. Money from the fund shall be expended on warrants of the secretary of finance and administration upon vouchers signed by the executive director of the commission on higher education [higher education department] or the executive director's authorized representative.

B. Grants from the fund are available to state research universities that are conducting collaborative research with corporate and nonprofit organizations. A state research university may apply for a grant from the fund in accordance with rules promulgated by the commission on higher education [higher education department]. Allocations from the fund shall be based on a competitive process with applications reviewed by a panel of scientific and business experts established by the commission [department]. The review panel shall judge proposals based on excellence in research design and possible innovation in cross-disciplinary, multi-campus and higher education-industry research collaboration. The review panel may determine new research areas.

C. To apply for a grant, a state research university must have equal or greater matching funds for the proposal from sources other than the state.

**History:** Laws 2003, ch. 367, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2003, ch. 367 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective on June 20, 2003, 90 days after adjournment of the legislature.

### 21-1-27.3. Higher education performance fund; created; administration; distributions.

A. The "higher education performance fund" is created in the state treasury. The fund consists of appropriations, gifts, grants, donations and income from investment of the fund. Money in the fund shall not revert to any other fund. The fund shall be administered by the commission on higher education [higher education department] and money in the fund is appropriated to the commission [department] for distributions to public post-secondary educational institutions.

B. The commission [department] shall distribute money in the fund annually to each public post-secondary educational institution that met its performance standards in the preceding year.

C. The commission [department] shall develop rules for the assessment of performance measures and standards for public post-secondary educational institutions and shall annually assess the performance of each institution according to those measures and standards.

**History:** Laws 2003, ch. 388, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2003, ch. 388 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

### 21-1-27.4. Higher education program development enhancement fund; purpose.

A. The "higher education program development enhancement fund" is created in the state treasury. All income earned on investment of the fund shall be credited to the fund and money



in the fund shall not revert to any other fund at the end of a fiscal year. The fund shall be administered by the commission on higher education [higher education department] and money in the fund is appropriated to the commission [department] to carry out the purposes of this section. Disbursements from the fund shall be by warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the executive director of the commission on higher education [higher education department] or his authorized representative.

B. The higher education program development enhancement fund shall be used to enhance the contribution of post-secondary educational institutions to the resolution of critical state issues and the advancement of the welfare of state citizens.

C. At the beginning of each fiscal year in which the commission [department] determines that the balance of the fund is sufficient to make awards, the commission [department] shall define or reaffirm no more than four critical issues to be addressed through awards from the fund. Issues to be addressed may include:

- (1) expanding instructional programs to meet critical statewide work force and professional training needs;
- (2) enhancing instructional programs that provide employment opportunity for New Mexico students in a global economy; and
- (3) developing mission-specific instructional programs that build on existing institutional academic strengths.

D. The commission [department] shall establish criteria and procedures for making awards from the fund based on evaluation of competitive proposals submitted by post-secondary educational institutions. Each winning proposal shall address at least one of the critical issues defined for use of the fund that year. Criteria may include:

- (1) collaboration among educational agencies and other public or private entities that demonstrate a competency regarding the issues addressed by the proposal;
- (2) the commitment of matching money; and
- (3) evaluation components.

E. The commission [department] shall report annually to the legislature and the governor on the status of the fund and projects supported by the fund.

**History:** Laws 2003, ch. 389, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2003, ch. 389, § 2 made the act effective July 1, 2003.

## 21-1-27.5. Adult basic education fund created.

The "adult basic education fund" is created in the state treasury. Money in the fund is appropriated to the commission on higher education [higher education department] for the purpose of funding adult basic education programs for educationally disadvantaged adults. Money in the fund shall be distributed by the commission [department] pursuant to an equitable formula established by the commission [department] in consultation with representatives from the adult basic education administrative sites. Any unexpended or unencumbered balance remaining in the fund at the end of each fiscal year shall revert to the general fund.

**History:** Laws 1995, ch. 56, § 1; 2003, ch. 394, § 3; § 22-8-30.1, recompiled as § 21-1-27.5 by Laws 2004, ch. 27, § 28.

**Recompilations.** — Laws 2004, ch. 27, § 28 recompiled former 22-8-30.1 NMSA 1978 as 21-1-27.5 NMSA 1978, effective May 19, 2004.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**The 2003 amendment,** effective April 8, 2003, substituted "commission on higher education" for "department of education" following "appropriated to the", substituted "commission" for "department of education" following "distributed by the", substituted "commission" for "state board" following "established by the", deleted "and with the approval of the commission on higher education as provided by law" following "education administrative sites".

### 21-1-27.6. Adult basic education; distribution of money; objective formula; higher education department; adoption of formula.

The higher education department in consultation with representatives of adult basic education administrative sites shall create an equitable formula for the distribution of money in the adult basic education fund, including funding for instructional materials for adult basic education students. In establishing an equitable formula, the department shall consider the types of programs conducted, the cost of service delivery, the types and cost of instructional materials and the socioeconomic profiles of the adult receiving services. The department shall review the formula and any proposed changes with the adult basic education administrative sites prior to adoption or amendment.

**History:** Laws 1995, ch. 56, § 2; 2003, ch. 394, § 4; § 22-8-30.2, recompiled as § 21-1-27.6 by Laws 2004, ch. 27, § 28; 2009, ch. 221, § 1.

**Recompilations.** — Laws 2004, ch. 27, § 28 recompiled former 22-8-30.2 NMSA 1978 as 21-1-27.6 NMSA 1978, effective May 19, 2004.

**The 2009 amendment**, effective July 1, 2010, after "adult basic education fund", added "including funding for instructional materials for basic adult education students" and after "the cost of service delivery", added "the types and cost of instructional materials".

**The 2003 amendment**, effective April 8, 2003, in the catchline, substituted "commission on higher education"

for "state board", deleted "commission on higher education approval"; in the section text, substituted "commission on higher education" for "state board" near the beginning, substituted "create" for "by regulation, establish" following "administrative sites shall", substituted "commission" for "state board" following "equitable formula", substituted "commission shall review the formula and any proposed changes with the adult basic education administrative sites" for "state board shall submit the proposed formula to the commission on higher education for approval" following "receiving services. The", and inserted "or amendment" at the end.

### 21-1-27.7. Fund created.

A. There is created in the state treasury the "nurse educators fund". The state treasurer shall deposit in the fund all amounts appropriated or credited to the fund. The fund shall be administered by the higher education department, which shall charge not more than a five percent administrative fee. Earnings from investment of the fund shall accrue to the credit of the fund. Any balance in the fund at the end of any fiscal year shall remain in the fund for appropriation by the legislature.

B. The purpose of the fund is to enable the attainment of bachelor of science, master of science, doctor of nursing practice and doctor of philosophy degrees in nursing programs by nursing educators employed by a public post-secondary educational institution and registered nurses seeking employment as nursing educators in a public post-secondary educational institution.

C. The higher education department shall develop rules for continuing employment or pay-back provisions for current and future nursing educators who use the fund.

**History:** Laws 2005, ch. 136, § 1; 2015, ch. 41, § 1; 2015, ch. 47, § 1.

**The 2015 amendment**, effective June 19, 2015, expanded the purpose of the nurse educators fund to allow registered nurses who are seeking employment as nurse educators to use the fund to obtain a higher degree; in Subsection A, in the first sentence, after "created in the", deleted "commission on higher education" and added "state treasury", in the second sentence, after "appropriated", added "or credited", in the third sentence, after "administered by the", deleted "commission on" and after "higher education", added "department", and in the last sentence, after "legislature", deleted "as provided in

this section"; in Subsection B, after "fund is to", deleted "enhance the ability of college and university employed nursing educators to obtain" and added "enable the attainment of", after "master of science", added "doctor of nursing practice", and after "philosophy degrees", added the remainder of the sentence; and in Subsection C, after "The", deleted "commission on", after "higher education", added "department", and after "provisions for", added "current and future".

Laws 2015, ch. 41, § 1 and Laws 2015, ch. 47, § 1, both effective June 19, 2015, enacted identical amendments to this section. The section was set out as amended by Laws 2015, ch. 47, § 1. See 12-1-8 NMSA 1978.

### 21-1-27.8. Adult basic education; instructional materials.

The higher education department shall promulgate rules on the purchase and provision of instructional materials for the free use of adult basic education students. The rules shall include:



A. the responsibilities of adult basic education administrative units as agents for the benefit of students entitled to the free use of instructional materials; and

B. inventory and accounting procedures to be followed by the adult basic education administrative units.

**History:** Laws 2009, ch. 221, § 2. **Effective dates.** — Laws 2009, ch. 221, § 11 made Laws 2009, ch. 221, § 2 effective July 1, 2010.

### **21-1-27.9. Alternative energy and energy efficiency programs; fund created; awards; criteria.**

A. The "higher education new energy development fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants, donations and bequests made to the fund and federal grants or distributions made to the fund or to the higher education department for deposit into the fund. All income earned on investment of the fund shall be credited to the fund, and money in the fund shall not revert to any other fund at the end of a fiscal year. The fund shall be administered by the higher education department, and money in the fund is appropriated to the department to carry out the purposes of this section. Disbursements from the fund shall be by warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of higher education or the secretary's authorized representative.

B. The higher education new energy development fund shall be used to provide financial incentives to:

(1) four-year public post-secondary educational institutions to develop research programs, courses of instruction and degree programs in the fields of alternative energy and energy efficiency; and

(2) two-year public post-secondary educational institutions to provide alternative energy and energy efficiency programs and courses of instruction for students seeking licensure or certification as electricians, plumbers, mechanics, welders and heating, ventilation and air conditioning personnel or similar professions.

C. The higher education department shall, by rule, establish criteria and procedures for making awards from the fund based on evaluation of competitive proposals submitted by public post-secondary educational institutions. The criteria shall include:

(1) a requirement that the application demonstrate how the award will be used to establish permanent educational programs in the fields of alternative energy and energy efficiency;

(2) a requirement that the application demonstrate how local resources will be utilized, including how the institution will cooperate with local employers with a potential need for interns or graduates;

(3) the commitment of matching money; and

(4) such other evaluation components as the department deems useful.

D. No more than an amount equal to five percent of the total awards made during a fiscal year shall be expended from the fund in that fiscal year for administrative costs, including project management, auditing and other oversight functions.

E. The higher education department shall report annually to the legislature and the governor on the status of the fund and programs supported by the fund.

**History:** Laws 2009, ch. 281, § 1.

**Emergency clauses.** — Laws 2009, ch. 281, § 2 contained an emergency clause and was approved on April 9, 2009.

### **21-1-27.10. Fund created; tribal college dual credit program fund; administration.**

A. The "tribal college dual credit program fund" is created in the state treasury. The fund shall be administered by the higher education department. Money in the fund is appropriated to the higher education department to be used only to compensate tribal colleges for the tuition and fees

waived to allow high school students to attend classes on the college campus or electronically pursuant to the dual credit program set forth in Section 21-1-1.2 NMSA 1978.

B. The fund shall consist of:

- (1) money appropriated by the legislature for the purposes of the tribal college dual credit program fund as it applies to tribal colleges;
- (2) grants, gifts, donations and bequests for the dual credit program as it applies to tribal colleges; and
- (3) earnings on the money in the fund.

C. Disbursements from the fund shall be made by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of higher education or the secretary's designee.

D. Unexpended and unencumbered balances in the fund shall revert to the general fund at the end of each fiscal year.

**History:** Laws 2012, ch. 44, § 1.

**Effective dates.** — Laws 2012, ch. 44, § 2 made Laws 2012, ch. 44, § 1 effective July 1, 2012.

## 21-1-27.11. Centers of excellence.

A. A "center of excellence" is established at the following higher education institutions:

- (1) the New Mexico institute of mining and technology to work toward developing and promoting innovation in and expanding cybersecurity industries;
- (2) New Mexico state university to work toward developing and promoting innovation in and expanding sustainable agricultural industries;
- (3) San Juan college to work toward developing and promoting innovation in and expanding sustainable and renewable energy industries; and
- (4) the university of New Mexico health sciences center-affiliated entity, the New Mexico bioscience authority, to continue its work toward developing, promoting innovation in and expanding the bioscience industry in New Mexico.

B. Each center of excellence provided for in Subsection A of this section shall foster excellence in the noted field through:

- (1) collaboration among leaders of the state's agencies, higher education institutions, business sector, national laboratories and community organizations;
- (2) the development by those leaders of strategies to accomplish that aim; and
- (3) the execution of those strategies.

C. Each center of excellence provided for in Subsection A of this section shall:

- (1) actively seek, and may accept, public and private funding for its work;
- (2) establish short- and long-term goals for job creation, business creation and private equity investment outcomes of its work; and
- (3) beginning in 2020, report annually to the higher education department and the legislative finance committee on its goals and achievements.

**History:** Laws 2019, ch. 60, § 1.

**Effective dates.** — Laws 2019, ch. 60, § 2 made Laws 2019, ch. 60, § 1 effective July 1, 2019.

## 21-1-28. Repealed.

**Repeals.** — Laws 2005, ch. 289, § 30 repealed 21-1-28 NMSA 1978, as enacted by Laws 1977, ch. 246, § 49, relating to administrative services of commission on higher

education, effective April 7, 2005. For provisions of former section, see the 2004 NMSA 1978 on *NMOneSource.com*.

## 21-1-29. Repealed.

**Repeals.** — Laws 2005, ch. 289, § 30 repealed 21-1-29 NMSA 1978, as enacted by Laws 1971, ch. 224, § 1, relating to membership of commission on higher education,

effective April 7, 2005. For provisions of former section, see the 2004 NMSA 1978 on *NMOneSource.com*.



### 21-1-30. Repealed.

**Repeals.** — Laws 2005, ch. 289, § 30 repealed 21-1-30 NMSA 1978, as enacted by Laws 1977, ch. 365, § 2, relating to executive director of commission on higher

education, effective April 7, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

### 21-1-31. Repealed.

**Repeals.** — Laws 2005, ch. 289, § 30 repealed 21-1-31 NMSA 1978, as enacted by Laws 1973, ch. 82, § 1, relating to per diem and mileage allowance for commission

members, effective April 7, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

### 21-1-32. Purpose of act.

It is the purpose of this act [21-1-32, 21-1-33 NMSA 1978] to provide for the compilation and utilization of an accounting, budgeting and reporting manual for institutions of higher learning for the purpose of ensuring full disclosure and consistent reporting of all financial data.

**History:** 1953 Comp., § 73-29-19, enacted by Laws 1974, ch. 30, § 1.

### 21-1-33. System of accounting and reporting; manual.

A. The higher education department, in consultation with the state auditor, shall compile a manual prescribing a uniform classification of accounts and a uniform system for budgeting and reporting that includes the reporting of all funds available. The manual shall apply to all institutions enumerated in Article 12, Section 11 of the constitution of New Mexico and all their branches, except the New Mexico school for the blind and visually impaired and the New Mexico school for the deaf. The manual shall also apply to the two-year public post-secondary educational institutions.

B. The uniform system for budgeting and reporting shall require the submission of at least quarterly financial reports.

C. Following review by the legislative finance committee, the manual shall be reproduced by the department and filed as required by the State Rules Act [Chapter 14, Article 4 NMSA 1978]. Upon the filing, the requirements set forth in the manual shall constitute rules of the department and have the force of law. The department shall review the manual annually. Sections of the manual may be revised or amended from time to time by the department, and revisions or amendments shall become effective upon review by the legislative finance committee and reproduction and filing as provided in this section.

D. All institutions to which this section and Section 21-1-32 NMSA 1978 apply shall comply with all of the requirements in the manual, submit reports to the department as requested and furnish such additional information as the department deems necessary.

**History:** 1953 Comp., § 73-29-20, enacted by Laws 1974, ch. 30, § 2; 2003, ch. 273, § 21; 2005, ch. 289, § 24.

**The 2005 amendment,** effective April 7, 2005, changed "commission on higher education" to "higher education department" and provided in Subsection A that the manual shall apply to two-year public post-secondary educational institutions.

**The 2003 amendment,** effective July 1, 2003, rewrote the section.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 2 Am. Jur. 2d Administrative Law §§ 92 to 137.

73 C.J.S. Public Administrative Law and Procedure §§ 87 to 102.

### 21-1-34. Educational television equipment replacement fund; disbursement.

The "educational television equipment replacement fund" is created. The higher education department shall develop criteria and promulgate rules for the disbursement of money in this fund

for the replacement of equipment at educational television stations operated by institutions of higher education. Disbursement shall be made to the institutions by warrant of the department of finance and administration upon vouchers signed by the secretary of higher education. It is the intent of the legislature that in subsequent years a specific line item for educational television replacement shall be included in the appropriations recommended for educational television by the department. The appropriation to the fund in the General Appropriation Act of 1982 shall not revert to the general fund at the end of any fiscal year, and no subsequent appropriation to the fund shall revert unless it contains the sentence "The appropriation to the educational television equipment replacement fund shall revert."

**History:** 1953 Comp., § 73-26-36, enacted by Laws 1977, ch. 330, § 1; 1983, ch. 66, § 1; 2005, ch. 289, § 25.

**Compiler's notes.** — The General Appropriation Act of 1982, referred to in the last sentence, is Laws 1982, ch. 4, §§ 1 to 8.

**The 2005 amendment**, effective April 7, 2005, changed "board of educational finance" to "higher education department".

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 74 Am. Jur. 2d Telecommunications § 192.

### 21-1-35. Sales by boards, officers or employees prohibited; parties to contracts receiving commission or profit; penalty.

No board of regents of a state educational institution, no member of a board and no school official or teacher, either directly or indirectly, shall sell to any state educational institution that he is connected with by reason of being a member of a board of regents of a state educational institution or to any school official or teacher, any school books, school furniture, equipment, apparatus or any other kind of school supplies, sell property insurance or life insurance to any employee of that state educational institution or do any work under contract, nor shall any such board or members thereof or school officers or teachers receive any commission or profit on account thereof, and all such persons are prohibited from being parties directly or indirectly to any such contract or transaction; provided that the provisions of this section shall not apply to contracts entered into pursuant to the provisions of the University Research Park Act [University Research Park and Economic Development Act] [Chapter 21, Article 28 NMSA 1978] or that comply with provisions of the Governmental Conduct Act [Chapter 10, Article 16 NMSA 1978] and the Procurement Code [13-1-28 through 13-1-199 NMSA 1978]. Any person violating the provisions of this section shall be fined not exceeding one thousand dollars (\$1,000) or imprisoned not exceeding one year in the penitentiary of New Mexico or be fined and imprisoned as set forth in this section in the discretion of the court.

**History:** Laws 1923, ch. 148, § 1415; 1927, ch. 139, § 5; C.S. 1929, § 120-1415; 1941 Comp., § 55-715; Laws 1943, ch. 119, § 1; 1953 Comp., § 73-8-15; Laws 1979, ch. 17, § 1; 1989, ch. 264, § 29; 1999, ch. 148, § 2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2007, ch. 247, § 1 changed the "University Research Park Act" to the "University Research Park and Economic Development Act".

**The 1999 amendment**, effective June 18, 1999, added "or that comply with provisions of the Governmental Conduct Act and the Procurement Code" at the end of the first sentence.

**The 1989 amendment**, effective April 5, 1989, added the proviso at the end of the first sentence, and made minor stylistic changes throughout the section.

#### ANNOTATIONS

**Purpose of 22-21-1 NMSA 1978 and this section** is to prevent a conflict of interest between school board members and the districts with which they are connected. *State ex rel. Martinez v. Padilla*, 1980-NMSC-064, 94 N.M. 431, 612 P.2d 223.

**Practice restricting bus drivers in place of purchasing gas prohibited.** — The practice of requiring certain district bus drivers to buy their gas at a school board member's gas station is exactly the type of improper conflict this section was designed to prohibit, and the activity does not fall within the "regular course of business," exception of 22-21-1B NMSA 1978. *State ex rel. Martinez v. Padilla*, 1980-NMSC-064, 94 N.M. 431, 612 P.2d 223.

**When sales by school board members permissible.** — Members of school boards could sell to schools under the jurisdiction of their boards, so long as the provisions of the former Public Purchases Act were complied with, which included purchases made in the regular course of business or upon competitive bids of not to exceed the regularly established prices and when such members received no compensation other than from profits from their business. 1957-58 Op. Att'y Gen. No. 57-53 (issued prior to 1999 amendment of section).

**Termination of employment required.** — Under this section in order for an enumerated individual to properly perform work or supply services by contract and which involve tasks other than those covered under his official capacity or employment, such person must first terminate his official position or employment prior



to entering into any such contract. 1964 Op. Att'y Gen. No. 64-88 (issued prior to 1999 amendment of section).

**When bus driver is board member.** — Should any school bus driver qualify and serve as a member of the board of education with whom he holds a contract, without first terminating the contract, such person would be in violation of this section. 1953-54 Op. Att'y Gen. No. 53-5727 (issued prior to 1999 amendment of section).

**Board member wants to be bus driver.** — A member of a local school district board may not enter into a contract with the school district to drive a school bus on behalf of the district. 1964 Op. Att'y Gen. No. 64-88 (issued prior to 1999 amendment of section).

**When wife of board member is bus driver.** — No violation of this section would result where a school board transfers a school bus transportation contract to the wife of a member of the local board making such transfer, as

the board member is neither directly nor indirectly working under contract to his school district and the contract is truly between the school board and the wife only, with the husband having no personal interest, pecuniary or otherwise, in the contract. 1971 Op. Att'y Gen. No. 71-36 (issued prior to 1999 amendment of section).

**Truck route not permissible.** — It is not permissible for a member of the municipal school board to have a truck route for his school. 1935-36 Op. Att'y Gen. No. 36-1389.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63A Am. Jur. 2d Public Officers and Employees §§ 321, 338 to 343, 411; 68 Am. Jur. 2d Schools § 23.

Relationship as disqualifying interest within statute making it unlawful for an officer to be interested in a public contract, 74 A.L.R. 792.

67 C.J.S. Officers and Public Employees §§ 204, 255 to 259; 78 C.J.S. Schools and School Districts § 405.

## 21-1-36. New Mexico cooperative education program; purpose.

The purpose of the New Mexico cooperative education program is to provide an opportunity for students in New Mexico post-secondary educational institutions to combine academic and employment experience by creating and expanding cooperative education programs in New Mexico colleges and universities, thereby enhancing the educational benefits and job training received by students who participate in cooperative education. The program shall encourage cooperative education for students from groups most severely underrepresented in specified fields of study or employment, particularly women and minorities in engineering.

**History:** Laws 1988, ch. 117, § 1; 1993, ch. 236, § 1.

**The 1993 amendment**, effective June 18, 1993, added the second sentence.

## 21-1-37. New Mexico cooperative education program created; administration; duties.

There is created the "New Mexico cooperative education program" which shall be administered by the commission on higher education [higher education department]. The New Mexico cooperative education program shall supplement existing cooperative education programs to allow cooperative education to incorporate employment experience in rural areas, small businesses and fields not included in traditional campus-based programs. The commission [department] shall establish procedures to identify employment opportunities for cooperative education throughout New Mexico in private, governmental and nonprofit sectors and shall work with the public post-secondary institutions to encourage involvement of students in the cooperative education program. The commission [department] shall identify those groups of students and fields of study or employment for which the most severe underrepresentation exists and for which cooperative education shall be encouraged. The program shall include:

A. parallel cooperative education, in which students who are enrolled full-time in public post-secondary institutions may be employed a maximum of twenty hours in a career-related work assignment;

B. alternating cooperative education, in which students who are enrolled full-time in public post-secondary institutions may alternate employment in a career-related field with academic study; and

C. summer cooperative education, in which students who are enrolled full-time in public post-secondary institutions may be employed in a career-related work assignment during the summer months.

**History:** Laws 1988, ch. 117, § 2; 1993, ch. 236, § 2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**The 1993 amendment**, effective June 18, 1993, added the present fourth sentence.

## 21-1-38. Definition; requirements for adoption of investment policy for investing endowment funds.

### A. As used in this section:

#### (1) "endowment funds" means funds:

(a) acquired by gift by an educational institution with respect to which the donors or other outside agencies have stipulated as a condition of the gift, and the stipulation is expressed specifically in the gift instrument, that the principal is to be maintained and invested for the purpose of producing current and future income that may either be added to the principal or expended, and the maintenance of the principal may be either: 1) held in perpetuity; or 2) expended after the passage of a stated period of time or upon the happening of a specified event; and

(b) notwithstanding the source of acquisition, that the governing board of the educational institution has determined and has designated by a written instrument, either revocable or irrevocable, to be retained for long-term investment; and

(2) "educational institution" means an educational institution designated in Article 12, Section 11 of the constitution of New Mexico and any post-secondary educational institution, which term includes an academic, vocational, technical, business, professional or other school, college or university or other organization or person offering or purporting to offer courses, instruction, training or education through correspondence or in person to any individual within this state over the compulsory school attendance age, if that post-secondary educational institution is directly supported in whole or in part by state or local taxation.

B. The board of finance, as that term is defined in Section 6-10-9 NMSA 1978, for each of the educational institutions:

(1) shall adopt regulations governing the investment and distribution of endowment funds by the institution's board of finance, which regulations shall provide at least for:

(a) the application of the standard of loyalty described in Section 45-7-606 NMSA 1978 and the Uniform Prudent Management of Institutional Funds Act [46-9A-1 through 46-9A-10 NMSA 1978];

(b) the appointment of an investment advisory committee made up of individuals having demonstrated experience and skill in the field of the investment of endowment funds; and

(c) the development of a comprehensive investment policy for the investment of endowment funds by the institution, with the advice and upon the recommendation of the investment committee; and

(2) may employ an institutional endowment funds investment manager and delegate to the manager the power to make purchases, sales, exchanges, investments and reinvestments of endowment funds.

**History:** Laws 1991, ch. 69, § 1; 1997, ch. 199, § 13; 2011, ch. 44, § 2.

**The 2011 amendment**, effective June 17, 2011, in Subsection A, eliminated the requirement that the conditions of a gift stipulate that principal will be held inviolate; and in Subsection B, required the board of finance to adopt regulations regarding the distribution of funds

that apply the standard of loyalty described in Section 45-7-606 NMSA 1978.

**The 1997 amendment**, effective July 1, 1997, substituted "standard of conduct described in Section 6-8-10 NMSA 1978 and the Uniform Management of Institutional Funds Act" for "standard described in Section 6-8-10 NMSA 1978" in Subparagraph B(1)(a) and made minor stylistic changes in Subsection A.

## 21-1-39. Legislative findings.

The legislature finds that the state currently has six universities established by the constitution of New Mexico. The legislature has authorized these institutions to create branches of their institutions in conjunction with local school districts. The legislature also finds that proliferation of post-secondary educational institutions is not in the best interest of the state.

**History:** Laws 1997, ch. 167, § 1; 1998, ch. 61, § 1.

**Cross references.** — For provisions relating to the establishment of branch community colleges, see 21-14-2 NMSA 1978.

**The 1998 amendment**, effective March 9, 1998, deleted "prohibition" from the end of the section heading; deleted the designation "A" at the beginning of the first



sentence, deleted "four-year" at the beginning of the second sentence and deleted the language beginning "and

shall not be funded by the legislature" at the end of that sentence; and deleted Subsection B.

## **21-1-40. Prepaid higher education tuition program; feasibility study; guidelines.**

A. The commission on higher education [higher education department] shall conduct a thorough study to determine the feasibility of creating a prepaid higher education tuition program, which shall include requirements that:

(1) prepaid tuition contracts, once paid, will cover all tuition and required fees of the institution of higher education;

(2) payments for prepaid tuition contracts may be made either in a lump sum or in installments;

(3) the prepaid tuition contracts shall:

(a) allow purchasers to choose from payment plans that pay the tuition and required fees for either a community college, four-year or in-state, private post-secondary educational institution;

(b) allow for rollover of prepaid higher education tuition benefits from one plan to another, and that provide that benefits may be used at any community college, four-year or in-state, private post-secondary educational institution;

(c) include penalties for termination of the contract or default on any of the contract's terms or conditions; and

(d) include provisions that allow purchasers to change or switch beneficiaries;

(4) beneficiaries meet certain minimum eligibility requirements;

(5) when setting contract prices, the commission [department] consider:

(a) the amount and estimated rate of increase of tuition and fees at institutions of higher education;

(b) expected investment returns;

(c) estimated administrative costs; and

(d) the period between the date the contract is entered into and the date the beneficiary is projected to graduate from high school;

(6) allow for gifts or bequests either on behalf of a beneficiary or to the fund generally;

(7) institutions of higher education are either required to participate or that the commission [department] may specify how and when institutions of higher education become eligible to participate in the program;

(8) benefits under a prepaid tuition contract are excluded from any calculation of a beneficiary's state student-aid eligibility; and

(9) a program established pursuant to the requirements set forth in this section shall not obligate or encumber any money deposited in the state permanent fund, the severance tax bond fund or any money that is a part of a state-funded financial aid program.

B. The commission [department] shall report its findings to the appropriate interim legislative committee no later than October 15, 1997. The report shall include a recommendation from the commission [department] regarding the feasibility of implementing a prepaid higher education tuition program based on the requirements set forth in Subsection A of this section.

**History:** Laws 1997, ch. 208, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

## **21-1-41. Military access to a post-secondary educational institution.**

A public post-secondary educational institution shall provide on a mutually acceptable schedule on-campus recruitment opportunities and facilities to a branch or service of the United States military to the same degree that it provides such opportunities and facilities to members of the public.

**History:** Laws 2007, ch. 113, § 1.  
**Effective dates.** — Laws 2007, ch. 113, contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

## **21-1-42. Public post-secondary educational institutions; student identification number.**

A. The higher education department shall, in collaboration with public post-secondary educational institutions, use the same student identification number issued to a New Mexico public school student pursuant to Section 22-2C-11 NMSA 1978 for a student enrolled in a public post-secondary educational institution, including an off-campus instructional program or learning center.

B. In collaboration with the public education department, the higher education department shall:

- (1) develop a system for assigning a unique student identifier to a student who did not attend a New Mexico public school;

- (2) add an additional identifier to the student identification number for those students who enter a teacher preparation program; and

- (3) adopt the format to report individual student data into the public education department's student teacher accountability reporting system.

C. The higher education department shall promulgate rules to carry out the provisions of this section.

**History:** Laws 2007, ch. 264, § 4.

**Effective dates.** — Laws 2007, ch. 264 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

## **21-1-43. First year of college outcomes of New Mexico public high school graduates; annual reports.**

A. Upon request from a public high school or school district superintendent in New Mexico, a public post-secondary educational institution shall provide a report of students who enroll in the institution within three years of graduating from that high school or leaving that high school without enrolling in another high school or earning a high school equivalency credential. Information in the reports may be used by the high schools and public post-secondary educational institutions to improve instruction, student preparation and advisement.

B. The higher education department, in consultation with the public education department and representatives of public high schools and public post-secondary educational institutions, shall prescribe the form of the reports. Reports shall not include any personally identifiable student information. The reports shall be designed to show advanced placement by subject, total credits earned, grade point averages, retention from fall to spring semester of the first year of college and frequency and patterns of remedial or development courses being taken.

C. The higher education department shall be provided with copies of the reports.

**History:** Laws 2009, ch. 7, § 1; 2015, ch. 122, § 5.

**The 2015 amendment,** effective July 1, 2015, replaced the term "general education development certificate" with "high school equivalency credential" in the provision relating to annual reports by public post-secondary

educational institutions regarding enrollment of high school graduates; and in Subsection A, after "high school or earning a", deleted "general educational development certificate" and added "high school equivalency credential".

## **21-1-44. School leadership institute; created; purpose.**

A. The "school leadership institute" is created and is administratively attached to the higher education department. The department shall provide administrative services for the institute. The institute shall provide a comprehensive and cohesive framework for preparing, mentoring and providing professional development for principals and other public school leaders.

B. The institute shall offer at least the following programs:



- (1) licensure preparation for aspiring principals;
- (2) mentoring for new principals and other public school leaders;
- (3) intensive support for principals at schools in need of improvement;
- (4) professional development for aspiring superintendents; and
- (5) mentoring for new superintendents.

C. The institute shall partner with state agencies, institutions of higher education and professional associations to identify and recruit candidates for the institute.

**History:** Laws 2010, ch. 65, § 1.

**Effective dates.** — Laws 2010, ch. 65 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

## 21-1-45. Sale of student information; marketing credit cards to students; prohibited practices.

A. No public or private post-secondary educational institution, including its agents, its employees, its student or alumni organizations or its affiliates, shall:

- (1) sell, give or otherwise transfer to any card issuer, for the purpose of distributing or marketing credit cards, the name, address, social security number, date of birth, telephone number or other contact or personal identifying information of an undergraduate student at the post-secondary educational institution;
- (2) enter into any agreement or cooperate with a card issuer to market credit cards to undergraduate students at the post-secondary educational institution; or
- (3) allow the marketing of credit cards from the property or campus of the post-secondary educational institution.

B. A person whose contact information was sold, given or transferred in violation of this section, or the attorney general, may bring a civil action and seek a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) for each violation plus costs of the action and reasonable attorney fees.

C. For purposes of this section, "credit card" and "card issuer" have the meanings given them in the federal Truth in Lending Act.

**History:** Laws 2010, ch. 71, § 1.

**Effective dates.** — Laws 2010, ch. 71 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

**Cross references.** — For the federal Truth in Lending Act, see 15 U.S.C. § 1601 et seq.

## 21-1-46. Request for access to social networking account prohibited.

A. It is unlawful for a public or private institution of post-secondary education to request or require a student, applicant or potential applicant for admission to provide a password to gain access to the student's, applicant's or potential applicant's account or profile on a social networking web site or to demand access in any manner to a student's, applicant's or potential applicant's account or profile on a social networking web site.

B. It is unlawful for public or private institutions of post-secondary education to deny admission to an applicant or potential applicant for admission on the basis of the applicant's or potential applicant's refusal to provide an agent of a public or private institution of post-secondary education access to the applicant's or potential applicant's account or profile on a social media networking site.

C. It is unlawful for a private or public institution of post-secondary education to take any disciplinary action against a student for the student's refusal to grant access to an agent of the private or public institution of post-secondary education to the student's account or profile on a social media networking site.

D. Nothing in this section prohibits a public or private institution of post-secondary education from obtaining information about a student, applicant or potential applicant for admission that is in the public domain.

E. As used in this section, "social networking web site" means an internet-based service that allows individuals to:

- (1) construct a public or semi-public profile within a bounded system created by the service;
- (2) create a list of other users with whom they share a connection within the system; and
- (3) view and navigate their list of connections and those made by others within the system.

**History:** Laws 2013, ch. 223, § 1, amended 2018, Laws 2018, ch. 1, § 23, was effective June 14, 2018, 90 days after the

**Effective dates.** — Laws 2013, ch. 223 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

## 21-1-47. Statewide advanced placement policy.

A. Beginning with the 2019-2020 academic year, public post-secondary educational institutions shall accept a score of three or higher on the advanced placement examination for post-secondary level course credit. Institutions that offer a corresponding course for a particular advanced placement examination as a part of their general education degree requirements shall accept a score of three or higher on the advanced placement examination for course credit as part of their general education degree requirements. If an institution does not offer a corresponding course for a particular advanced placement examination, the institution shall award, at a minimum, elective post-secondary level course credit for those students who receive a score of three or higher on that advanced placement examination.

B. An institution shall not require an examination score of more than three unless the chief academic officer provides evidence-based research to the higher education department that the higher score is necessary for a student to be successful in a related or more advanced course for which the lower-division course is a prerequisite. Each institution shall publish its updated course-granting policy for advanced placement in accordance with the requirements of this subsection on its website before the beginning of the 2019-2020 academic year.

C. The higher education department, in cooperation with all public post-secondary educational institutions, shall collect and report the course-granting policy for advanced placement of each institution and the research used by each institution to determine the level of credit and the number of credits provided for the advanced placement examination scores and file a report that includes findings and recommendations to the legislature and the governor. Each institution shall provide the department with all necessary data, in accordance with the federal Family Educational Rights and Privacy Act of 1974, to allow the department to conduct its analysis.

**History:** Laws 2019, ch. 139, § 1.

**Effective dates.** — Laws 2019, ch. 139 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

**Cross references.** — For the federal Family Educational Rights and Privacy Act of 1974, see 20 U.S.C. § 1232g.

## 21-1-48. Regional two plus two pilot project; eligibility; evaluation and reporting.

A. "Two plus two" is created as a six-year pilot project in which public post-secondary educational institutions in the southeastern region of the state join to establish a seamless transition from community college to university to:

- (1) improve graduation rates at both educational systems;
- (2) reduce student credit hour accumulation;
- (3) reduce student debt;
- (4) reduce student remediation; and
- (5) increase collaboration and efficiency by and among the southeastern region's post-secondary educational institutions.

B. The purpose of two plus two is to show that the alignment of curricula, course numbering and course credits between community colleges and state universities:

- (1) improves student success and outcomes;



(2) improves the performance, efficiency and effectiveness of both community colleges and state universities; and

(3) lowers cost and provides greater benefits to students, institutions and taxpayers.

C. The following public post-secondary educational institutions may participate in two plus two:

(1) eastern New Mexico university;

(2) the Roswell branch of eastern New Mexico university and eastern New Mexico university Ruidoso branch community college;

(3) New Mexico junior college;

(4) New Mexico military institute;

(5) Clovis community college;

(6) the Carlsbad branch of New Mexico state university or the branch's successor institution; and

(7) any other public post-secondary educational institution that requests to join the pilot project.

D. Three four-year cohorts of students shall be tracked in the pilot project, beginning with those academic students in the freshman class of 2022 at the participating community colleges who declare their intention and receive a bachelor's degree at eastern New Mexico university and ending with those academic students in the freshman class of 2024.

E. The participants in two plus two shall:

(1) designate an institution to serve as lead administrator, if needed;

(2) designate a person at each institution to serve as that institution's lead administrator;

(3) determine what and how data will be collected, analyzed and evaluated to determine whether the purpose of two plus two was borne out and whether articulation changes lead to better outcomes for students and institutions; and

(4) any other matters necessary for the conduct and evaluation of two plus two.

F. The participants shall submit interim and final reports annually to the secretary of higher education and the legislature on the efficacy of two plus two. Reports shall also be filed with the legislative library at the legislative council service.

**History:** Laws 2021, ch. 33, § 1.

**Effective dates.** — Laws 2021, ch. 33 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

## 21-1-49. Medical school licensure requirements.

A. Prior to issuing or renewing a license to operate a medical school in New Mexico, the higher education department shall require a medical school to:

(1) for the purpose of providing third- and fourth-year medical student training, demonstrate that the school has obtained executed agreements with at least four clinical affiliates in New Mexico that have sufficient capacity to provide access to a comprehensive training program for its students. The medical school shall ensure that these agreements represent urban, rural and frontier areas;

(2) obtain the required number of executed agreements and faculty credentialed appointments from New Mexico-based preceptors as defined by the medical school applicant's programmatic accreditor; and

(3) for the purpose of building new graduate medical education residency training, demonstrate the ability to facilitate the creation of such new graduate medical education residency programs within New Mexico, with a preference for primary care programs as defined by the state, in urban, frontier and rural medical facilities. At a minimum, the medical school applicant shall demonstrate and provide documentation that the applicant is the procuring cause for the creation of at least one first-year resident position in New Mexico for every ten students in the applicant's initial approved class size. When possible, preference shall be given to primary care programs in urban, frontier and rural areas.

B. The higher education department shall maintain an appeals process for medical schools in New Mexico that have had a license denied by the higher education department.

C. As used in this section:

(1) "clinical affiliate" means a hospital, physician office, outpatient medical clinic or center, surgical center or health department;

(2) "comprehensive training" means that the clinical affiliate has the capability to provide all of the following services within its premises: inpatient adult medical and surgical services, pediatrics, labor and delivery, emergency room and critical care services;

(3) "executed agreement" means an agreement signed by the designated medical school official and designated official of the institution providing access for medical students to clinical rotations and education;

(4) "faculty credentialed" means the process by which the medical school ensures that the physicians providing clinical education have the required education, training and licensure to practice medicine;

(5) "graduate medical education" means any type of formal medical education pursued after receipt of an allopathic or osteopathic physician degree. Graduate medical education includes internship, residency, subspecialty and fellowship programs, in all fields of medicine and surgery, recognized by and enabling state licensure in New Mexico;

(6) "medical school" means a tertiary educational institution, or part of such an institution, that teaches medicine and awards a professional degree for physicians and surgeons, including a bachelor of medicine, bachelor of surgery, doctor of medicine or doctor of osteopathic medicine;

(7) "preceptors" means licensed, practicing allopathic or osteopathic physicians who, under a faculty appointment with a medical school, mentor medical students and provide clinical education for core and elective clerkship rotations;

(8) "primary care" means family medicine, general psychiatry, general internal medicine, general pediatrics and pediatric medicine;

(9) "procuring cause" means evidence that the medical school has created graduate medical education positions in the state, either at the medical school's own medical facility or through partnerships with third-party clinical affiliates; and

(10) "programmatic accreditor" means, for allopathic physicians, the liaison committee on medical education and for osteopathic physicians, the commission on osteopathic college accreditation.

**History:** Laws 2021, ch. 85, § 1.

**Effective dates.** — Laws 2021, ch. 85 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

## ARTICLE 1A

### University Endowments

Sec.

21-1A-1. Repealed.

21-1A-2. Repealed.

21-1A-3. Repealed.

Sec.

21-1A-4. Repealed.

21-1A-5. Repealed.

#### 21-1A-1. Repealed.

**Repeals.** — Laws 1989, ch. 390, § 6 repealed 21-1A-1 NMSA 1978, as enacted by Laws 1989, ch. 390, § 1, relating to the short title of the University Endowment Act,

effective July 1, 2000. For provisions of former section, see the 1999 NMSA 1978 on *NMOneSource.com*.

#### 21-1A-2. Repealed.

**Repeals.** — Laws 1989, ch. 390, § 6 repealed 21-1A-2 NMSA 1978, as enacted by Laws 1989, ch. 390, § 2, relating to purpose, effective July 1, 2000. For provisions

of former section, see the 1999 NMSA 1978 on *NMOneSource.com*.



### 21-1A-3. Repealed.

**Repeals.** — Laws 1989, ch. 390, § 6 repealed 21-1A-3 NMSA 1978, as enacted by Laws 1989, ch. 390, § 3, relating to definitions, effective July 1, 2000. For provisions

of former section, see the 1999 NMSA 1978 on *NMOneSource.com*.

### 21-1A-4. Repealed.

**Repeals.** — Laws 1989, ch. 390, § 6 repealed 21-1A-4 NMSA 1978, as enacted by Laws 1989, ch. 390, § 4, relating to the university fund for endowments, effective

July 1, 2000. For provisions of former section, see the 1999 NMSA 1978 on *NMOneSource.com*.

### 21-1A-5. Repealed.

**Repeals.** — Laws 1989, ch. 390, § 6 repealed 21-1A-5 NMSA 1978, as enacted by Laws 1989, ch. 390, § 5, relating to allocation of fund, effective July 1, 2000. For

provisions of former section, see the 1999 NMSA 1978 on *NMOneSource.com*.

## ARTICLE 1B

### Post-Secondary Education Articulation

Sec.

21-1B-1. Short title.

21-1B-2. Definitions.

21-1B-3. Initial articulation planning and development of meta-major and transfer module.

21-1B-4. Transfer of credits.

Sec.

21-1B-5. Oversight of articulation programs; complaint procedures,

21-1B-5.1. Articulation complaint process; notification.

21-1B-6. Reporting.

### 21-1B-1. Short title.

Chapter 21, Article 1B NMSA 1978 may be cited as the "Post-Secondary Education Articulation Act".

**History:** Laws 1995, ch. 224, § 1; 2005, ch. 272, § 1.

**The 2005 amendment**, effective June 17, 2005, changed the statutory reference to the act.

### 21-1B-2. Definitions.

As used in the Post-Secondary Education Articulation Act:

A. "articulation" means the transfer of courses that fulfill a graduation requirement for a student's chosen degree program;

B. "department" means the higher education department;

C. "general education core curriculum" means the group of lower-division courses approved by the department as fulfilling general education requirements that are accepted by all institutions for transfer purposes;

D. "institution" means an accredited, public post-secondary educational institution operating in the state;

E. "meta-major" means fifteen credits of lower-division courses that are developed in consultation with the faculty and approved by the department and that include general education courses and prerequisite courses and that can articulate to multiple degree programs and can include courses across the institution that address diversity;

F. "transfer" means the transfer of course credits from one institution to another; and

G. "transfer module" means a list of lower-division courses established by the department that fulfill graduation requirements for a specific degree program.

**History:** Laws 1995, ch. 224, § 2; 2005, ch. 272, § 2; 2015, ch. 29, § 1; 2017, ch. 18, § 1.

**The 2017 amendment**, effective July 1, 2017, amended definitions in the Post-Secondary Education Articulation Act to clarify conditions under which students may

transfer earned credits between and among New Mexico institutions of higher education; in Subsection A, after "the transfer of", deleted "course credit from one institution to another" and added "courses that fulfill a graduation requirement for a student's chosen degree program"; deleted former Subsections C and D, which defined "discipline module" and "general education core"; added a new Subsection C; redesignated former Subsection E as Subsection D; deleted former Subsection F, which defined "module" or "transfer module"; and added new Subsections E, F and G.

**The 2015 amendment**, effective June 19, 2015, updated references to the higher education department; in

Subsection B, after "B.", deleted "commission" and added "department", after "means the", deleted "commission on", and after "higher education", added "department"; in Subsection D, after "by the", deleted "commission" and added "department"; in Subsection F, after "by the", deleted "commission" and added "department".

**The 2005 amendment**, effective June 17, 2005, added Subsection C to define "discipline module"; added Subsection D to define "general education core"; and deleted "skills" from the definition of "module" or "transfer module".

### **21-1B-3. Initial articulation planning and development of meta-major and transfer module.**

A. The department shall establish and maintain a comprehensive statewide plan to provide for the articulation of educational programs and facilitate the transfer of course credits between institutions.

B. In establishing a statewide articulation plan, the department shall:

(1) by August 1, 2017, establish a common course naming and numbering system for courses identified as substantially equivalent lower-division courses; provided that the department shall establish an interim mechanism of a statewide equivalency table that uses a universal taxonomy to identify substantially equivalent courses until the common system is in place;

(2) establish a process to identify courses as substantially equivalent. The process shall:

(a) include a procedure for each course whereby faculty members from each segment teaching the academic discipline will reach mutual agreement on the material to be taught and the competencies to be gained;

(b) ensure that the content of each course is comparable across institutions offering that course;

(c) ensure that substantially all the content agreed to among the institutions as the content to be covered by a course is in fact covered in that course and that students successfully completing the course will achieve like competencies with respect to the content covered; and

(d) ensure that the content requirements for each course will be sufficient to prepare students for upper-division coursework in that field;

(3) maintain a list of lower-division courses offered at higher education institutions in New Mexico. All courses assigned the same number shall transfer between institutions as that course name and number; and

(4) develop a process for reviewing, updating and maintaining the common course numbering system.

C. The department shall, in consultation with the faculty, facilitate the development and approval of statewide meta-majors and transfer modules by August 2019.

D. The department, in consultation with faculty, shall develop a statewide general education core curriculum of not less than fifteen hours for an associate in applied science degree, thirty hours for an associate degree other than in applied science and thirty hours for a bachelor degree. The statewide general education core curriculum shall include a comprehensive array of lower-division college-level courses designed to provide a foundation for a liberal education and courses that include the interdisciplinary study of differences that recognize and respect New Mexico's diverse cultures, histories and identities. The department shall develop a process for maintaining and updating the statewide general education core curriculum. The department shall review and approve proposed statewide general education core curriculum requirements. For every institution, each approved course in the general education core curriculum shall be transferable, and its credit hours shall count toward fulfilling general education core curriculum requirements at any institution to which they are transferred.



**History:** Laws 1995, ch. 224, § 3; 2005, ch. 272, § 3; 2015, ch. 29, § 2; 2017, ch. 18, § 2.

**The 2017 amendment**, effective July 1, 2017, provided additional requirements for the higher education department in establishing a comprehensive statewide plan under which students may transfer earned credits between and among New Mexico institutions of higher education; in the catchline, added "Initial", changed "plan" to "planning and", after "development", deleted "implementation establishment", and added "meta-major and"; in Subsection A, after "the transfer of", deleted "students" and added "course credits"; in Subsection B, Paragraph B(3), deleted "define, publish and", after "maintain", deleted "modules" and added "a list", after "lower division courses", deleted "accepted for transfer at all institutions and meeting requirements for lower division requirements established for associate and baccalaureate degree granting programs" and added the remainder of the paragraph, and added Paragraph B(4); in Subsection C, after "The department shall", deleted "ensure that institutions develop transfer modules that include approximately sixty-four hours of lower division college level credit" and added the remainder of the subsection; and deleted former Subsections D, E and F and added a new Subsection D.

**The 2015 amendment**, effective June 19, 2015, provided a deadline for the department to establish a statewide articulation plan; in Subsection A, after "The",

deleted "commission" and added "department"; in the introductory sentence of Subsection B, after "the", deleted "commission" and added "department"; in Subsection B, Paragraph (1), after "(1)", added "by August 1, 2017", and after "provided that the", deleted "commission" and added "department"; and in Subsection C, after "The", deleted "commission" and added "department".

**The 2005 amendment**, effective June 17, 2005, added Subsection B(1) to provide that the commission shall establish a common course naming and numbering system for courses substantially equivalent to lower division courses and an interim mechanism of a statewide equivalency table; added Subsection B(2)(a) through (d) to provide for a process to identify courses as substantially equivalent; provided in Subsection C that transfer modules shall include approximately sixty-four hours of credit; provided in Subsection D that the general education core shall transfer as a block and count as required lower-division course work and that any course in the core is transferable as credit toward the general education core requirements; added Subsection E to provide that courses in the general education core may be offered for dual credit to secondary school students and be transferable as credit for a required lower-division course; and added Subsection F to provide that a discipline module shall consist of approximately sixty-four hours applicable to the discipline and that any course within the discipline module is transferable as credit toward degree requirements.

## 21-1B-4. Transfer of credits.

A. Courses that have a New Mexico common course number shall be accepted as the equivalent courses offered at the receiving institution.

B. Courses taken as part of an approved meta-major or transfer module shall be accepted to meet lower-division graduation requirements of a degree-granting program to which the meta-major or transfer module articulates.

C. An institution shall not increase requirements for degree-granting programs as a result of the use of a meta-major or transfer module or acceptance of a course that is part of a meta-major or transfer module. An institution may specify additional lower-division or upper-division requirements not included in a meta-major or transfer module for one or more programs of study; provided that those requirements apply equally to transfer students and students originating their study at the institution.

**History:** Laws 1995, ch. 224, § 4; 2005, ch. 272, § 4; 2017, ch. 18, § 3.

**The 2017 amendment**, effective July 1, 2017, provided for the transfer of credits between and among New Mexico institutions of higher education; in the catchline, deleted "use of transfer module" and added "transfer of credits"; in Subsection A, deleted "Each" and added "Courses that have a New Mexico common course number shall be accepted as the equivalent courses offered at the receiving", and after "institution", deleted the remainder of the subsection; added a new Subsection B and redesignated former Subsection B as Subsection C; deleted former Subsection C, which related to the transfer of completed transfer modules; and in Subsection D, added "meta-major or" in two places, and after "requirements not included in a", deleted "discipline" and added "meta-major or transfer".

**The 2005 amendment**, effective June 17, 2005, provided in Subsection A that Subsection A applies to any course that is part of a transfer module; provided in Subsection B that an institution shall not increase the degree requirements as a result of acceptance of a course that is part of a transfer module and that an institution may specify additional requirements not included in a discipline module for programs of study; deleted the former provisions of Subsection C which provided that the commission establish procedures to identify additional lower-division courses in specific disciplines of study that will be transferable and applicable to baccalaureate degrees in specific programs of study; and added Subsection C to provide that institution shall accept completed transfer modules as a block as fulfilling lower-division coursework and upon transfer of a discipline module, admit students into the upper-division program.

## 21-1B-5. Oversight of articulation programs; complaint procedures.

A. The department shall establish and maintain a process to monitor and improve articulation through frequent and systematic consultation with institutions.

B. The department shall establish a complaint procedure for transfer students who fail to receive credit for courses that have a common course number or are contained in an approved meta-major or transfer module taken at another institution. The department may set standards for determining bona fide complaints, including a requirement that students follow institutions' internal procedures for resolving complaints prior to submitting them to the department. The department shall investigate all articulation complaints and render decisions as to the appropriateness of the actions of the participants.

C. Prior to December 31 of each year, the department shall summarize all articulation complaints filed with the department and the decisions of the department with regard to those complaints.

D. If a student's articulation complaint regarding commonly numbered courses or courses contained in a meta-major or transfer module is upheld, the receiving institution shall reimburse the student the complete cost, including tuition, books and fees, of each course the student was required to repeat at the receiving institution.

**History:** Laws 1995, ch. 224, § 5; 2005, ch. 272, § 5; 2017, ch. 18, § 4.

**The 2017 amendment**, effective July 1, 2017, required the higher education department to establish a complaint procedure for transfer students who fail to receive credit for commonly numbered courses or courses contained in a meta-major or transfer module; in Subsection A, after "The", deleted "commission" and added "department", and after the first sentence, deleted the remainder of the subsection, which related to monitoring the progress of transfer students; in Subsection B, substituted "department" for "commission" throughout the subsection, after "receive credit for courses", added "that have a common course number or are", and after "contained in", deleted

"a" and added "an approved meta-major or"; in Subsection C, substituted "department" for "commission" throughout the subsection, and deleted the last sentence of the subsection, which related to the process for meritorious complaints; and in Subsection D, deleted "When a module becomes effective as provided in Subsection F of Section 21-1B-6 NMSA 1978", after "complaint regarding", added "commonly numbered courses or", and after "courses contained in a", added "meta-major or transfer".

**The 2005 amendment**, effective June 17, 2005, added Subsection D. to provide that if a student's articulation complaint is upheld, the receiving institution shall reimburse the student the cost of each course the student was required to repeat.

### 21-1B-5.1. Articulation complaint process; notification.

The receiving institution shall publish in the student handbook or otherwise notify transfer students of the complaint process to be followed in the event that a transfer module course is not accepted for credit. The notification shall include the remedy available to the student if the complaint is upheld.

**History:** Laws 2005, ch. 272, § 6.

**Effective dates.** — Laws 2005, ch. 272 contained no effective date provision, but, pursuant to N.M. Const.,

art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

### 21-1B-6. Reporting.

A. Prior to December 31 of each year, the department shall report to the legislative finance committee and the governor regarding the status of articulation programs and the transfer of students between institutions.

B. The report developed by the department shall include the statewide meta-major and transfer modules available, an analysis of the number of students transferring between New Mexico's higher education institutions, the graduation rates and time to earn degrees of transfer students at receiving institutions, the average number of credit hours earned by graduating transfer students compared to the average number of credit hours earned by graduates who originated at the institution and a summary of student complaints regarding articulation. The report shall include data and other information obtained on both a statewide and individual institution basis.

C. The report shall look at outcomes with regard to such factors as transfer rates, persistence rates after transfer and graduation rates.

D. The report shall identify each institution against which a meritorious complaint has been filed. The report shall summarize the recommendations of the department with regard to those complaints.



E. All institutions shall provide articulation information required by the department for the development of the annual report prior to September 30 of each year.

**History:** Laws 1995, ch. 224, § 6; 2005, ch. 272, § 7; 2017, ch. 18, § 5.

**The 2017 amendment**, effective July 1, 2017, required the higher education department to include in its annual report the statewide meta-major and transfer modules available, graduation rates of transfer students, and the time to earn degrees for transfer students at receiving institutions; substituted "department" for "commission" throughout the section; in Subsection A, after "legislative finance committee", deleted "the legislative education study committee"; in Subsection B, after "shall include", added "the statewide meta-major and transfer modules available", after "transferring between", deleted "campuses, the number of credits being requested and accepted for transfer, institutions denying transfer of credits and reasons for denial" and added "New Mexico's higher education institutions", and after the next occurrence of "the",

deleted "progress" and added "graduation rates and time to earn degrees"; and deleted Subsection F, which related to the effective dates of certain discipline modules.

**The 2005 amendment**, effective June 17, 2005, provided in Subsection B that the report shall include the average number of credit hours earned by graduating transfer students compared to the average number of credit hours earned by graduates who originated at the institution; added Subsection C to provide that the report shall look at outcomes with regard to such factors as transfer rates, persistence rates after transfer and graduation rates; provided in Subsection D that the report shall summarize recommendations with regard to complaints; and added Subsection F to provide deadlines the preparation of the general education core, modules, and the common course numbering and naming system.

## ARTICLE 2

### Post-Secondary Educational Planning

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| <p>Sec. 21-2-1. Short title.</p> <p>21-2-2. Definitions.</p> <p>21-2-3. State commission created; designated members; designation of supplementary members for specific functions.</p> <p>21-2-4. State commission; appointment of committees and task forces.</p> <p>21-2-5. Statewide planning.</p> | <p>Sec. 21-2-5.1. Funding formula.</p> <p>21-2-6. Statewide planning; participating agencies and persons.</p> <p>21-2-7. Annual report.</p> <p>21-2-8. Designation of state commission as agency required for certain federal programs.</p> <p>21-2-9. Designation of state agency required for certain federal occupational education programs.</p> |
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#### 21-2-1. Short title.

Chapter 21, Article 2 NMSA 1978 may be cited as the "Post-Secondary Educational Planning Act".

**History:** 1953 Comp., § 73-44-1, enacted by Laws 1973, ch. 233, § 1; 1986, ch. 24, § 7.

**Cross references.** — For additional duties of higher education department, see 21-1-26.11 NMSA 1978.

#### 21-2-2. Definitions.

As used in the Post-Secondary Educational Planning Act:

##### A. "post-secondary education":

(1) means education, training or retraining for persons sixteen years of age or older who have graduated from secondary school or left elementary or secondary school without graduating from secondary school, which is designed to provide for such persons:

- (a) adult basic education;
- (b) high school equivalency education;
- (c) prevocational education;
- (d) vocational education;
- (e) technical education;
- (f) general academic education;
- (g) undergraduate academic education leading to associate's and bachelor's degrees;
- (h) graduate academic education leading to master's and doctor's degrees;
- (i) undergraduate and graduate professional education leading to professional degrees;
- (j) continuing education; or
- (k) some combination of the above; and

(2) includes public, private, nonprofit and proprietary educational institutions and programs of the following types, among others:

- (a) technical and vocational institutes;
- (b) junior colleges;
- (c) branch community colleges;
- (d) colleges and universities;
- (e) post-secondary military institutes;
- (f) post-secondary vocational schools;
- (g) adult vocational and prevocational manpower and training programs;
- (h) programs designed to identify persons who can benefit from post-secondary education and to assist them in enrolling in appropriate programs; and
- (i) programs providing guidance, counselling and placement services for persons in connection with their participation in post-secondary education; and

B. "state commission" means the state commission on post-secondary education.

**History:** 1953 Comp., § 73-44-2, enacted by Laws 1973, ch. 233, § 2.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 1, 2.  
14A C.J.S. Colleges and Universities §§ 2, 5; 78 C.J.S. Schools and School Districts § 66.

### 21-2-3. State commission created; designated members; designation of supplementary members for specific functions.

There is created the "state commission on post-secondary education". The commission on higher education [higher education department] is designated the state commission. For the purposes of the Post-Secondary Educational Planning Act, the commission on higher education [higher education department], in functioning as the state commission, is charged with a concern for all types of post-secondary education and all types of educational institutions and programs as enumerated in Section 21-2-2 NMSA 1978. Whenever federal statutes and regulations so require, the state commission may request the governor to appoint, for specific functions relating to federally sponsored programs, supplementary members to the state commission, and members shall be appointed by the governor to fulfill those specific functions as requested. When sitting with the state commission, the supplementary members shall have, for purposes of the specific functions for which they were appointed, all the powers and perquisites of regular members of the state commission.

**History:** 1953 Comp., § 73-44-3, enacted by Laws 1973, ch. 233, § 3; 1986, ch. 24, § 8.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 3, 11.  
14A C.J.S. Colleges and Universities §§ 14, 15.

### 21-2-4. State commission; appointment of committees and task forces.

The state commission may establish committees or task forces, not necessarily consisting of commission members, and may use existing agencies or organizations to make studies, conduct surveys, submit recommendations or otherwise contribute expertise from the post-secondary educational institutions, programs, interest groups and segments of the society most concerned with a particular aspect of the state commission's work.

**History:** 1953 Comp., § 73-44-4, enacted by Laws 1973, ch. 233, § 4.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63A Am. Jur. 2d Public Officers and Employees § 97.  
81A C.J.S. States § 120.



## 21-2-5. Statewide planning.

The state commission shall carry out a continuing program of statewide planning for post-secondary education. Planning activities shall include:

A. assessment of present and projected needs for the various types of post-secondary education in all parts of the state;

B. assessment of existing capabilities and facilities for the provision of the various types of post-secondary education and the utilization of these capabilities and facilities;

C. analysis of the effectiveness and productivity of post-secondary educational programs and an identification of marginal programs and of unnecessary or excessive duplication of programs;

D. analysis of the most effective means of utilizing all existing institutions and programs to meet the present and projected needs for the various types of post-secondary education;

E. identification of cases where expansion or improvement of existing institutions and programs, contraction or elimination of existing institutions and programs, and establishment of new institutions and programs are needed in order to meet the present and projected needs for post-secondary education on a statewide basis in an effective and efficient manner;

F. identification of steps required to coordinate the activities of the various institutions and programs of post-secondary education in order that they will be most effective and efficient in meeting the statewide needs;

G. development of strategies for infusing occupational education and career education into the educational system at all levels on an equal basis with traditional academic education;

H. development of logical, consistent and equitable organizational and fiscal provisions for the operation of post-secondary education and for the effective utilization of federal, state and local funding available for such education;

I. the making of specific recommendations to the cognizant governing authorities of post-secondary educational institutions and programs, as to the steps necessary to adjust the operations of the particular institution or program in order that they will best serve a coordinated statewide system of post-secondary education meeting the statewide needs for post-secondary education;

J. the making of recommendations to appropriate state executive agencies and to the legislature regarding the legislation and the administrative actions necessary to implement a coordinated statewide system of post-secondary education;

K. the making of recommendations to the executive and to the legislature which provide consistent standards for determining the necessary appropriation from the state general fund to implement the planned system of post-secondary education. Such standards shall pertain to, but not necessarily be limited to:

(1) all income to the institution or to any connected corporation to the institution from any source whatsoever, except that gifts, donations, private endowments or other gratuities received by an institution shall not be used in any manner as a substitute for public funds;

(2) all balances whether fund balances or cash balances and the operational need for such balances;

(3) the consistent application of overhead income among institutions;

(4) full-time equivalent (FTE) student costs by level of instruction and subject area;

(5) an equitable distribution of funds to support research;

(6) expenditures and revenues necessary for operation of each auxiliary enterprise;

(7) the translation of institutional internal accounts to the board of educational finance budget forms;

(8) funding of intercollegiate athletics; and

(9) funding of institutional branches and other state vocational facilities; and

L. tuition equalization grants to students.

**History:** 1953 Comp., § 73-44-5, enacted by Laws 1973, ch. 233, § 5.

### 21-2-5.1. Funding formula.

A. The commission on higher education [higher education department] shall develop a funding formula that will provide funding for each institution of higher education to accomplish its mission as determined by a statewide plan.

B. The commission on higher education [higher education department] may include factors in the funding formula, which when implemented will achieve the following:

- (1) improve the quality of programs central to each institution's mission;
- (2) develop and enhance programs that meet targeted post-secondary educational needs and the related needs of public schools;
- (3) eliminate unnecessary, unproductive or duplicative programs;
- (4) consider faculty salaries and benefits adjustment to a competitive level with similar institutions in similar states, when such compensation adjustments are supported by detailed analyses of faculty workloads and educational outcomes assessments, and nonteaching staff salaries and benefits at a competitive level with other similar public or private sector employment in the community in which the institution is situated;
- (5) recognize additional costs incurred through increases in enrollment;
- (6) provide for equipment and equipment maintenance and library acquisitions and operations since the development of the prior funding formula;
- (7) fund off-campus courses and other nontraditional course delivery systems at a level sufficient to allow their development;
- (8) provide incentives to institutions to pursue private or alternative funding sources;
- (9) encourage the sharing of expertise, equipment and facilities and development of joint instructional programs, research and public service projects;
- (10) implement uniform articulation agreements and facilitation of transfer of students between institutions;
- (11) encourage energy conservation;
- (12) require mechanisms to track expenditures to ensure greater accountability; and
- (13) require each institution of higher education that offers distance learning and computer-based courses of study to provide accompanying electronic formats that are usable by an individual with a disability using assistive technology, and those formats shall be based on the American standard code for information interchange, hypertext markup language and extensible markup language.

**History:** 1978 Comp., § 21-2-5.1, enacted by Laws 1988, ch. 164, § 1; 1995, ch. 224, § 19; 2003, ch. 162, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**The 2003 amendment,** effective June 20, 2003, added Paragraph B(13).

**The 1995 amendment,** effective June 16, 1995, substituted "statewide plan" for "statewide planning effort" at the end of Subsection A, and, in Subsection B, rewrote Paragraph (2), inserted "when such compensation adjustments are supported by detailed analyses of faculty workloads and educational outcomes assessments" in Paragraph (4), added Paragraph (10), redesignated former Paragraphs (10) and (11) as Paragraphs (11) and (12), and made stylistic changes.

### 21-2-6. Statewide planning; participating agencies and persons.

A. The state commission in carrying out its planning activities for post-secondary education shall consult with and invite the active participation of:

- (1) representatives of post-secondary educational institutions of the several types enumerated in Paragraph (2) of Subsection A of Section 21-2-2 NMSA 1978;
- (2) the public education commission;
- (3) the public education department;
- (4) representatives of public and private elementary and secondary schools;
- (5) the secretary of labor;
- (6) the tourism department;
- (7) the apprenticeship council;
- (8) the economic development department;
- (9) the state advisory council on vocational education;



- (10) the secretary of finance and administration or the secretary's designee;
- (11) persons familiar with the education needs of persons with a disability and persons disadvantaged by economic, racial or ethnic status;
- (12) representatives of business, industry, organized labor and agriculture;
- (13) the general public; and
- (14) private in-state post-secondary institutions.

B. Whenever the planning activities carried out under the provisions of Section 21-2-5 NMSA 1978 are concerned with the types of post-secondary education enumerated in Subparagraphs (a) through (e) of Paragraph (1) of Subsection A of Section 21-2-2 NMSA 1978, the state commission shall directly involve the public education commission and the public education department in all planning activities.

**History:** 1953 Comp., § 73-44-6, enacted by Laws 1978, ch. 54, § 1; 1986, ch. 24, § 9; 1991, ch. 21, § 33; 2007, ch. 46, § 8.

**Repeals and reenactments.** — Laws 1978, ch. 54, § 1 repealed former 73-44-6, 1953 Comp. (former 21-2-6 NMSA 1978) and enacted a new 73-44-6, 1953 Comp.

**The 2007 amendment,** effective June 15, 2007, amended Paragraphs (2) and (3) of Subsection A and

Subsection B to change the names of the departments and made other non-substantive language changes.

**The 1991 amendment,** effective March 27, 1991, in Subsection A, substituted "labor" for "employment security" in Paragraph (5), substituted "tourism department" for "labor commissioner" in Paragraph (6), and deleted "and tourism" following "development" in Paragraph (8).

## 21-2-7. Annual report.

The state commission shall submit an annual report to the governor and the legislature prior to November 15 each year. Such report shall describe the planning activities undertaken, present data on the status of all types of post-secondary education and set forth all recommendations developed under Section 5 [21-2-5 NMSA 1978], Items I, J and K of the Post-Secondary Educational Planning Act. Prior to the final adoption of the annual report the state commission shall distribute a draft of the report to all institutions and programs of the types enumerated in Section 2A(2) [21-2-2A(2) NMSA 1978] and to representatives of all other interests enumerated in Section 6 [21-2-6 NMSA 1978] and shall then hold a hearing at which all such institutions, programs and interests may comment upon the draft report.

**History:** 1953 Comp., § 73-44-7, enacted by Laws 1973, ch. 233, § 7.

**Compiler's notes.** — Section 6 of the Post-Secondary Educational Planning Act, referred to near the middle of the last sentence, was compiled as 21-2-6 NMSA 1978,

and was repealed by Laws 1978, ch. 54, § 1, which enacted a new 21-2-6 NMSA 1978 relating to the same subject matter and containing only minor differences from the former 21-2-6 NMSA 1978.

## 21-2-8. Designation of state commission as agency required for certain federal programs.

The state commission is designated the agency required under the provisions of Section 1202 of the Higher Education Act of 1965, as amended (P.L. 92-318, June 23, 1972). After July 1, 1973, the state commission shall be the successor agency to those agencies required and designated under Sections 105, 603 and 704 of the Higher Education Act of 1965, as amended (20 USCA Sections 1005, 1123 and 715). The state commission is designated the agency to administer any programs for the benefit of post-secondary education or post-secondary education students provided by acts of congress in the future and requiring a state-level agency for their administration, except as otherwise provided by law.

**History:** 1953 Comp., § 73-44-8, enacted by Laws 1973, ch. 233, § 8.

**Compiler's notes.** — Section 1202 of the Higher Education Act of 1965, as amended by P.L. 92-318, June 23, 1972, was compiled at 20 U.S.C. 1142a but was repealed by P.L. 96-374.

Section 105 of the Higher Education Act of 1965, as amended, was compiled at 20 U.S.C. 1005 but was omitted in the general revision by P.L. 99-498.

Section 704 of the Higher Education Act of 1965, as amended, was compiled at 20 U.S.C. 1132a-3 but was omitted in the general revision by P.L. 96-374.

# ANNOTATIONS 14A C.J.S. Colleges and Universities § 7.

**Am. Jur. 2d, A.L.R. and C.J.S. references. — 15A**  
 Am. Jur. 2d Colleges and Universities § 33.

## 21-2-9. Designation of state agency required for certain federal occupational education programs.

The state board of education is designated as the state agency required under the provisions of Section 1055(a) of the Higher Education Act of 1965, as amended (P.L. 92-318, June 23, 1972) and shall exercise all the powers and perform all the duties required of that state agency. In exercising such powers and performing such duties, the state board of education shall afford the state commission, on a regular basis, an opportunity to review and comment upon any policies, procedures, programs or allocation of resources prior to their final adoption.

**History:** 1953 Comp., § 73-44-9, enacted by Laws 1973, ch. 233, § 9.

**Compiler's notes. —** Section 1055(a) of the Higher Education Act of 1965, as amended by P.L. 92-318, June 23, 1972, was compiled at 20 U.S.C. 1135b-4(a), and was repealed by P.L. 94-482, title I, § 176(c).

# ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references. — 15A**  
 Am. Jur. 2d Colleges and Universities § 33.  
 14A C.J.S. Colleges and Universities § 7.

## ARTICLE 2A

### College District Tax

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| <p>Sec. 21-2A-1. Short title.</p> <p>21-2A-2. Definitions.</p> <p>21-2A-3. Purpose.</p> <p>21-2A-4. Application of act.</p> <p>21-2A-5. Special tax levy for college district operation.</p> <p>21-2A-6. College district general obligation bonds; interest; form; payment.</p> <p>21-2A-7. Payment of general obligation bonds; bond provisions.</p> <p>21-2A-8. Refunding bonds; general obligation college district bonds.</p> <p>21-2A-9. College district revenue bonds; refunding bonds.</p> <p>21-2A-10. Procedure for election.</p> <p>21-2A-11. Extended learning programs; purpose; commission on higher education [higher education department] responsibilities; reporting.</p> | <p>Sec. 21-2A-12. Extended learning fund created; distribution of fund.</p> <p>21-2A-13. College district lease-purchase arrangements; notice; process for approving lease-purchase arrangements; limitation of action.</p> <p>21-2A-14. College district lease-purchase arrangements; tax levy; terms of lease-purchase arrangements; refunding or refinancing.</p> <p>21-2A-15. College district lease-purchase arrangements; agreement of the state; legal investments; tax exemption; cumulative and complete authority.</p> <p>21-2A-16. Liberal interpretation.</p> <p>21-2A-17. Severability.</p> |
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### 21-2A-1. Short title.

Sections 21-2A-1 through 21-2A-10 NMSA 1978 may be cited as the "College District Tax Act".

**History:** Laws 1995, ch. 224, § 7; 2013, ch. 37, § 1.

**The 2013 amendment,** effective June 14, 2013, deleted "Sections 7 through 16 of this act" and added "Sections 21-2A-1 through 21-2A-10 NMSA 1978".

### 21-2A-2. Definitions.

As used in the College District Tax Act:

A. "board" means the governing board of the college district;

B. "college" means a two-year, public post-secondary educational institution organized pursuant to the provisions of the Community College Act, Chapter 21, Article 14 NMSA 1978, the Technical and Vocational Institute Act [Chapter 21, Article 16 NMSA 1978] or the Off-Campus Instruction Act [21-14A-1 through 21-14A-10 NMSA 1978];



C. "college district" means a district in which a college is located or is proposed to be located, the exterior boundaries of which are determined pursuant to the statutory provisions under which the college is organized;

D. "debt" means an obligation payable from ad valorem property tax revenues or the general fund of a college district and that may be secured by the full faith and credit of a college district and a pledge of its taxing powers;

E. "education technology equipment" means tools used in the educational process that constitute learning and administrative resources and may include:

(1) closed-circuit television systems; educational television and radio broadcasting; cable television, satellite, copper and fiber-optic transmission; computer, network connection devices; digital communications equipment, including voice, video and data; servers; switches; portable media such as discs and drives to contain data for electronic storage and playback; and purchase or lease of software licenses or other technologies and services, maintenance, equipment and computer infrastructure information, techniques and tools used to implement technology in colleges and related facilities;

(2) improvements, alterations and modifications to, or expansions of, existing buildings or personal property necessary or advisable to house or otherwise accommodate any of the tools listed in Paragraph (1) of this subsection; and

(3) expenditures for technical support and training expenses of college district employees who administer education technology projects funded by a lease-purchase arrangement and may include training by contractors; and

F. "lease-purchase arrangement" means a financing arrangement constituting debt of a college district pursuant to which periodic lease payments composed of principal and interest components are to be paid to the holder of the lease-purchase arrangement and pursuant to which the owner of the education technology equipment may retain title to or a security interest in the equipment and may agree to release the security interest or transfer title to the equipment to the college district for nominal consideration after payment of the final periodic lease payment. "Lease-purchase arrangement" also means any debt of the college district incurred for the purpose of acquiring educational technology equipment whether designated as a general obligation lease, note or other instrument evidencing a debt of the college district.

**History:** Laws 1995, ch. 224, § 8; 2019, ch. 252, § 1.

The 2019 amendment, effective April 4, 2019, defined "debt", "education technology equipment", and "lease-purchase arrangement" for purposes of the College

District Tax Act; in Subsection B, after "Technical and Vocational Institute Act", deleted "Chapter 21, Article 17 NMSA 1978"; and added new Subsections D through F.

### 21-2A-3. Purpose.

The purpose of the College District Tax Act is to provide a uniform procedure for the authorization, imposition and collection of tax levies for the operation of college districts and the issuance of college district general obligation and revenue bonds for capital improvements in a college district.

**History:** Laws 1995, ch. 224, § 9.

**Effective dates.** — Laws 1995, ch. 224 contained no effective date provision, but, pursuant to N.M. Const.,

art. IV, § 23, was effective June 16, 1995, 90 days after adjournment of the legislature.

### 21-2A-4. Application of act.

The College District Tax Act applies to all educational institutions organized pursuant to the provisions of Chapter 21, Article 14 [13] NMSA 1978, the Community College Act, Chapter 21, Article 17 [16] NMSA 1978, the Technical and Vocational Institute Act [Chapter 21, Article 16 NMSA 1978] and the Off-Campus Instruction Act [21-14A-1 through 21-14A-10 NMSA 1978].

**History:** Laws 1995, ch. 224, § 10.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The Community College Act is compiled as Chapter 21, Article 13, not Article 14.

The Technical and Vocational Institute Act is compiled as Chapter 21, Article 16, not Article 17.

**Effective dates.** — Laws 1995, ch. 224 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1995, 90 days after adjournment of the legislature.

### 21-2A-5. Special tax levy for college district operation.

A. In each college district, the board may call an election within the college district for the purpose of authorizing that board to levy taxes on all taxable property within the district to be used for current operations, maintenance and capital improvements of the college district. The taxes, if authorized as provided in the College District Tax Act, shall be in addition to the taxes authorized for the payment of general obligation bonds pursuant to the provisions of the College District Tax Act. This election shall be for the purpose of allowing the electors, as the term "electors" is used in Article 8, Section 2 of the constitution of New Mexico, to vote on whether to allow the levy and on a specific limitation not to exceed five dollars (\$5.00) on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code [Chapter 7, Articles 35 through 38 NMSA 1978]. If approved by a majority of the electors voting on the issue, the board of county commissioners, at the direction of the board, shall levy the taxes in an amount certified by the commission on higher education [higher education department] as necessary to meet the annual budget approved by the commission on higher education [higher education department], but in no event shall the taxes levied exceed the rate limitation approved by the electors nor shall it exceed any lower maximum rate required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 applied to the rate limitation approved by the electors.

B. Levies, assessments and collections and distributions authorized for college district financing shall be made at the same time and in the same manner as levies, assessments and collections and distributions for ad valorem taxes for school districts are made.

C. The board may call an election within the district for the purpose of authorizing the board to raise the levy to a rate not to exceed the maximum authorized in Subsection A of this section, lower the levy or abolish the continuing levy, upon the adoption of a resolution by a majority of the members of the board.

D. Alternatively, an election to raise or lower the rate limitation or to abolish the continuing levy shall be called by the board upon receipt by it of a valid petition. To be valid, the petition shall be signed by electors of the college district in a number equal to ten percent of the number of votes cast in the district for the office of governor at the last general election and shall state the question to be voted upon.

E. If the question to be voted on at an election called pursuant to Subsection D of this section fails, it shall not again be submitted to the voters within two years from the date of the election.

F. Any part of the rate authorized by the electors that is not imposed for reasons other than the rate limitation required by Section 7-37-7.1 NMSA 1978 may be authorized to be imposed by the board without calling an election.

**History:** Laws 1995, ch. 224, § 11.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1995, ch. 224 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1995, 90 days after adjournment of the legislature.

### 21-2A-6. College district general obligation bonds; interest; form; payment.

A. Any board, other than a board created pursuant to the provisions of the Off-Campus Instruction Act [21-14A-1 through 21-14A-10 NMSA 1978], may borrow money for the purpose of:

- (1) erecting, furnishing, constructing, purchasing, remodeling and equipping buildings and utility facilities, exclusive of stadiums;
- (2) making other real property improvements;



(3) purchasing grounds; and

(4) purchasing and installing computer hardware and software with a useful life equal to or exceeding the maturity of the bonds.

B. To carry out the purposes of the College District Tax Act, the board may issue negotiable general obligation bonds of the college district, if approved by the higher education department and then approved at an election by a majority of the qualified electors voting on the issue; provided, however, no bonds shall be issued that create a total bonded indebtedness in the college district in excess of three percent of the assessed valuation of the taxable property within the college district as shown in the preceding general assessment, which debt limitation is to be in excess of other existing debt limitations. Bonds shall be sold at a price that does not result in a net effective interest rate exceeding the maximum net effective interest rate permitted by the Public Securities Act [6-14-1 through 6-14-3 NMSA 1978]. The bonds shall be sold at a public sale or may be sold at private sale to the state of New Mexico or the New Mexico finance authority at the price and upon such terms and conditions as the board and the state of New Mexico or the New Mexico finance authority may determine. The bonds may be in such denominations and registered and pay interest as the board determines.

C. The bonds shall be due and payable either annually or semiannually commencing not later than three years from their date. The bonds shall be issued for a term of not more than twenty years. The form and terms of the bonds, including provisions for their payment and optional or mandatory redemption, shall be as determined by the board. If the board so determines, the bonds may be redeemable prior to maturity upon payment of a premium not exceeding one percent of the principal of the bonds. The bonds shall be executed in the name of and on behalf of the college district, signed by the chair of the board, with the seal of the college district affixed to the bonds, and attested by the secretary of the board. The bonds may be executed and sealed in accordance with the provisions of the Uniform Facsimile Signature of Public Officials Act [6-9-1 through 6-9-6 NMSA 1978].

D. To provide for the payment of the interest and principal of the bonds issued and sold pursuant to the provisions of the College District Tax Act, upon approval of the bonds at an election by a majority of the qualified electors in the college district who voted on the issue, the board of county commissioners shall annually make and levy, during each year in which any bonds are outstanding, an ad valorem tax on all taxable property in the district in an amount sufficient to produce a sum equal to one year's interest on all bonds then outstanding, together with an amount sufficient to pay the principal on all bonds as they mature. This levy shall not exceed five mills; provided, however, that this five-mill limitation may be exceeded in any year in which the valuation of the property within the college district declines to a level lower than the valuation of the property in the year in which the bonds were issued. The taxes authorized by this subsection shall be levied, assessed and collected at the times and in the manner that ad valorem taxes for school districts are assessed, levied and collected, and it is the duty of all tax officials and authorities to cause taxes authorized by this subsection to be levied, assessed and collected.

E. The proceeds obtained from the issuance of the bonds shall not be diverted or expended for any purposes other than those provided in the College District Tax Act; provided that no building shall be built without prior approval of detailed plans by the higher education department; and further provided that the expenses incurred in the preparation and sale of the bonds may be paid out of the proceeds from the sale of the bonds.

F. Prior to the issuance and sale of bonds, the attorney general shall approve all bond transcripts and certify approval or rejection thereof in the same manner as is required by law for the approval of school bonds. Unless otherwise specifically provided, the provisions of the College District Tax Act for the issuance of bonds shall be deemed exclusive of the provisions of all other laws.

**History:** Laws 1995, ch. 224, § 12; 2013, ch. 37, § 2.

**Cross references.** — For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**The 2013 amendment,** effective June 14, 2013, allowed for the expenditure of bond proceeds on computer

hardware and software; in Paragraph (3) of Subsection A, after "purchasing grounds", deleted "exclusive of stadiums"; added Paragraph (4) of Subsection A; in Subsection B, in the first sentence, after "issue negotiable", deleted "coupon", after "if approved by the", deleted "commission on", after "higher education", added "department",



and after "bonded indebtedness in the", added "college", in the third sentence, after "The bonds shall be sold", deleted "and" and added the remainder of the sentence, and in the fourth sentence, at the beginning of the sentence, added "The bonds", after "in such denominations", added "and registered and pay interest", and after "board determines", deleted "and the bonds and the attached coupons shall be payable to the bearer but may also be made registrable as to principal or as to principal and interest"; in Subsection C, after "due and payable", deleted "serially",

in the second sentence, after "for a term of not", deleted "less than five or", in the third sentence, after "their payment and", added "optional or mandatory", in the fourth sentence, after "premium not exceeding", deleted "three" and added "one", and deleted the former seventh sentence which provided that interest coupons shall bear the original or facsimile signature of the chairman of the board; and in Subsection E, after "detailed plans by the", deleted "commission on" and after "higher education", added "department".

## 21-2A-7. Payment of general obligation bonds; bond provisions.

A. The principal of and interest on general obligation bonds authorized in the College District Tax Act to be issued, and any prior redemption premiums, shall be payable from the proceeds of general property taxes levied without limitation as to rate or amount, except for the limitation for general obligation bond issuances established in the College District Tax Act, and except to the extent other revenues are made available for that purpose. All bonds shall be the general obligations of the college district, and the full faith and credit of the college district shall be pledged for the payments of the bonds.

B. It may be provided in any proceedings authorizing any bonds under the College District Tax Act that the bond shall recite that it is issued under authority of the College District Tax Act. The recital shall conclusively impart full compliance with all of the provisions of the College District Tax Act, and all bonds issued containing the recital shall be incontestable for any cause whatsoever after their delivery for value.

C. All bonds issued by a college district shall be fully negotiable and constitute negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code [Chapter 55 NMSA 1978] as that law is now or may hereafter be in force in this state. If lost or completely destroyed, any bond may be reissued in the form and tenor of the lost or destroyed bond upon the owner furnishing to the satisfaction of the board:

- (1) proof of ownership;
- (2) proof of loss or destruction;
- (3) a surety bond in twice the face amount of the bond and coupons; and
- (4) payment of the cost of preparing and issuing the new bond and coupons.

D. Notwithstanding any other provision of law, the board may in any proceedings authorizing bonds under the College District Tax Act provide for the initial issuance of one or more bonds, in this section called "bond", aggregating the amount of the entire issue, may make such provision for installment payments of the principal amount of any bond as it may consider desirable and may provide for the making of any bond payable to bearer or otherwise, registrable as to principal or as to both principal and interest and, where interest accruing on the bond is not represented by interest coupons, for the endorsing of payments of interest on the bond. The board may further make provisions in any such resolution for the manner and circumstances in and under which any bond may, at the request of the holder of the bond, be converted into bonds of smaller denominations, which bonds of smaller denominations may in turn be either coupon bonds or bonds registrable as to principal or principal and interest.

**History:** Laws 1995, ch. 224, § 13.

**Effective dates.** — Laws 1995, ch. 224 contained no effective date provision, but, pursuant to N.M. Const.,

art. IV, § 23, was effective June 16, 1995, 90 days after adjournment of the legislature.

## 21-2A-8. Refunding bonds; general obligation college district bonds.

The board of any college district may, with the approval of the commission on higher education [higher education department], issue bonds, to be denominated refunding bonds, for the purpose of refunding any of the general obligation bonded indebtedness of the college district. Whenever the board of any college district deems it expedient to issue refunding bonds, it shall adopt a resolution setting out the facts making the issuance of the refunding bonds necessary or advisable,



the determination of such necessity or advisability by the board and the amount of refunding bonds that the board deems necessary and advisable to issue. The resolution shall fix the form of the bonds; the rate or rates of interest of the bonds, provided that the net effective interest rate of the bonds shall not exceed the maximum net effective interest rate permitted by the Public Securities Act [6-14-1 through 6-14-3 NMSA 1978], as hereafter amended and supplemented; the date of the refunding bonds; the denominations of the refunding bonds; the maturity dates, the last of which shall not be more than twenty years from the date of the refunding bonds; and the place or places of payment within or without the state of both principal and interest. Refunding bonds when issued, except for bonds issued in book entry or similar form without the delivery of physical securities, shall be negotiable in form, shall bear the signature or the facsimile signature of the chairman of the board, with the seal of the college district affixed thereto, and shall be attested by the secretary of the board. All refunding bonds may be exchanged dollar for dollar for the bonds to be refunded or they may be sold as directed by the board, and the proceeds of the sale shall be applied only to the purpose for which the bonds were issued and the payment of any expenses incidental thereto.

**History: Laws 1995, ch. 224, § 14.**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1995, ch. 224 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1995, 90 days after adjournment of the legislature.

## **21-2A-9. College district revenue bonds; refunding bonds.**

A. The board of any college district may issue revenue bonds for the purpose of constructing, purchasing, improving, remodeling, furnishing or equipping any necessary buildings, structures or facilities of the college district. The revenue bonds shall be payable from and secured by a lien on and pledge of all or any part of any of the revenues, income or receipts of the college district and its board, including without limitation any rentals, rates, charges, tuition and fees or other revenues other than ad valorem tax proceeds available to the college district and its board.

B. The revenue bonds shall be authorized by resolution of the board approved by majority vote of the board. The commission on higher education [higher education department] and the state board of finance shall approve the sale of the bonds.

C. The revenue bonds may be issued in one or more series and shall mature not more than thirty years from their date. The net effective interest rate of the bonds shall not exceed the net effective interest rate as permitted by the Public Securities Act [6-14-1 through 6-14-3 NMSA 1978] in accordance with the terms and options of redemption authorized in the bond resolution adopted by the board.

D. The board:

(1) may pledge all or any part of its revenues, income or receipts from rentals, rates, charges, tuition and fees or other resources and revenues other than ad valorem tax proceeds for the payment of the bonds, including the payment of principal, interest and any other amounts required or permitted in connection with the bonds in accordance with the bond resolution;

(2) shall fix and collect those pledged rentals, rates, charges, tuition and fees in amounts that shall be at least sufficient, together with other pledged resources, to provide for all payments of principal, interest and any other amounts required in connection with the bonds; to provide for the payment of expenses in connection with the bonds; and, to the extent required by the resolution authorizing the issuance of the bonds, to provide for the payment of operation, maintenance and other expenses in connection with the property, buildings, structures, activities, services, operations or other facilities of the college district; and

(3) may establish and enforce parietal rules for students and others and enter into agreements regarding occupancy, use and availability of facilities and the amounts and collection of pledged revenues, income, receipts, rentals, rates, tuition and fees or other resources, to assure that all required payments and deposits shall be made pursuant to the bond resolution.

E. Fees for the use by or availability to the students of all or any property, buildings, structures, activities, services, operations or other facilities of the college district may be pledged to the payment of the bonds and shall be fixed and collected from all or any designated part of the students enrolled in the colleges of the college district in the amounts and in the manner determined and provided by the board in the resolution authorizing the issuance of the bonds. Such fees:

(1) may be collected in the full amounts required or permitted under this section, without regard to actual use, availability or existence of any facility, commencing at any time designated by the board;

(2) may be fixed and collected for the use or availability of any specifically described property, buildings, structures, activities, services, operations or other facilities or may be fixed and collected as general fees for the general use or availability of the colleges of the college district; and

(3) whether fixed and collected as specific or general fees, may be pledged to the payment of any issue or series of bonds issued by the board, in the full amounts required or permitted under this section, in addition to and regardless of the existence of any other specific or general fees at the colleges of the college district; provided that the board may restrict its power to pledge such additional specific or general fees in any manner that may be provided in any resolution authorizing the issuance of bonds, and provided further that no such additional specific fees shall be pledged if prohibited by any resolution that authorized the issuance of the bonds that are outstanding at the time of such pledge.

F. A board of a college district may by bond resolution provide for the issuance of refunding bonds to refund any outstanding bonds issued under the College District Tax Act, together with redemption premiums, if any, and interest accrued or to accrue on such bonds. Provisions governing the issuance and sale of bonds under the College District Tax Act govern the issuance and sale of refunding bonds insofar as applicable. Refunding bonds may be exchanged for the outstanding bonds or may be sold and the proceeds used to retire the outstanding bonds. Pending the application of the proceeds of any such refunding bonds with any other available funds to the payment of principal, interest and any redemption premiums on the bonds being refunded, and if so provided or permitted in the bond resolution of the board authorizing the issuance of such refunding bonds to the payment of any interest on such refunding bonds and any expenses incurred in connection with such refunding, such proceeds may be placed in escrow and invested in securities that are unconditionally guaranteed by the United States and that shall mature or that shall be subject to redemption by the holders of the bonds, at the option of the bondholders, not later than the respective dates when the proceeds together with the interest accruing on the bonds will be required for the purposes intended.

**History:** Laws 1995, ch. 224, § 15.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1995, ch. 224 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1995, 90 days after adjournment of the legislature.

## 21-2A-10. Procedure for election.

A. In all elections held under the College District Tax Act, the board shall issue a resolution calling for an election. The resolution shall be filed with each county clerk in the college district.

B. All elections held under the College District Tax Act shall be conducted and canvassed pursuant to the provisions of the Local Election Act.<sup>1</sup>

C. Any person or corporation may institute, in the district court of any county in which the college district affected lies, an action or suit to contest the validity of any proceedings held under the College District Tax Act, but no such suit or action shall be maintained unless it is instituted within ten days after the issuance by the proper official of a certificate or notification of the results of the election.

**History:** Laws 1995, ch. 224, § 16; 2019, ch. 212, § 215.

**The 2019 amendment,** effective April 3, 2019, revised certain notice provisions, and provided that all elections held under the College District Tax Act shall be conducted



pursuant to the Local Election Act; in Subsection A, deleted the last sentence of the subsection, which provided "The board shall publish the resolution in a newspaper of general circulation in the college district at least once a week for three consecutive weeks, the last insertion to be not less than thirty days prior to the proposed election.";

and in Subsection B, after "conducted and canvassed" deleted "in the same manner as municipal school elections, unless otherwise specifically provided in the College District Tax Act" and added "pursuant to the provisions of the Local Election Act".

### **21-2A-11. Extended learning programs; purpose; commission on higher education [higher education department] responsibilities; reporting.**

A. The commission on higher education [higher education department] shall coordinate the role and participation of public post-secondary higher education institutions in the development and operation of extended learning programs. Extended learning programs shall be established to ensure equitable student access to educational opportunities throughout the state. The commission [department] shall work to ensure access, efficiency, coordination and accountability in the development and operation of the extended learning programs.

B. In coordinating the development and operation of extended learning programs, the commission on higher education [higher education department] shall make awards from the extended learning fund for the purpose of establishing pilot extended learning programs. Pilot programs shall focus on the creation and operation of community-based extended learning centers, the development of regional resources and the expanded use of technology in instruction.

C. Annually, prior to October 1, the commission on higher education [higher education department] shall report to the legislature and the governor on the status of extended learning programs and make recommendations on the funding level for such projects for the upcoming year.

**History:** Laws 1995, ch. 224, § 17.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1995, ch. 224 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1995, 90 days after adjournment of the legislature.

### **21-2A-12. Extended learning fund created; distribution of fund.**

The "extended learning fund" is created in the state treasury. Money in the fund is appropriated to the commission on higher education [higher education department] for the purpose of making awards to public schools and public post-secondary institutions for the purpose of developing and operating extended learning programs throughout the state. The commission [department] shall establish by regulation a procedure for application and award of money in the fund. Disbursements of the fund shall be made by warrant of the department of finance and administration pursuant to vouchers signed by the executive director [secretary] of the commission on higher education [higher education department]. Any unexpended or unencumbered balances remaining in the fund at the end of any fiscal year shall not revert but shall remain to the credit of the fund.

**History:** Laws 1995, ch. 224, § 18.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1995, ch. 224 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1995, 90 days after adjournment of the legislature.

### **21-2A-13. College district lease-purchase arrangements; notice; process for approving lease-purchase arrangements; limitation of action.**

A. When a college district contemplates entering into a lease-purchase arrangement payable in whole or in part from ad valorem taxes, the board, before initiating any proceedings for approval

of such lease-purchase arrangement, shall forward to the higher education department a written notice of the proposed lease-purchase arrangement.

B. The higher education department, upon the receipt of the notice provided for in Subsection A of this section, shall furnish all necessary information with reference to the valuation, present outstanding bonded indebtedness, present outstanding lease-purchase arrangements and limitations as to tax rates and debt contracting power and other information useful to the board in the consideration of a proposed lease-purchase arrangement. Upon entering into a lease-purchase arrangement, the board shall prepare two true and complete transcripts of proceedings relating to the lease-purchase arrangement, one to be immediately filed with the higher education department and one to be kept by the board.

C. At a regular or special meeting called for the purpose of considering a lease-purchase arrangement, a board shall:

(1) make a determination of the necessity for lease-purchasing the educational technology equipment;

(2) determine the estimated cost of the equipment needed;

(3) review a summary of the terms of the proposed lease-purchase arrangement;

(4) identify the source of funds for the payment of debt;

(5) if all or part of the funds needed require or anticipate the imposition of an ad valorem tax, determine the estimated rate of the ad valorem tax and what, if any, the percentage increase in ad valorem taxes for all taxable property in the college district would be;

(6) set a date for a meeting to consider a resolution granting final approval to the lease-purchase arrangement; and

(7) direct that notice of the meeting provided for in Paragraph (6) of this subsection be published once each week for the two weeks immediately preceding the meeting in a newspaper having general circulation in the college district and that the notice include the information required in Paragraphs (1) through (5) of this subsection.

D. At a regular or special meeting called for the purpose of considering a lease-purchase arrangement as set forth in Subsection C of this section, a board may adopt an authorizing instrument in compliance with the requirements of Section 6-14-10.2 NMSA 1978. The requirements of Paragraphs (6) and (7) of Subsection C of this section shall not apply if the board adopts such an authorizing instrument.

E. At a meeting scheduled pursuant to Paragraph (6) of Subsection C of this section, the board may adopt a final resolution approving the lease-purchase arrangement only by an affirmative vote of a majority of all members of the board.

F. After the adoption by the board of a final resolution approving the lease-purchase arrangement or after the final approval of a lease-purchase arrangement by delegation as provided for in Subsection D of this section, the board shall publish notice of the adoption of the resolution or the approval of the lease-purchase arrangement once in a newspaper having general circulation in the college district. After the passage of thirty days from the publication required by this subsection, any action attacking the validity of the proceedings taken by the board preliminary to, in the authorization of and entering into the lease-purchase arrangement described in the notice is perpetually barred.

**History:** Laws 2019, ch. 252, § 2.

**Emergency clauses.** — Laws 2019, ch. 252, § 7 contained an emergency clause and was approved April 4, 2019.

## **21-2A-14. College district lease-purchase arrangements; tax levy; terms of lease-purchase arrangements; refunding or refinancing.**

A. The officials charged by law with the duty of levying ad valorem taxes for the payment of bonds and interest shall, in the manner provided by law, make an annual levy sufficient to meet the payments due on lease-purchase arrangements. Annual payments due on lease-purchase arrangements may be combined with other college district general obligation debt when determining the annual debt service tax levy pursuant to Section 7-37-8 NMSA 1978 and the College District Tax Act. This annual debt service tax levy shall not exceed five dollars (\$5.00) per one thousand



dollars (\$1,000) of taxable value; provided, however, that this limitation may be exceeded in any year in which the valuation of property in the college district declines to a level lower than the valuation of property in the year in which the applicable debt was issued. Nothing in the College District Tax Act shall be so construed as to prevent a college district from applying any other legally available funds, including funds that may be in its general fund or investment income actually received from investments, to the payments due on or any prepayment premium payable in connection with such lease-purchase arrangements as the same become due, and, upon such payments, the levy or levies provided for in this section may, to that extent, be reduced.

**B. Lease-purchase arrangements may:**

- (1) have interest, appreciated principal value, or any part thereof, payable at intervals or at maturity as may be determined by the board;
- (2) be subject to prior redemption or prepayment at the option of the board at such time or times and upon such terms and conditions with or without the payment of such premium or premiums as may be determined by the board;
- (3) have a final payment date or mature at any time or times not exceeding five years after the date of issuance;
- (4) be payable at one time or in installments or may be in such other form as may be determined by the board;
- (5) be priced at, above or below par and at a price that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act [6-14-1 through 6-14-3 NMSA 1978]; and
- (6) be sold or issued at public sale, negotiated sale or private sale to the New Mexico finance authority.

**C.** The board shall not adopt a resolution for or approve a lease-purchase arrangement that exceeds five years or creates a total general obligation indebtedness in the college district which, when combined with other outstanding college district general obligation debt, exceeds three percent of the assessed valuation of the taxable property within the college district as shown in the preceding general assessment.

**D.** College districts are authorized to enter into lease-purchase arrangements for the purpose of refunding or refinancing any lease-purchase arrangements then outstanding, including the payment of any prepayment of redemption premiums thereon and any interest accrued or to accrue to the date of purchase, prepayment, redemption or maturity of the outstanding lease-purchase arrangements. Until the proceeds of the lease-purchase arrangements issued for the purpose of refunding or refinancing outstanding lease-purchase arrangements are applied to the purchase, prepayment, redemption or retirement of the outstanding lease-purchase arrangements, the proceeds may be placed in escrow and invested and reinvested. The interest, income and profits, if any, earned or realized on any such investment may, in the discretion of the board, also be applied to the payment of the outstanding lease-purchase arrangements to be refunded or refinanced by purchase, prepayment, redemption or retirement, as the case may be. After the terms of the escrow have been fully satisfied and carried out, any balance of such proceeds and interest, if any, earned or realized on the investments thereof may be returned to the board to be used for payment of the refunding or refinancing lease-purchase arrangement. All such refunding or refinancing lease-purchase arrangements shall be entered into under, secured and subject to the provisions of the College District Tax Act in the same manner and to the same extent as any other lease-purchase arrangements entered into pursuant to that act.

**History:** Laws 2019, ch. 252, § 3.

**Emergency clauses.** — Laws 2019, ch. 252, § 7 contained an emergency clause and was approved April 4, 2019.

## **21-2A-15. College district lease-purchase arrangements; agreement of the state; legal investments; tax exemption; cumulative and complete authority.**

**A.** The state does hereby pledge to and agree with the holders of any lease-purchase arrangement entered into pursuant to the College District Tax Act that the state will not limit or alter the

rights hereby vested in college districts to fulfill the terms of any lease-purchase arrangement or in any way impair the rights and remedies of the holders of lease-purchase arrangements until the payments due thereon, and all costs and expenses in connection with any action or proceedings by or on behalf of those holders, are fully met and discharged. College districts are authorized to include this pledge and agreement of the state in any lease-purchase arrangement.

B. Lease-purchase arrangements entered into pursuant to the College District Tax Act shall be legal investments in which all insurance companies, banks and savings and loan associations organized under the laws of the state, public officers and public bodies and all administrators, guardians, executors, trustees and other fiduciaries may properly and legally invest funds.

C. The state covenants with the purchasers and all subsequent holders and transferees of lease-purchase arrangements entered into by boards, in consideration of the acceptance of and payment for the lease-purchase arrangements entered into pursuant to the College District Tax Act, that lease-purchase arrangements and the income from the lease-purchase arrangements shall at all times be free from taxation by the state, except for estate or gift taxes and taxes on transfers.

D. The College District Tax Act shall be deemed to provide an additional and alternative method for acquiring educational technology equipment and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as a derogation of any powers now existing. The College District Tax Act shall be deemed to provide complete authority for acquiring educational technology equipment and entering into lease-purchase arrangements. No other approval of any state agency or officer, except as provided in that act, shall be required with respect to any lease-purchase arrangements, and the board acting pursuant to provisions of that act need not comply with the requirements of any other law applicable to the issuance of debt by college districts; provided, however, that a board may submit to a vote of qualified electors of the college district the question of creating debt by entering into a lease-purchase arrangement; and provided further that the board shall abide by the vote of the majority of those persons voting on the question.

**History:** Laws 2019, ch. 252, § 4.

**Emergency clauses.** — Laws 2019, ch. 252, § 7 contained an emergency clause and was approved April 4, 2019.

## 21-2A-16. Liberal interpretation.

The College District Tax Act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to the effect of the purposes of the act.

**History:** Laws 2019, ch. 252, § 5.

**Emergency clauses.** — Laws 2019, ch. 252, § 7 contained an emergency clause and was approved April 4, 2019.

## 21-2A-17. Severability.

If any part or application of the College District Tax Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**History:** Laws 2019, ch. 252, § 6.

**Emergency clauses.** — Laws 2019, ch. 252, § 7 contained an emergency clause and was approved April 4, 2019.

# ARTICLE 3

## Certain State Post-Secondary Schools

Sec.

- 21-3-1. Names of Las Vegas and Silver City schools.  
21-3-2. Use of name "New Mexico highlands university" authorized.  
21-3-3. Use of name "western New Mexico university" authorized; exceptions.

Sec.

- 21-3-4. Boards of regents; appointment and qualifications of members; corporate powers.  
21-3-5. Election of officers; bond of secretary-treasurer.  
21-3-6. Meeting of boards of regents; quorum.



- Sec.  
21-3-7. Powers of boards of regents; employment of superintendent or principal and teachers; courses of study; admission; nonresident tuition.
- 21-3-8. Duties of board officers.
- 21-3-9. New Mexico highlands university; school of manual training; kindergarten training school.
- 21-3-10. New Mexico highlands university to be nonsectarian.
- 21-3-11. Acquisition of land for New Mexico highlands university.
- 21-3-12. Right of eminent domain by New Mexico highlands university regents unaffected.
- 21-3-13. Borrowing by New Mexico highlands university for building, land acquisition or bond retirement purposes.
- 21-3-14. Resolution of New Mexico highlands university regents.
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- 21-3-16. Sale of New Mexico highlands university bonds; purchase by state treasurer; acceptance by public officials.
- 21-3-17. Disposition of proceeds of New Mexico highlands university bonds; building and improvement fund; interest and retirement fund; disbursement; sale expenses.
- 21-3-18. Creation of interest and retirement fund by New Mexico highlands university regents; deposits.
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21-3-19. Protection of interest and retirement fund of New Mexico highlands university.
- 21-3-20. Income of permanent land funds of New Mexico highlands university pledged.
- 21-3-21. Interest payments for New Mexico highlands university bonds.
- 21-3-22. Payments to New Mexico highlands university interest and retirement fund by state treasurer.
- 21-3-23. Series of New Mexico highlands university bonds; restrictions.
- 21-3-24. Tax exemption of New Mexico highlands university bonds.
- 21-3-25. Restrictions on use of New Mexico highlands university bond proceeds.
- 21-3-26. State board of finance approval of New Mexico highlands university bonds.
- 21-3-27. Lien of New Mexico highlands university bonds.
- 21-3-28. Refunding bonds issued by New Mexico highlands university.
- 21-3-29. Eastern New Mexico university; establishment.
- 21-3-30. Board of regents of eastern New Mexico university; appointment, qualifications and terms of members; powers.
- 21-3-31. Use of name "eastern New Mexico university" authorized; exceptions.

### 21-3-1. [Names of Las Vegas and Silver City schools.]

The state educational institution at Las Vegas, shall be known by the name and title of the New Mexico normal university [New Mexico highlands university]; and the state educational institution at Silver City, shall be known by the name and title of the New Mexico normal school [western New Mexico university].

**History:** Laws 1893, ch. 19, § 1; C.L. 1897, § 3650; Laws 1899, ch. 18, § 1; Code 1915, § 4974; C.S. 1929, § 120-1901; 1941 Comp., § 55-2101; 1953 Comp., § 73-22-1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed the name of the New Mexico normal school to the New Mexico western college, which was again changed by constitutional amendment of November 3, 1964, to western New Mexico university. See 21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 NMSA 1978.

**Compiler's notes.** — This section bore no history line in the 1915 Code. The compilers appear to have correlated the two acts now cited to the history line to create it.

**Cross references.** — For New Mexico highlands university, see 21-3-2 NMSA 1978.

For western New Mexico university, see 21-3-3 NMSA 1978.

For eastern New Mexico university, see 21-3-29 NMSA 1978.

For designation as state educational institutions, see N.M. Const., art. XII, § 11.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 14A C.J.S. Colleges and Universities § 9.

### 21-3-2. [Use of name "New Mexico highlands university" authorized.]

That except for financial transactions the use of the name New Mexico highlands university is hereby permitted in lieu of New Mexico normal university, for common convenience.

**History:** Laws 1941, ch. 130, § 1; 1941 Comp., § 55-2102; 1953 Comp., § 73-22-2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 14A C.J.S. Colleges and Universities § 9.

### 21-3-3. Use of name "western New Mexico university" authorized; exceptions.

For all purposes excepting suits, state lands, funds and appropriations the name "western New Mexico university" is hereby authorized for use in lieu of the name New Mexico western college.

**History:** Laws 1923, ch. 22, § 1; C.S. 1929, § 120-1902; 1941 Comp., § 55-2103; 1953 Comp., § 73-22-3; Laws 1963, ch. 3, § 1.

#### ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 14A C.J.S. Colleges and Universities § 9.

### 21-3-4. [Boards of regents; appointment and qualifications of members; corporate powers.]

Said normal schools [universities] shall each be controlled and managed by a board of regents consisting of five members to be appointed by the governor, by and with the advice and consent of the senate for a term of four years, and not more than three of whom shall belong to the same political party at the time of their appointment. The members of such board shall be qualified electors of the state and owners of real estate therein. Each such board shall constitute a body politic and corporate, and shall have power to sue and be sued, to contract and be contracted with, and the title to all property belonging to each such normal school shall be vested in the respective corporate bodies and their successors.

**History:** Laws 1893, ch. 19, § 3; C.L. 1897, § 3652; Code 1915, § 4975; C.S. 1929, § 120-1905; 1941 Comp., § 55-2104; 1953 Comp., § 73-22-4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed the name of the New Mexico normal school to the New Mexico western college, which was again changed by constitutional amendment of November 3, 1964, to western New Mexico university. See 21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 NMSA 1978.

**Cross references.** — For board of regents of eastern New Mexico university, see 21-3-30 NMSA 1978.

For interest in contract for supplies, penalty, see 21-1-35 NMSA 1978.

#### ANNOTATIONS

**Scope of powers.** — The legislature has expressly recognized the authority of institutions of higher learning to receive benefits and donations from the United States and from private individuals and corporations; to buy, sell, lease or mortgage real estate; and to do all things, which in the opinions of the respective boards of regents, will be for the best interests of the institutions in the accomplishment of their purposes or objects and, therefore, the legislature lacks authority to appropriate these funds or

to control the use thereof through the power of appropriation. *State ex rel. Sego v. Kirkpatrick*, 1974-NMSC-059, 86 N.M. 359, 524 P.2d 975.

**Scope of powers to contract.** — Eastern New Mexico University, through its regents, has authority to contract and be contracted with and where the issue simply involves the law of contracts the public or private character of the university is not the controlling factor. *Hillis v. Meister*, 1971-NMCA-034, 82 N.M. 474, 483 P.2d 1314.

**Effect where handbook part of contract.** — Where the undisputed evidence shows a course of conduct that made the university handbook a part of plaintiff's contract as the handbook was treated as controlling the relationship between the university administration and its faculty, then a failure of the university administration to follow these procedures constituted a breach of contract by the university. *Hillis v. Meister*, 1971-NMCA-034, 82 N.M. 474, 483 P.2d 1314.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 3, 5, 7, 11, 35, 39; 68 Am. Jur. 2d Schools § 30.

Constitutionality of statute requiring or limiting, selection or appointment of public officers or agents from members of a political party or parties, 140 A.L.R. 471, 170 A.L.R. 198.

14A C.J.S. Colleges and Universities §§ 14 to 17; 29 C.J.S. Elections § 1(7); 67 C.J.S. Officers and Public Employees §§ 36, 40 to 43, 66, 69.

### 21-3-5. [Election of officers; bond of secretary-treasurer.]

Each of such boards shall annually elect one member thereof as president and another member as secretary and treasurer, and such officers shall hold their offices until their successors shall be elected and qualified. The secretary and treasurer shall execute his bond to the state of New Mexico for not less than twenty thousand dollars [(\$20,000)], with at least two freehold sureties, residents of the state, which shall be conditioned for the faithful performance of the duties of such secretary and treasurer, and shall be approved by the governor and filed in the office of the secretary of state.



**History:** Laws 1893, ch. 19, § 4; C.L. 1897, § 3653; Code 1915, § 4976; C.S. 1929, § 120-1906; 1941 Comp., § 55-2105; 1953 Comp., § 73-22-5.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63A Am. Jur. 2d Public Officers and Employees §§ 487, 488.

Malfeasance in office, public officer's bond as subject to forfeiture for, 4 A.L.R.2d 1348.

14A C.J.S. Colleges and Universities § 16.

### 21-3-6. [Meeting of boards of regents; quorum.]

Each of said boards of regents shall hold at least four meetings during each year at their respective normal schools [universities] for the purpose of discharging their duties, the time of such meetings to be fixed by such board, and the president of such board may call special meetings thereof when in his judgment the business of such schools demands the same. Three members of such boards shall constitute a quorum for the transaction of business.

**History:** Laws 1893, ch. 19, § 5; C.L. 1897, § 3654; Code 1915, § 4977; C.S. 1929, § 120-1907; 1941 Comp., § 55-2106; 1953 Comp., § 73-22-6.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed the name of the New

Mexico normal school to the New Mexico western college, which was again changed by constitutional amendment of November 3, 1964, to western New Mexico university. See 21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 NMSA 1978.

### 21-3-7. [Powers of boards of regents; employment of superintendent or principal and teachers; courses of study; admission; nonresident tuition.]

Said boards of regents shall have full and complete power and control over their respective normal schools [universities]. Each board shall employ a superintendent or principal for such school who shall have the supervision and control of the school under such rules and regulations as may be provided by such board. Such board shall determine and provide as to what branches of learning shall be taught in such school and the classification and order of the same, and shall also direct the number of teachers that shall be employed, and shall determine the compensation to be paid to the superintendent and teachers. Such board shall also prescribe upon what terms and conditions pupils shall be admitted to such school, but no pupils shall be admitted who are not residents of this state, except on payment of a tuition fee to be prescribed by the board of regents for each term.

**History:** Laws 1893, ch. 19, § 6; C.L. 1897, § 3655; Laws 1899, ch. 18, § 4; Code 1915, § 4978; C.S. 1929, § 120-1908; 1941 Comp., § 55-2107; 1953 Comp., § 73-22-7.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed the name of the New Mexico normal school to the New Mexico western college, which was again changed by constitutional amendment of November 3, 1964, to western New Mexico university. See 21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 NMSA 1978.

**Compiler's notes.** — The last sentence, insofar as it relates to tuition, may be superseded by 21-1-2 NMSA 1978.

**Cross references.** — For tuition charges, see 21-1-2 NMSA 1978.

## ANNOTATIONS

**Employee must comply with internal grievance procedures.** — An employee must substantially comply with mandatory internal grievance procedures contained in an employee manual or handbook before filing suit for

breach of contract claims based on an alleged failure of an employer to follow its employment policies. *Lucero v. UNM Board of Regents*, 2012-NMCA-055, 278 P.3d 1043, cert. denied, 2012-NMCERT-004.

Where a university manager was terminated by the university; the manager did not follow the grievance process contained in the university's employee handbook by filing a grievance; the handbook governed the manager's employment with the university; and the manager filed an action in district court for breach of contract and wrongful termination alleging that the employee handbook created a contract and that the university breached the contract by failing to abide by the handbook's policies and procedures governing workplace performance, disciplinary action, a harassment-free workplace, employer-employee relations, progressive discipline and by disciplining the manager without just cause, the manager's claims were barred because the manager failed to exhaust the handbook's internal grievance procedures before filing the breach of contract action based on an alleged failure of the university to follow policies in the handbook. *Lucero v. UNM Board of Regents*, 2012-NMCA-055, 278 P.3d 1043, cert. denied, 2012-NMCERT-004.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 5, 11, 17, 19, 21, 23, 33 to 35.

Mandamus to compel enrollment or restoration of pupil in state school or university, 39 A.L.R. 1019.

Validity and application of provisions governing determination of residency for purpose of fixing fee differential of out-of-state students in public college, 56 A.L.R.3d 641. College's power to revoke degree, 57 A.L.R.4th 1243. 14A C.J.S. Colleges and Universities §§ 15 to 38.

## 21-3-8. [Duties of board officers.]

The president of each board shall preside at all meetings thereof and shall sign the proceedings of the same, and shall sign all orders directed by the board to be drawn upon the treasurer thereof for the payment of money. In the absence of the president at any meeting of the board, the members present shall elect a president pro tem. The secretary of the board shall have charge of the records, books and papers belonging to such board, and shall keep a record of the proceedings of such board and shall issue and attest all orders directed by the board to be drawn upon the treasurer of the same for the payment of money. Such secretary, as treasurer, shall have the care and custody of all moneys belonging to such school, and he shall pay out the same only upon orders drawn upon him by direction of the board of regents and signed by the president thereof; and at each regular meeting of such board such treasurer shall submit to the same a statement showing a full account of the condition of financial affairs of such school.

**History:** Laws 1893, ch. 19, § 7; C.L. 1897, § 3656; Code 1915, § 4979; C.S. 1929, § 120-1909; 1941 Comp., § 55-2108; 1953 Comp., § 73-22-8.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 21-3-9. [New Mexico highlands university; school of manual training; kindergarten training school.]

There are hereby established as branches or departments of said New Mexico normal university [New Mexico highlands university], to be carried on at Las Vegas, a school of manual training for the state of New Mexico, the object of which shall be to instruct pupils, and to train and qualify teachers to teach the use of hands and tools in the various useful arts of practical value to the people of the state; and also a kindergarten training school to qualify teachers of the state to use that system of teaching in the primary schools.

**History:** Laws 1899, ch. 18, § 2; Code 1915, § 4982; C.S. 1929, § 120-1914; 1941 Comp., § 55-2111; 1953 Comp., § 73-22-11.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed the name of the New Mexico normal school to the New Mexico western college, which was again changed by constitutional amendment

of November 3, 1964, to western New Mexico university. See 21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 NMSA 1978.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 14A C.J.S. Colleges and Universities §§ 35, 37, 38.

## 21-3-10. [New Mexico highlands university to be nonsectarian.]

Said institution shall be forever strictly nonsectarian in its character and management, and no creed or system of religion shall be taught, practiced or exercised in it.

**History:** Laws 1899, ch. 18, § 3; Code 1915, § 4983; C.S. 1929, § 120-1915; 1941 Comp., § 55-2112; 1953 Comp., § 73-22-12.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For prohibition of religious tests and services in schools, see N.M. Const., art. XII, § 9.

For free public schools conducted in English, see N.M. Const., art. XXI, § 4.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 16 Am. Jur. 2d Constitutional Law §§ 465, 466, 481.

Sectarianism in schools, 5 A.L.R. 866, 141 A.L.R. 1144, 45 A.L.R.2d 742.

Validity and construction of public school regulation of student distribution of religious documents at school, 136 A.L.R. Fed. 551.

14A C.J.S. Colleges and Universities § 7; 16A C.J.S. Constitutional Law §§ 518 to 521, 523.



### 21-3-11. [Acquisition of land for New Mexico highlands university.]

That the board of regents of the New Mexico normal university [New Mexico highlands university] is hereby given the right and authority to acquire by purchase or donation any and all land which may be necessary for campus and building site purposes.

**History:** Laws 1927, ch. 60, § 1; C.S. 1929, § 120-1911; 1941 Comp., § 55-2113; 1953 Comp., § 73-22-13.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed the name of the New Mexico normal school to the New Mexico western college, which was again changed by constitutional amendment of November 3, 1964, to western New Mexico university. See 21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 NMSA 1978.

**Compiler's notes.** — Laws 1937, ch. 95, § 1, ratified and confirmed any and all deeds, grants and conveyances heretofore made by any city, town or village in this state to the state of New Mexico, conveying land or other property for the use of any institution of this state.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 32 to 35.  
14A C.J.S. Colleges and Universities §§ 10, 11, 17.

### 21-3-12. [Right of eminent domain by New Mexico highlands university regents unaffected.]

That the provisions of the foregoing section [21-3-11 NMSA 1978] shall in no way change, alter or amend the right given the board of regents of the New Mexico normal university [New Mexico highlands university] to condemn land for university purposes as is now provided by the laws of the state of New Mexico.

**History:** Laws 1927, ch. 60, § 2; C.S. 1929, § 120-1912; 1941 Comp., § 55-2114; 1953 Comp., § 73-22-14.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed the name of the New Mexico normal school to the New Mexico western college, which was again changed by constitutional amendment of November 3, 1964, to western New Mexico university. See 21-3-3 NMSA 1978. That constitutional provision also

changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 26 Am. Jur. 2d Eminent Domain § 68.

Right to condemn property owned or used by private educational, charitable or religious organization, 80 A.L.R.3d 833.

### 21-3-13. [Borrowing by New Mexico highlands university for building, land acquisition or bond retirement purposes.]

That for the purpose of erecting, altering, improving, furnishing and equipping any necessary buildings or structures at the New Mexico normal university [New Mexico highlands university], or acquiring any necessary land for the use of said institution, or for retiring the whole or any part of any series bonds, previously issued by said institution under the provisions of law or for any or all of such purposes, the board of regents or directors of the New Mexico normal university [New Mexico highlands university] is hereby authorized to borrow money for such purposes in conformity with the terms of this act [21-3-13 through 21-3-28 NMSA 1978].

**History:** Laws 1941, ch. 208, § 1; 1941 Comp., § 55-2115; 1953 Comp., § 73-22-15.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed the name of the New Mexico normal school to the New Mexico western college, which was again changed by constitutional amendment of November 3, 1964, to western New Mexico university. See 21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 NMSA 1978.

**Cross references.** — For authority of state treasurer to purchase bonds, see 6-13-6 NMSA 1978.

For regulations concerning sale of bonds, see 6-13-6 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 35.  
14A C.J.S. Colleges and Universities § 17.

### 21-3-14. [Resolution of New Mexico highlands university regents.]

That whenever the said board of regents of the New Mexico normal university [New Mexico highlands university], by the affirmative vote of a majority of its members, duly entered in the minutes of said board, shall by resolution determine that it is necessary to erect, alter, improve, furnish or equip any building or buildings, structure or structures at said university, or acquire any land for use thereof, or to retire the whole or any part of any series of bonds previously issued in conformity with law or for any or all of said purposes, said board is hereby empowered and authorized to issue and sell, subject to the terms of this act [21-3-13, 21-3-14, 21-3-16 through 21-3-28 NMSA 1978], building and improvement bonds of said New Mexico normal university [New Mexico highlands university].

**History:** Laws 1941, ch. 208, § 2; 1941 Comp., § 55-2116; 1953 Comp., § 73-22-16.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed the name of the New Mexico normal school to the New Mexico western college, which was again changed by constitutional amendment of November 3, 1964, to western New Mexico university. *See*

21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. *See* 21-3-2 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations § 120.  
14A C.J.S. Colleges and Universities §§ 4, 10.

### 21-3-15. Bonds; form; conditions.

Bonds issued pursuant to Chapter 21, Article 3 NMSA 1978 shall be in such form and denominations as the board determines, due and payable not later than fifty years from date of issue. The bonds shall be payable in consecutive order commencing not later than two years from date of issue.

**History:** 1978 Comp., § 21-3-15, enacted by Laws 1983, ch. 265, § 37.

**Repeals and reenactments.** — Laws 1983, ch. 265, § 37 repealed former 21-3-15 NMSA 1978, and enacted a new section.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations §§ 195, 196, 202, 205, 399 to 453.

Power and discretion of officer or board authorized to issue bonds of governmental units as regards terms or conditions to be included therein, 119 A.L.R. 190.

47 C.J.S. Interest and Usury; Consumer Credit § 18.

### 21-3-16. [Sale of New Mexico highlands university bonds; purchase by state treasurer; acceptance by public officials.]

That said bonds may be sold at public or private sale, in the discretion of the board of regents, provided, however, that no sale shall be made for less than the par value of the bonds, plus accrued interest from the last preceding interest date to the date of delivery of said bonds. Before delivery of the bonds to the purchaser all matured interest coupons shall be detached and cancelled. The state treasurer may, with the approval of the state board of finance and other officials whose approval may be required by law for the investment of public funds, purchase such bonds at par and accrued interest to date of delivery of such investment. Such bonds shall be accepted at their par value by all public officials in this state as security for the repayment of all deposits of public monies of this state, or of any county, municipality or public institution thereof, and as security for the faithful performance of any obligations or duty to guarantee the performance of which such officials are now authorized by law to accept a deposit of the bonds of this state or of the United States of America.

**History:** Laws 1941, ch. 208, § 4; 1941 Comp., § 55-2118; 1953 Comp., § 73-22-18.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations §§ 120, 228, 229, 240, 452, 453, 488.

Sale of municipal or other public bonds at less than par or face value, 91 A.L.R. 7, 162 A.L.R. 396.



**21-3-17. [Disposition of proceeds of New Mexico highlands university bonds; building and improvement fund; interest and retirement fund; disbursement; sale expenses.]**

That the proceeds from the sale of said bonds shall be paid to the secretary and treasurer of the board of regents issuing same, and shall by such secretary and treasurer be placed in a separate fund to be known as "building and improvement fund" to be used and paid out only for the specific purposes in this act [21-3-13, 21-3-14, 21-3-16 through 21-3-28 NMSA 1978] enumerated upon order of the board, or checks signed by the president of the board of regents and by the secretary and treasurer thereof, except such portion thereof as may have been received on account of accrued interest on said bonds to date of delivery, which amount shall be placed in the "interest and retirement fund" for the liquidation of said bonds as hereinafter provided. The cost of preparing, advertising and selling said bonds, including any necessary expense for legal services thereon, shall be paid out of the proceeds of the sale of said bonds.

**History:** Laws 1941, ch. 208, § 5; 1941 Comp., § 55-2119; 1953 Comp., § 73-22-19.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 33.  
14A C.J.S. Colleges and Universities § 14.

**21-3-18. [Creation of interest and retirement fund by New Mexico highlands university regents; deposits.]**

That the board of regents issuing said bonds, shall, at the time of issuing said bonds, establish for the payment of the principal and interest thereof a fund to be known as "interest and retirement fund" into which fund said board shall immediately place a sum not less than the amount necessary to pay the interest and maturing principal of said bonds for the ensuing twelve months, and annually thereafter shall continue to place in said fund a sufficient amount to pay principal and interest maturing in the succeeding twelve months.

**History:** Laws 1941, ch. 208, § 6; 1941 Comp., § 55-2120; 1953 Comp., § 73-22-20.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations § 266.

**21-3-19. [Protection of interest and retirement fund of New Mexico highlands university.]**

That for the faithful and prompt payment of all interest and principal of said bonds as and when the same shall mature according to the tenor thereof, the issue thereof shall constitute an irrevocable pledge by said board of so much of each year's income from the permanent funds of such New Mexico normal university [New Mexico highlands university], so issuing bonds hereunder, in the hands of the treasurer, as shall be needed to provide the "interest and retirement fund" herein mentioned, for the ensuing year, and at all times fully and faithfully to keep the same in not less than the amount necessary to pay the interest and principal maturing as aforesaid; and in addition thereto the issue of said bonds shall constitute an irrevocable pledge by said board of so much of each year's income from the income and current fund derived from the lease of such of said institution's lands as remain unsold, as may be necessary to fully protect the "interest and retirement fund" for the ensuing year, and keep the same at all times in proper amount as herein provided.

**History:** Laws 1941, ch. 208, § 7; 1941 Comp., § 55-2121; 1953 Comp., § 73-22-21.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed the name of the New Mexico normal school to the New Mexico western college, which was again changed by constitutional amendment

of November 3, 1964, to western New Mexico university. See 21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations § 199.

### 21-3-20. [Income of permanent land funds of New Mexico highlands university pledged.]

That from and after the passage and approval of this act [21-3-13, 21-3-14, 21-3-16 through 21-3-28 NMSA 1978], all permanent funds thereafter derived from the sale or disposition of the lands held in trust for New Mexico normal university [New Mexico highlands university] shall be invested in the same manner as other permanent funds of the state of New Mexico are authorized to be invested, the income from which shall likewise form a part of the pledged income for the payment of principal and interest of bonds issued by the board of regents of the New Mexico normal university [New Mexico highlands university] under the provisions of this act.

**History:** Laws 1941, ch. 208, § 8; 1941 Comp., § 55-2122; 1953 Comp., § 73-22-22.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed the name of the New Mexico normal school to the New Mexico western college, which was again changed by constitutional amendment of November 3, 1964, to western New Mexico university. See

21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 35.  
14A C.J.S. Colleges and Universities § 14.

### 21-3-21. [Interest payments for New Mexico highlands university bonds.]

That it shall be the duty of the secretary and treasurer of the board of regents of the New Mexico normal university [New Mexico highlands university], where bonds have been issued hereunder, to forward to the bank at which said bonds are payable, prior to the date on which any coupons or any principal amount of any of said bonds shall mature, out of the "interest and retirement fund," a sufficient sum of money to meet said coupons and maturing bonds as the same become due, plus any service charge which said bank shall be entitled to receive for its services.

**History:** Laws 1941, ch. 208, § 9; 1941 Comp., § 55-2123; 1953 Comp., § 73-22-23.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed the name of the New Mexico normal school to the New Mexico western college, which was again changed by constitutional amendment of November 3, 1964, to western New Mexico university. See

21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations §§ 197, 198.  
11 C.J.S. Bonds § 59 et seq.

### 21-3-22. [Payments to New Mexico highlands university interest and retirement fund by state treasurer.]

That it is hereby made the duty of the state treasurer of the state of New Mexico, upon receiving written notice from the secretary and treasurer of the board of regents of the New Mexico normal university [New Mexico highlands university] that such board has issued bonds as herein provided, forthwith to forward and pay over to the secretary and treasurer of such board out of the income from the permanent funds of such institution, a sum sufficient to make and establish the interest and retirement fund, as herein provided, and annually thereafter to pay over a sufficient amount for said purpose, to the end that said interest and retirement fund shall at all times be kept in the proper amount. In the event there should not be sufficient undistributed income from permanent funds of such institution, then said state treasurer shall use so much of the income and



current fund of such institution in his hands as shall be necessary to establish and at all times maintain said interest and retirement fund.

**History:** Laws 1941, ch. 208, § 10; 1941 Comp., § 55-2124; 1953 Comp., § 73-22-24.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed the name of the New Mexico

normal school to the New Mexico western college, which was again changed by constitutional amendment of November 3, 1964, to western New Mexico university. *See* 21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. *See* 21-3-2 NMSA 1978.

### 21-3-23. [Series of New Mexico highlands university bonds; restrictions.]

That in the event the board of regents of the New Mexico normal university [New Mexico highlands university] should find it advisable to issue bonds under this act [21-3-13, 21-3-14, 21-3-16 through 21-3-28 NMSA 1978] in more than one series, or at different times, for any or all of the purposes aforesaid, then each series of said bonds shall be designated by the letter "A," "B" or in some other designation, to the end that each series shall be kept separate, and all of the requirements of this act shall apply to and be faithfully followed, done and carried out as to each of said series; provided, however, that the board of regents of the New Mexico normal university [New Mexico highlands university] shall have no power to issue bonds hereunder, the aggregate interest and principal requirements for which, for any year, together with the aggregate principal and interest requirements for all outstanding bonds of such board for such year, shall exceed the amount of the income from the permanent funds and from the aforesaid income and current fund of said New Mexico normal university [New Mexico highlands university], received by the state treasurer for the fiscal year next preceding the fiscal year in which any bonds of such New Mexico normal university [New Mexico highlands university] are authorized to be issued by resolution of the board of regents.

**History:** Laws 1941, ch. 208, § 11; 1941 Comp., § 55-2125; 1953 Comp., § 73-22-25.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed the name of the New Mexico normal school to the New Mexico western college, which was again changed by constitutional amendment of November 3, 1964, to western New Mexico university. *See*

21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. *See* 21-3-2 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 35.  
14A C.J.S. Colleges and Universities § 14.

### 21-3-24. [Tax exemption of New Mexico highlands university bonds.]

That bonds issued under the provisions of this act [21-3-13, 21-3-14, 21-3-16 through 21-3-28 NMSA 1978], and the income thereupon being for the sole purposes specified in Section 1 [21-3-13 NMSA 1978] hereof, shall forever be and remain free and exempt from taxation by the state of New Mexico or any subdivision thereof.

**History:** Laws 1941, ch. 208, § 12; 1941 Comp., § 55-2126; 1953 Comp., § 73-22-26.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 495, 526.

Constitutional enumeration of subjects of tax exemption as affecting power of legislature to free government securities or property from taxation, 9 A.L.R. 436.  
84 C.J.S. Taxation § 260.

### 21-3-25. [Restrictions on use of New Mexico highlands university bond proceeds.]

That none of the funds derived from the sale of bonds issued under the provisions of this act [21-3-13, 21-3-14, 21-3-16 through 21-3-28 NMSA 1978], except so much thereof as shall be necessary

to defray the costs of the issuance thereof and the accrued interest from the date thereof to the time of delivery, shall ever be used or expended for any purpose other than those for which authority to issue the same by this act is given.

**History:** Laws 1941, ch. 208, § 13; 1941 Comp., § 55-2127; 1953 Comp., § 73-22-27.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 35.  
14A C.J.S. Colleges and Universities § 14.

### 21-3-26. [State board of finance approval of New Mexico highlands university bonds.]

That no bonds shall be finally issued and sold under the provisions of this act [21-3-13, 21-3-14, 21-3-16 through 21-3-28 NMSA 1978] until the approval of such issue shall have been had by the majority vote of the state board of finance in a regular or called meeting.

**History:** Laws 1941, ch. 208, § 14; 1941 Comp., § 55-2128; 1953 Comp., § 73-22-28.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 21-3-27. [Lien of New Mexico highlands university bonds.]

All bonds of the same issue under this act [21-3-13, 21-3-14, 21-3-16 through 21-3-28 NMSA 1978] shall have a prior and paramount lien upon the income from the permanent funds and upon the income and current fund of the institution by which said bonds were issued, under and ahead of all bonds of any series secured by a pledge of said income, and said fund which may be subsequently authorized and over and ahead of all other claims or obligations of any nature against said income and said fund subsequently arising or subsequently incurred. All bonds of the [same] payment series issued under this act shall be equally and ratably secured without priority by reason of number, date of bonds, sale, execution or delivery, by a lien on said income and said fund in accordance with this act.

**History:** Laws 1941, ch. 208, § 15; 1941 Comp., § 55-2129; 1953 Comp., § 73-22-29.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 51 Am. Jur. 2d Liens and Encumbrances § 5.  
53 C.J.S. Liens §§ 4 to 17.

### 21-3-28. [Refunding bonds issued by New Mexico highlands university.]

That where bonds heretofore issued by New Mexico normal university [New Mexico highlands university] are held by the state treasurer and which were purchased with the permanent funds of such institution and held for its account, and which by their terms are not now subject to call for the retirement or refunding, the board of regents of New Mexico normal university [New Mexico highlands university], with the approval of the state finance board, may refund such bonds under the provisions of this act [21-3-13, 21-3-14, 21-3-16 through 21-3-28 NMSA 1978] by the issuance of refunding bonds for such time and at a rate of interest not exceeding the interest provided in the original issue as may be determined by such board of regents.

**History:** Laws 1941, ch. 208, § 16; 1941 Comp., § 55-2130; 1953 Comp., § 73-22-30.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed the name of the New Mexico normal school to the New Mexico western college, which was again changed by constitutional amendment

of November 3, 1964, to western New Mexico university. See 21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations §§ 261 to 269.



### 21-3-29. [Eastern New Mexico university; establishment.]

Pursuant to Section 12 of Article XII of the constitution of New Mexico, there is hereby created, located and established at Portales, Roosevelt county, New Mexico, the institution of learning to be known as the eastern New Mexico normal school [eastern New Mexico university]; said normal school shall be entitled to all of the benefits accruing from the provision of the constitution aforesaid, and shall be the normal school which the legislature is required to locate and establish in one of the following counties: Union, Quay, Curry, Roosevelt, Chaves or Eddy.

**History:** Laws 1927, ch. 9, § 1; C.S. 1929, § 120-1903; 1941 Comp., § 55-2134; 1953 Comp., § 73-22-35.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed the name of the New Mexico normal school to the New Mexico western college, which was again changed by constitutional amendment of November 3, 1964, to western New Mexico university. See

21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 NMSA 1978.

**Cross references.** — For tuition of nonresident students, see 21-1-2 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 14A C.J.S. Colleges and Universities §§ 35, 37, 38.

### 21-3-30. [Board of regents of eastern New Mexico university; appointment, qualifications and terms of members; powers.]

The governor is hereby authorized and empowered to appoint a board of regents for the eastern New Mexico normal school [eastern New Mexico university] at Portales, New Mexico, by and with the advice and consent of the senate, consisting of five members, no more than three of whom shall be of the same political party, at the time of their appointment, and not more than three of whom shall be appointed for a longer term than two years, and the remainder for four years, after which such appointments shall be for four years; and provided that should the senate not be in session when such appointment is made, such appointees shall hold their office until the convening of the senate, and if confirmed for the period of their appointment. Such board shall have the general powers now conferred on boards of regents of the other normal schools of this state; including the power to acquire by donations, the title to the necessary lands for building site and campus, and the acceptance of such other donations as may be available; and provided further, that such board can incur no indebtedness whatever.

**History:** Laws 1927, ch. 79, § 1; C.S. 1929, § 120-1904; 1941 Comp., § 55-2135; 1953 Comp., § 73-22-36.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed the name of the New Mexico normal school to the New Mexico western college, which was again changed by constitutional amendment of November 3, 1964, to western New Mexico university. See 21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 NMSA 1978.

**Cross references.** — For election of officers, see 21-3-5 NMSA 1978.

#### ANNOTATIONS

**Scope of powers concerning contracts.** — Eastern New Mexico university, through its regents, has authority to contract and be contracted with and where the issue simply involves the law of contracts the public or private character of the university is not the controlling factor.

*Hillis v. Meister*, 1971-NMCA-034, 82 N.M. 474, 483 P.2d 1314.

**Effect of university handbook on powers of regents.** — Where the undisputed evidence shows a course of conduct that made the university handbook a part of plaintiff's contract as the handbook was treated as controlling the relationship between the university administration and its faculty, then a failure of the university administration to follow these procedures constituted a breach of contract by the university. *Hillis v. Meister*, 1971-NMCA-034, 82 N.M. 474, 483 P.2d 1314.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 3, 5, 7, 11, 35, 39; 68 Am. Jur. 2d Schools § 30.

Constitutionality of statute requiring, or limiting, selection or appointment of public officers or agents from members of a political party or parties, 140 A.L.R. 471, 170 A.L.R. 198.

14A C.J.S. Colleges and Universities §§ 14, 15 to 17; 29 C.J.S. Election § 1(7); 67 C.J.S. Officers and Public Employees §§ 36, 40 to 43, 66, 69.

### 21-3-31. [Use of name "eastern New Mexico university" authorized; exceptions.]

For all purposes excepting suits, state lands, funds and appropriations the name "eastern New Mexico university" is hereby authorized for use in lieu of the name eastern New Mexico normal school.

**History:** 1953 Comp., § 73-22-37, enacted by Laws 1955, ch. 38, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted on November 8, 1960, changed the name of the New Mexico normal school to the New Mexico western college, which was again changed by constitutional amendment of November 3, 1964, to western New Mexico university. See

21-3-3 NMSA 1978. That constitutional provision also changed the name of New Mexico normal university to New Mexico highlands university. See 21-3-2 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 14A C.J.S. Colleges and Universities § 9.

## ARTICLE 4

### Northern New Mexico State School

Sec.

21-4-1. Management and control of northern New Mexico college.

21-4-2. Use of name "northern New Mexico college" for common convenience.

Sec.

21-4-3. Northern New Mexico college; purpose of instruction; academic courses; boarding of students.

21-4-4. Establishment of a solar energy research park and academy.

#### 21-4-1. Management and control of northern New Mexico college.

The management and control of the northern New Mexico state school at El Rito, also known as northern New Mexico college, and the appointment, qualification, powers and duties of its board of regents shall be the same as provided in Article 12, Section 13 of the constitution of New Mexico for the other state educational institutions mentioned in Article 12, Section 11 of the constitution of New Mexico.

**History:** Laws 1909, ch. 97, § 2; Code 1915, § 4986; C.S. 1929, § 120-1918; 1941 Comp., § 55-2132; 1953 Comp., § 73-22-32; Laws 1955, ch. 115, § 1; 2005, ch. 304, § 1; 2005, ch. 308, § 1.

The 2005 amendment, effective June 17, 2005, changed "Spanish American school" to "northern New Mexico state school" and provided that the school is also known as northern New Mexico college.

Laws 2005, ch. 304, § 1 and Laws 2005, ch. 308, § 1, both effective June 17, 2005, enacted identical amendments to this section. The section was set out as amended by Laws 2005, ch. 308, § 1. See 12-1-8 NMSA 1978.

#### ANNOTATIONS

**Employee must comply with internal grievance procedures.** — An employee must substantially comply with mandatory internal grievance procedures contained in an employee manual or handbook before filing suit for breach of contract claims based on an alleged failure of an employer to follow its employment policies. *Lucero v. UNM Board of Regents*, 2012-NMCA-055, 278 P.3d 1043, cert. denied, 2012-NMCERT-004.

Where a university manager was terminated by the university; the manager did not follow the grievance process contained in the university's employee handbook by

filing a grievance; the handbook governed the manager's employment with the university; and the manager filed an action in district court for breach of contract and wrongful termination alleging that the employee handbook created a contract and that the university breached the contract by failing to abide by the handbook's policies and procedures governing workplace performance, disciplinary action, a harassment-free workplace, employer-employee relations, progressive discipline and by disciplining the manager without just cause, the manager's claims were barred because the manager failed to exhaust the handbook's internal grievance procedures before filing the breach of contract action based on an alleged failure of the university to follow policies in the handbook. *Lucero v. UNM Board of Regents*, 2012-NMCA-055, 278 P.3d 1043, cert. denied, 2012-NMCERT-004.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 3, 5, 7, 11, 35, 39; 68 Am. Jur. 2d Schools § 30.

Constitutionality of statute requiring, or limiting, selection or appointment of public officers or agents from members of a political party or parties, 140 A.L.R. 471, 170 A.L.R. 198.

14A C.J.S. Colleges and Universities §§ 14, 15 to 17; 29 C.J.S. Election § 101; 67 C.J.S. Officers and Public Employees §§ 36, 40 to 43, 66, 69.

#### 21-4-2. Use of name "northern New Mexico college" for common convenience.

Except for financial transactions, the use of the name northern New Mexico college is hereby permitted in lieu of northern New Mexico state school, for common convenience.



**History:** 1941 Comp., § 55-2192a, enacted by Laws 1947, ch. 97, § 1; 1953 Comp., § 73-22-33; Laws 1955, ch. 115, § 2; 2005, ch. 304, § 2; 2005, ch. 308, § 2.

The 2005 amendment, effective June 17, 2005, changed "state school" to "college" and changed "the Spanish American school at El Rito" to "northern New Mexico state school".

Laws 2005, ch. 304, § 2 and Laws 2005, ch. 308, § 2, both effective June 17, 2005, enacted identical amendments to this section. The section was set out as amended by Laws 2005, ch. 308, § 2. See 12-1-8 NMSA 1978.

#### ANNOTATIONS

**Effect of failure to fund branch campus.** — The failure to fund a branch campus does not put either the university of New Mexico or the branch campus out of business nor does it constitute an invalid intrusion of the legislature into another branch of government. 1980 Op. Att'y Gen. No. 80-3.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 14A C.J.S. Colleges and Universities § 9; 78 C.J.S. Schools and School Districts §§ 387, 388.

### 21-4-3. Northern New Mexico college; purpose of instruction; academic courses; boarding of students.

A. The courses of instruction at northern New Mexico college shall:

(1) meet the needs of young people of New Mexico who cannot be served adequately by the local public schools in their home communities;

(2) prepare technical and trade students for occupations and vocations that are useful and necessary in the economy of New Mexico; and

(3) provide academic, technical and vocational instruction beyond the high school level and accredited college level academic instruction.

B. The board of regents of northern New Mexico college may provide quarters for the boarding of resident students.

C. Nothing in this section shall preclude the university of New Mexico from continuing to provide upper college level and graduate courses in any areas in which such courses were being offered prior to January 1, 1977.

D. The board of regents of northern New Mexico college may develop, implement and seek accreditation for a baccalaureate degree program in teacher education.

**History:** Laws 1909, ch. 97, § 3; Code 1915, § 4987; C.S. 1929, § 120-1919; 1941 Comp., § 55-2133; 1953 Comp., § 73-22-34; Laws 1955, ch. 115, § 3; 1961, ch. 117, § 1; 1963, ch. 77, § 1; 1977, ch. 203, § 1; 2004, ch. 84, § 1; 2005, ch. 304, § 1; 2005, ch. 308, § 1.

The 2005 amendment, effective June 17, 2005, changed "northern New Mexico state school at El Rito" to "northern New Mexico college" in Subsection A; deleted the former provision in Subsection A(3), which provided that in the event the university of New Mexico northern branch is dissolved, the college shall provide accredited college level instruction at those areas presently served by the University of New Mexico northern branch and by the northern New Mexico state school; deleted the former provision of Subsection D, which provided that the board of regents is authorized to develop a degree program in teacher education for the Espanola campus; and deleted the former provisions of Subsection D(1) and (2), which provided that the program for teacher education at the Espanola campus shall be authorized when the board of regents certifies that the program has been developed and is ready for implementation and is ready to receive the accreditation review team and that the northern New

Mexico state school shall engage in a partnership with New Mexico highlands university.

Laws 2005, ch. 304, § 3 and Laws 2005, ch. 308, § 3, both effective June 17, 2005, enacted identical amendments to this section. The section was set out as amended by Laws 2005, ch. 308, § 2. See 12-1-8 NMSA 1978.

The 2004 amendments, effective May 19, 2004, added Subsection D.

#### ANNOTATIONS

**Law reviews.** — For comment, "Education and the Spanish-Speaking - An Attorney General's Opinion on Article XII, Section 8 of the New Mexico Constitution," see 3 N.M.L. Rev. 364 (1973).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 28, 35; 68 Am. Jur. 2d Schools §§ 219, 220, 298 to 302.

Extent of legislative power with respect to attendance and curriculum, 39 A.L.R. 477, 53 A.L.R. 832.

Power of legislature to impose noneducational function upon state educational institution or instructors therein, 67 A.L.R. 1032.

14A C.J.S. Colleges and Universities §§ 4, 10, 17, 29; 78A C.J.S. Schools and School Districts § 782 et seq., 815.

### 21-4-4. Establishment of a solar energy research park and academy.

A. There is established at northern New Mexico state school a "solar energy research park and academy" to conduct applied research on solar energy storage devices, on photovoltaic technology, on solar thermal and concentrated solar technologies and on other alternative renewable energy

sources. Northern New Mexico state school shall collaborate with Los Alamos national laboratory to develop technology transfer applications related to solar energy.

B. In addition to the research park, the academy shall provide new academic programs, including three levels of engineering degrees: associate of science, bachelor of science and master of science in mechanical engineering with a major in solar energy.

**History:** Laws 2008, ch. 52, § 1.

**Effective dates.** — Laws 2008, ch. 52 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 14, 2008, 90 days after the adjournment of the legislature.

## ARTICLE 5

### New Mexico School for the Blind and Visually Impaired

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| <p>Sec. 21-5-1. Purpose of school for the blind [New Mexico school for the blind and visually impaired]; power to acquire land.</p> <p>21-5-2. Management of New Mexico school for the visually handicapped [New Mexico school for the blind and visually impaired]; corporate powers.</p> <p>21-5-3. Recompiled.</p> <p>21-5-4. Authority to use name "New Mexico school for visually handicapped [New Mexico school for the blind and visually impaired]."</p> <p>21-5-5. Repealed.</p> <p>21-5-6. Transportation of children.</p> <p>21-5-7. Superintendents of school districts required to report blind children.</p> <p>21-5-8. Repealed.</p> <p>21-5-9 to 21-5-11. Recompiled.</p> <p>21-5-12. Authority to borrow money; purposes.</p> | <p>Sec. 21-5-13. Power of board to sell and retire bonds.</p> <p>21-5-14. Form of bonds.</p> <p>21-5-15. Bonds; publication of notice; award to highest responsible bidder; purchase by state.</p> <p>21-5-16. Permanent improvement and interest and retirement funds.</p> <p>21-5-17. Interest and retirement fund established.</p> <p>21-5-18. Pledge of income for interest and retirement; leased land income.</p> <p>21-5-19. Forwarding of funds for payment of coupons and bonds.</p> <p>21-5-20. Funds restricted to designated purposes.</p> <p>21-5-21. State treasurer's duty to establish interest and retirement fund.</p> <p>21-5-22. Authority to designate bonds in series; bonds not to exceed income for preceding fiscal year.</p> <p>21-5-23. Tax exemption; security for public moneys.</p> |
|--|---|

#### 21-5-1. Purpose of school for the blind [New Mexico school for the blind and visually impaired]; power to acquire land.

The New Mexico school for the blind [New Mexico school for the blind and visually impaired] is intended and meant for the proper formal education of the blind of the state, and for the furtherance of such purpose to acquire land by purchase, gift or otherwise.

**History:** Laws 1903, ch. 2, § 8; 1907, ch. 4, § 1; Code 1915, § 5105; C.S. 1929, § 130-407; 1941 Comp., § 55-2201; Laws 1947, ch. 183, § 1; 1953 Comp., § 73-23-1; Laws 1971, ch. 324, § 6.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1903, ch. 2, § 3 established the New Mexico institute for the blind. Laws 1947, ch. 183, § 1, amended this section so that it referred to the New Mexico school for the blind.

The repeal and reenactment on November 8, 1960, of N.M. Const., art. XII, § 11, changed the name of the New Mexico institute for the blind to the New Mexico school for the visually handicapped.

An amendment to N.M. Const., art. XII, § 11, adopted at a general election held November 2, 2004, changed the name of the New Mexico school for the visually handicapped to the New Mexico school for the blind and visually impaired.

**Cross references.** — For the White Cane Law, see 28-7-1 through 28-7-7 NMSA 1978.

#### ANNOTATIONS

**Scope of discretion to refuse admission.** — As the institute for the blind (school for the visually handicapped) is for the blind youth of the state, it is not within the discretion of the superintendent, either with or without the approval of the board of trustees, to refuse admission to a blind applicant. 1925-26 Op. Att'y Gen. No. 25-3868.

**As to granting of tenure.** — Teaching personnel of the New Mexico school for the visually handicapped were not accorded statutory tenure rights unless they met the qualifications of 73-12-15.1, 1953 Comp. (repealed) or unless these privileges were extended by policy of board of regents of the institution or afforded under a written contract. 1964 Op. Att'y Gen. No. 64-89.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — When does change in "educational placement" occur for purposes of § 615(b)(1)(C) of the Education for All Handicapped Children Act of 1975 (20 USCS § 1415(b)(1)(C)), requiring notice to parents prior to such change, 54 A.L.R. Fed. 570. 78 C.J.S. Schools and School Districts § 4 et seq.



## 21-5-2. Management of New Mexico school for the visually handicapped [New Mexico school for the blind and visually impaired]; corporate powers.

A. The management and control of the New Mexico school for the visually handicapped [New Mexico school for the blind and visually impaired], the care and preservation of all property of which it shall become possessed, the erection and construction of all buildings necessary for its use and the disbursement and expenditure of all money appropriated by the state or that shall otherwise come into the school's possession shall be vested in a board of five regents, at least one of whom shall be visually handicapped and at least one other of whom shall be the parent of a visually handicapped child.

B. The regents and their successors in office shall constitute a body corporate under the name and style of "the board of regents of the New Mexico school for the visually handicapped [New Mexico school for the blind and visually impaired]". The board has the right as such of suing and being sued, of contracting and being contracted with, of making and using a common seal and altering the same at pleasure and of causing all things to be done necessary to carry out the provisions of Chapter 21, Article 5 NMSA 1978. A majority of the board shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time. The officers of the board shall be elected in the same manner and possess the same qualifications as the officers of the board of regents of the university of New Mexico.

C. The board of regents of the New Mexico school for the visually handicapped [New Mexico school for the blind and visually impaired] shall comply with provisions of the fourteenth amendment to the United States constitution, the federal Civil Rights of Institutionalized Persons Act and the Individuals with Disabilities Education Act.

**History:** Laws 1903, ch. 2, § 6; Code 1915, § 5109; C.S. 1929, § 130-606; 1941 Comp., § 5-101; 1953 Comp., § 13-3-1; recompiled as 1953 Comp., § 73-23-1.1; Laws 1968, ch. 17, § 8; 1997, ch. 232, § 1; 1999, ch. 116, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

An amendment to N.M. Const., art. XII, § 11, adopted at a general election held November 2, 2004, changed the name of the New Mexico school for the visually handicapped to the New Mexico school for the blind and visually impaired.

**Cross references.** — For the federal Civil Rights of Institutionalized Persons Act, see 42 USC § 1997 et seq.

For the Individuals with Disabilities Education Act, see 20 USCS § 1400 et seq.

**The 1999 amendment,** effective June 18, 1999, added Subsection C.

**The 1997 amendment,** effective June 20, 1997, substituted "New Mexico school for the visually handicapped" for "state institutions" in the section heading, designated the existing language as Subsections A and B, made minor stylistic changes in and rewrote the last three sentences of Subsection A; in Subsection B, in the first sentence, inserted "The regents" at the beginning and substituted "board of regents" for "trustees" near the middle, in the second sentence inserted "The board has" at the beginning and substituted "Chapter 21, Article 5 NMSA 1978" for "this article" at the end, in the fourth sentence, inserted "board of regents of the" near the end, and deleted the last two sentences in Subsection B relating to the board requiring corporate surety bonds in reasonable amounts set by the board and the governor being an ex-officio member of the board, but not having the right to vote or be eligible to office on the board.

### ANNOTATIONS

**Employee must comply with internal grievance procedures.** — An employee must substantially comply with mandatory internal grievance procedures contained

in an employee manual or handbook before filing suit for breach of contract claims based on an alleged failure of an employer to follow its employment policies. *Lucero v. UNM Board of Regents*, 2012-NMCA-055, 278 P.3d 1043, cert. denied, 2012-NMCERT-004.

Where a university manager was terminated by the university; the manager did not follow the grievance process contained in the university's employee handbook by filing a grievance; the handbook governed the manager's employment with the university; and the manager filed an action in district court for breach of contract and wrongful termination alleging that the employee handbook created a contract and that the university breached the contract by failing to abide by the handbook's policies and procedures governing workplace performance, disciplinary action, a harassment-free workplace, employer-employee relations, progressive discipline and by disciplining the manager without just cause, the manager's claims were barred because the manager failed to exhaust the handbook's internal grievance procedures before filing the breach of contract action based on an alleged failure of the university to follow policies in the handbook. *Lucero v. UNM Board of Regents*, 2012-NMCA-055, 278 P.3d 1043, cert. denied, 2012-NMCERT-004.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 3, 5, 7, 11, 17, 19, 21, 23, 33 to 35, 39; 63A Am. Jur. 2d Public Officers and Employees §§ 487, 488; 68 Am. Jur. 2d Schools § 30.

Mandamus to compel enrollment or restoration of pupil in state school or university, 39 A.L.R. 1019.

Constitutionality of statute requiring, or limiting, selection or appointment of public officers or agents from members of a political party or parties, 140 A.L.R. 471, 170 A.L.R. 198.

Malfeasance in office, public officer's bond as subject to forfeiture for, 4 A.L.R.2d 1348.

14A C.J.S. Colleges and Universities §§ 14 to 38; 29 C.J.S. Elections § 1(7); 67 C.J.S. Officers and Public Employees §§ 36, 40 to 43, 66, 69.

### 21-5-3. Recompiled.

**Recompilations.** — Laws 1983, ch. 60, § 3, recompiled former 21-5-3 NMSA 1978 as 22-14-20 NMSA 1978, effective June 17, 1983.

Laws 1983, ch. 60, contained no effective date provision, but was enacted at the session which adjourned on March 19, 1983. See N.M. Const., art. IV, § 23.

### 21-5-4. [Authority to use name "New Mexico school for visually handicapped [New Mexico school for the blind and visually impaired]."]

For administrative purposes in all matters except suits, state lands, funds and appropriations, the "New Mexico institute for the blind" is hereby authorized to use the name "New Mexico school for the visually handicapped [New Mexico school for the blind and visually impaired]."

**History:** Laws 1925, ch. 13, § 1; C.S. 1929, § 130-403; 1941 Comp., § 55-2202; Laws 1953, ch. 62, § 1; 1953 Comp., § 73-23-2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 14A C.J.S. Colleges and Universities § 9.

### 21-5-5. Repealed.

**Repeals.** — Laws 1999, ch. 116, § 2 repealed 21-5-5 NMSA 1978, as amended by Laws 1973, ch. 138, § 29, requiring parents and guardians to send blind students to

school, effective June 18, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMOneSource.com*.

### 21-5-6. [Transportation of children.]

That the superintendent of such institute [New Mexico school for the blind and visually impaired], out of the appropriation made for said institute [school], shall pay for the transportation of such children, to and from such institution whenever the parents, guardian or person having control or custody of any such child shall be unable to pay for same: provided, that said board of regents shall prescribe what portion of said appropriation shall be used for said transportation purposes.

**History:** Laws 1915, ch. 33, § 2; C.S. 1929, § 120-2202; 1941 Comp., § 55-2204; 1953 Comp., § 73-23-4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1903, ch. 2, § 3 established the New Mexico institute for the blind. Laws 1947, ch. 183, § 1, amended this section so that it referred to the New Mexico school for the blind.

The repeal and reenactment on November 8, 1960, of N.M. Const., art. XII, § 11, changed the name of the New Mexico institute for the blind to the New Mexico school for the visually handicapped.

An amendment to N.M. Const., art. XII, § 11, adopted at a general election held November 2, 2004, changed the name of the New Mexico school for the visually handicapped to the New Mexico school for the blind and visually impaired.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools §§ 240 to 251.

Transportation of school pupils at expense of public, 63 A.L.R. 413, 118 A.L.R. 806, 146 A.L.R. 625.

79 C.J.S. Schools and School Districts § 475.

### 21-5-7. Superintendents of school districts required to report blind children.

Superintendents of all school districts in the state, on August 1 and January 1 in each year, shall report to the superintendent of the New Mexico institute for the blind [New Mexico school for the blind and visually impaired] whether or not there are blind children of legal school age within their respective districts; the required report shall include a complete list of all such children. It shall be the duty of the superintendent of the institute [school] to communicate to the parent, guardian or person having custody or control of each blind child the provisions of this act [21-5-6, 21-5-7 NMSA 1978]. The superintendent of the institute [school] shall notify the state board of



education of the failure of any superintendent of a school district to render a report required by this section.

**History:** Laws 1915, ch. 33, § 3; C.S. 1929, § 120-2203; 1941 Comp., § 55-2205; 1953 Comp., § 73-23-5; Laws 1959, ch. 346, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1903, ch. 2, § 3 established the New Mexico institute for the blind. Laws 1947, ch. 183, § 1, amended this section so that it referred to the New Mexico school for the blind.

The repeal and reenactment on November 8, 1960, of N.M. Const., art. XII, § 11, changed the name of the New Mexico institute for the blind to the New Mexico school for the visually handicapped.

An amendment to N.M. Const., art. XII, § 11, adopted at a general election held November 2, 2004, changed the name of the New Mexico school for the visually handicapped to the New Mexico school for the blind and visually impaired.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools §§ 65 to 67.

78 C.J.S. Schools and School Districts § 100 et seq.

## 21-5-8. Repealed.

**Repeals.** — Laws 1999, ch. 116, § 2 repealed 21-5-8 NMSA 1978, as enacted by Laws 1915, ch. 33, § 4, relating to the penalty for violating provisions for compulsory

education of the blind, effective June 18, 1999. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com*.

## 21-5-9 to 21-5-11. Recompiled.

**Recompilations.** — Laws 1983, ch. 60, § 3, recompiled former 21-5-9 to 21-5-11 NMSA 1978, relating to products

of clients of services for the blind, as 22-14-21 to 22-14-23 NMSA 1978, effective June 17, 1983.

## 21-5-12. [Authority to borrow money; purposes.]

That for the purpose of erecting, altering, improving, furnishing and equipping any necessary buildings or structures at the New Mexico institute for the blind [New Mexico school for the blind and visually impaired], or acquiring any necessary land for the use of said institute or for the retiring of the whole or any part of any series bonds, previously issued by said institute [school] under the provisions of law, or for any or all of such purposes, the board of regents or directors of the New Mexico institute for the blind [New Mexico school for the blind and visually impaired] is hereby authorized to borrow money for such purposes in conformity with the terms of this act [21-5-12, 21-5-13, 21-5-15 through 21-5-23 NMSA 1978].

**History:** 1941 Comp., § 55-2207, enacted by Laws 1949, ch. 44, § 1; 1953 Comp., § 73-23-10.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1903, ch. 2, § 3 established the New Mexico institute for the blind. Laws 1947, ch. 183, § 1, amended this section so that it referred to the New Mexico school for the blind.

The repeal and reenactment on November 8, 1960, of N.M. Const., art. XII, § 11, changed the name of the New Mexico institute for the blind to the New Mexico school for the visually handicapped.

An amendment to N.M. Const., art. XII, § 11, adopted at a general election held November 2, 2004, changed the name of the New Mexico school for the visually handicapped to the New Mexico school for the blind and visually impaired.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 35.

14A C.J.S. Colleges and Universities § 17.

## 21-5-13. [Power of board to sell and retire bonds.]

That whenever the said board, by the affirmative vote of a majority of its members, duly entered in the minutes of said board, shall by resolution determine that it is necessary to erect, alter, improve, furnish or equip any building or buildings, structure or structures at said institute [school]; or acquire any land for the use thereof, or to retire the whole or any part of any series of bonds previously issued in conformity with law, or for any or all of said purposes, said board is hereby empowered and authorized to issue and sell subject to the terms of this act [21-5-12, 21-5-13, 21-5-15 through 21-5-23 NMSA 1978], building and improvement bonds of said New Mexico institute for the blind [New Mexico school for the blind and visually impaired].

**History:** 1941 Comp., § 55-2208, enacted by Laws 1949, ch. 44, § 2; 1953 Comp., § 73-23-11.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1903, ch. 2, § 3 established the New Mexico institute for the blind. Laws 1947, ch. 183, § 1, amended this section so that it referred to the New Mexico school for the blind.

The repeal and reenactment on November 8, 1960, of N.M. Const., art. XII, § 11, changed the name of the New Mexico institute for the blind to the New Mexico school for the visually handicapped.

An amendment to N.M. Const., art. XII, § 11, adopted at a general election held November 2, 2004, changed the name of the New Mexico school for the visually handicapped to the New Mexico school for the blind and visually impaired.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations § 120.  
14A C.J.S. Colleges and Universities §§ 4, 10.

## 21-5-14. Form of bonds.

Bonds issued pursuant to Sections 21-5-12 through 21-5-23 NMSA 1978 shall be in such form and denominations as the board of trustees of the New Mexico school for the visually handicapped [New Mexico school for the blind and visually impaired] shall determine, due and payable not later than twenty years from date of issue. The bonds shall be payable in consecutive order commencing not later than two years from date of issue.

**History:** 1978 Comp., § 21-5-14, enacted by Laws 1983, ch. 265, § 38.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

An amendment to N.M. Const., art. XII, § 11, adopted at a general election held November 2, 2004, changed the name of the New Mexico school for the visually handicapped to the New Mexico school for the blind and visually impaired.

**Repeals and reenactments.** — Laws 1983, ch. 265, § 38, repealed former 21-5-14 NMSA 1978, effective April 7, 1983, and enacted a new section.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations §§ 195, 196, 202, 205, 399 to 453.

Terms of bond: power and discretion of officer or board authorized to issue bonds of governmental units as regards, terms or conditions to be included therein, 119 A.L.R. 190.

47 C.J.S. Interest and Usury; Consumer Credit § 18.

## 21-5-15. [Bonds; publication of notice; award to highest responsible bidder; purchase by state.]

The board shall offer said bonds for sale, after publication of notice of the time and place of sale, in some newspaper of general circulation in Albuquerque, New Mexico, once each week for four (4) successive weeks prior to the date fixed for said sale. Such notice shall specify the amount, denomination, maturity dates and the hour at which sealed bids therefor will be received and opened, and that only unconditional bids therefor will be considered, and that each bid must be accompanied by a certified check drawn on a solvent bank or trust company, payable to the order of the secretary and treasurer of said board, for not less than five (5) per centum of the par value of the bonds offered for sale, as a guaranty that the bonds will be taken by the bidder if his bid is accepted and the bidder does not take and pay for the bonds in accordance therewith. At the place and time specified in such notice, the board or the executive committee thereof shall publicly open the bids and award the bonds to the responsible bidder or bidders offering the highest price therefor, but no bid shall be accepted for less than the par value of said bonds, plus the accrued interest from the last preceding interest date to the date of delivery of said bonds. Before delivery of the bonds to the purchaser, the secretary and treasurer of the board shall detach and cancel all matured interest coupons. Said board or the executive committee thereof, shall have and reserve the right to reject any and all bids at such sale, and readvertise the same. The state treasurer may, with approval of the state board of finance and the other officials whose approval may be required by law for the investment of public funds, purchase such bonds at par and accrued interest to date of delivery for such investment, without the necessity of their being advertised or publicly offered for sale by the board, or after rejection of bids for all or any part of any issue. Such bonds may be accepted at their par value by all public officials in this state as security for the repayment of all deposits of public moneys of this state, or of any county, municipality or public institution thereof, and as security



for the faithful performance of any obligation or duty to guarantee the performance of which such officials are now authorized by law to accept a deposit of the bonds of this state or of the United States of America.

**History:** 1941 Comp., § 55-2210, enacted by Laws 1949, ch. 44, § 4; 1953 Comp., § 73-23-13.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For legal newspapers, see 14-11-2 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations §§ 120, 228, 229, 240, 452, 453, 488.

Sale of municipal or other public bonds at less than par or face value, 91 A.L.R. 7, 162 A.L.R. 396.

### 21-5-16. [Permanent improvement and interest and retirement funds.]

The proceeds from the sale of said bonds shall be paid to the secretary and treasurer of said board, and shall be by him placed in a separate fund to be known as "permanent improvement fund" to be used and paid out only for the specified purposes in this act [21-5-12, 21-5-13, 21-5-15 through 21-5-23 NMSA 1978] enumerated upon order of the board, on checks signed by the president or vice president of said board and by the secretary and treasurer thereof, except such portion thereof as may have been received on account of accrued interest on said bonds to date of delivery, which amount shall be placed in the "interest and retirement fund" for the liquidation of said bonds as hereinafter provided. The cost of preparing, advertising and selling said bonds, including any necessary expense for legal opinions thereon, shall be paid out of the proceeds of the sale of said bonds.

**History:** 1941 Comp., § 55-2211, enacted by Laws 1949, ch. 44, § 5; 1953 Comp., § 73-23-14.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 33.

14A C.J.S. Colleges and Universities § 14.

### 21-5-17. [Interest and retirement fund established.]

The board of regents shall at the time of issuing said bonds, establish for the payment of the principal and interest thereof a fund to be known as "interest and retirement fund" into which fund said board shall immediately place a sum not less than the amount necessary to pay the interest and maturing principal of said bonds for the ensuing twelve (12) months and annually thereafter shall continue to place in said fund a sufficient amount to pay principal and interest maturing in the succeeding twelve (12) months.

**History:** 1941 Comp., § 55-2212, enacted by Laws 1949, ch. 44, § 6; 1953 Comp., § 73-23-15.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations § 266.

### 21-5-18. [Pledge of income for interest and retirement; leased land income.]

For the faithful and prompt payment of all interest and principal of said bonds as and when the same shall mature according to the tenor thereof, the issue thereof shall constitute an irrevocable pledge by said board of so much of each year's income from the permanent fund of the New Mexico institute for the blind [New Mexico school for the blind and visually impaired] in the hands of the treasurer of this state, as shall be necessary to provide the "interest and retirement fund" herein mentioned, for the ensuing year, and to at all times fully and faithfully keep the same in not less than the amount necessary to pay the interest and principal maturing as aforesaid; and in addition thereto the issue of said bonds shall constitute an irrevocable pledge by said board of so much of each year's income from the income and current fund derived from the lease of such of its land [lands] as remain unsold, as may be necessary to fully protect the "interest and retirement fund" for the ensuing year, and keep the same at all times in proper amount as herein provided.

**History:** 1941 Comp., § 55-2213, enacted by Laws 1949, ch. 44, § 7; 1953 Comp., § 73-23-16.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1903, ch. 2, § 3 established the New Mexico institute for the blind. Laws 1947, ch. 183, § 1, amended this section so that it referred to the New Mexico school for the blind.

The repeal and reenactment on November 8, 1960, of N.M. Const., art. XII, § 11, changed the name of the New Mexico institute for the blind to the New Mexico school for the visually handicapped.

An amendment to N.M. Const., art. XII, § 11, adopted at a general election held November 2, 2004, changed the name of the New Mexico school for the visually handicapped to the New Mexico school for the blind and visually impaired.

**Cross references.** — For establishment of interest and retirement fund, see 21-5-17 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 35.  
14A C.J.S. Colleges and Universities § 14.

### 21-5-19. [Forwarding of funds for payment of coupons and bonds.]

It shall be the duty of the secretary and treasurer of said board of regents to forward to the bank at which said bonds are payable, prior to the date on which any coupons or any principal amount of any of said bonds shall mature, out of the "interest and retirement fund" a sufficient sum of money to meet said coupons and maturing bonds as the same become due, plus any service charge which said bank shall be entitled to receive for its service.

**History:** 1941 Comp., § 55-2214, enacted by Laws 1949, ch. 44, § 8; 1953 Comp., § 73-23-17.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations §§ 197, 198.  
11 C.J.S. Bonds § 59 et seq.

### 21-5-20. [Funds restricted to designated purposes.]

None of the funds derived from the sale of said bonds, except so much thereof as shall be necessary to defray the cost of the issuance thereof and the accrued interest from the date thereof to the time of delivery, shall ever be used or expended by said board for any other purposes than those for which authority is herein given to issue the same, as set forth in Section 1 [21-5-12 NMSA 1978] hereof.

**History:** 1941 Comp., § 55-2215, enacted by Laws 1949, ch. 44, § 9; 1953 Comp., § 73-23-18.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 35.  
14A C.J.S. Colleges and Universities § 14.

### 21-5-21. [State treasurer's duty to establish interest and retirement fund.]

It is hereby made the duty of the treasurer of this state, upon receiving written notice from the secretary and treasurer of said board that it has issued bonds as provided for herein, to forthwith forward and pay over to the secretary and treasurer of said board out of the income from the permanent funds of said college, a sum sufficient to make and establish the income (interest) and retirement fund, as herein provided, and annually thereafter to pay over a sufficient amount for said purpose, to the end that said interest and retirement fund shall at all times be kept in the proper amount. In the event there should not be sufficient undistributed income from permanent funds of said institution, then said state treasurer shall use so much of the income and current fund of said institution in his hands as shall be necessary to establish and at all times maintain said interest and retirement fund.

**History:** 1941 Comp., § 55-2216, enacted by Laws 1949, ch. 44, § 10; 1953 Comp., § 73-23-19.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 35.  
14A C.J.S. Colleges and Universities § 14.



## 21-5-22. [Authority to designate bonds in series; bonds not to exceed income for preceding fiscal year.]

In the event the board of regents aforesaid should find it advisable to issue bonds under this act [21-5-12, 21-5-13, 21-5-15 through 21-5-23 NMSA 1978] in more than one series, or at different times, for any of the purposes aforesaid, then each series of said bonds shall be designated by the letter "A" or "B" or in some other proper designation to the end that each series shall be kept separate, and all of the requirements of this act shall apply to and be faithfully followed, done and carried out as to each of said series; provided, however, that said board of regents shall not have power to issue bonds hereunder, the aggregate interest and principal requirements for which, for any year, together with the aggregate interest and principal requirements for all outstanding bonds of such board of such institution for such year, shall exceed the amount of the income from the permanent funds and from the aforesaid income and current fund of such institution received by the state treasurer for the fiscal year next preceding the fiscal year in which any bonds of such board of such institution are authorized to be issued by resolution of the board adopted pursuant to this act.

**History:** 1941 Comp., § 55-2217, enacted by Laws 1949, ch. 44, § 11; 1953 Comp., § 73-23-20.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 35.  
14A C.J.S. Colleges and Universities § 14.

## 21-5-23. [Tax exemption; security for public moneys.]

Bonds issued under the provisions of this act [21-5-12, 21-5-13, 21-5-15 through 21-5-23 NMSA 1978], being for the sole purposes specified in Section 1 [21-5-12 NMSA 1978] hereof, shall forever be and remain free and exempt from taxation by this state or any subdivision thereof. Such bonds may be deposited as security for public moneys by depositaries thereof within the state of New Mexico.

**History:** 1941 Comp., § 55-2218, enacted by Laws 1949, ch. 44, § 12; 1953 Comp., § 73-23-21.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Constitutional enumeration of subjects of tax exemption as affecting power of legislature to free government securities or property from taxation, 9 A.L.R. 436.  
84 C.J.S. Taxation §§ 260, 375.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 495, 526.

## ARTICLE 6

### New Mexico School for the Deaf

Sec.

21-6-1. Board of regents; appointment; officers; superintendent; indebtedness; report.

21-6-2. Purposes; admission age; admission of nonresidents; tuition; change of name; expenditures for graduates in college; audiological clinic; scholarships; president's powers.

Sec.

21-6-3. Reports by clerks of school districts and boards of education; notice to parents; transportation; compulsory attendance; noncompliance; penalty.

## 21-6-1. Board of regents; appointment; officers; superintendent; indebtedness; report.

A. The New Mexico school for the deaf shall be under the control and management of a board of regents consisting of five members, at least one of whom shall be a deaf person and at least one

of whom shall be the parent of a deaf child, to be appointed by the governor, by and with the advice and consent of the senate for a term of six years. Not more than three of them shall belong to the same political party at the time of their appointment. The board shall make its own rules and regulations for the government of its meetings and the institution under its care. Annually on the second Monday of April the board shall elect from among its number a president and secretary.

B. The board shall have full power and authority to employ a superintendent, teachers and all other necessary employees to operate the New Mexico school for the deaf in the most efficient manner with the appropriations made therefor, with full power to provide suitable buildings, additions to existing buildings and enlarging and improving the buildings and property now occupied by the school.

C. It is unlawful for any member of the board of regents to incur any indebtedness or provide any improvements, repairs or to enlarge the buildings, except for current expenses, unless there is money on hand in the treasury subject to be used for those purposes.

D. Members of the board of regents shall be reimbursed according to the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] for travel and expenses incurred for each day in actual attendance at board meetings or while engaged in the performance of official business.

E. The board of regents shall present to the governor each year a full and detailed report including an itemized statement of all expenditures and of all its actions during the previous year, with that information and those recommendations it deems necessary and advisable for the governor and the legislature to act upon.

**History:** Laws 1899, ch. 42, § 2; Code 1915, § 5102; C.S. 1929, § 130-404; 1941 Comp., § 55-2303; 1953 Comp., § 73-24-3; Laws 1961, ch. 31, § 1; 1979, ch. 44, § 1; 1981, ch. 19, § 1.

**Cross references.** — For penalty for interest in contracts for supplies, see 21-1-35 NMSA 1978.

For state educational institutions, see N.M. Const., art. XII, § 11.

For boards of regents for educational institutions, see N.M. Const., art. XII, § 13.

#### ANNOTATIONS

**Employee must comply with internal grievance procedures.** — An employee must substantially comply with mandatory internal grievance procedures contained in an employee manual or handbook before filing suit for breach of contract claims based on an alleged failure of an employer to follow its employment policies. *Lucero v. UNM Board of Regents*, 2012-NMCA-055, 278 P.3d 1043, cert. denied, 2012-NMCERT-004.

Where a university manager was terminated by the university; the manager did not follow the grievance process contained in the university's employee handbook by filing a grievance; the handbook governed the manager's employment with the university; and the manager filed an action in district court for breach of contract and wrongful termination alleging that the employee handbook created a contract and that the university breached the contract by failing to abide by the handbook's policies and procedures governing workplace performance, disciplinary action, a harassment-free workplace, employer-employee relations, progressive discipline and by disciplining the manager without just cause, the manager's claims were barred because the manager failed to exhaust the handbook's internal grievance procedures before filing the breach of contract action based on an alleged failure of the university to follow policies in the handbook. *Lucero v. UNM Board of Regents*, 2012-NMCA-055, 278 P.3d 1043, cert. denied, 2012-NMCERT-004.

**Implied powers also possessed.** — The board of regents possesses, in addition to the express powers given,

those which although not expressly stated are necessarily implied in order that the objects and purposes of the institution may be fully attained. 1955-56 Op. Att'y Gen. No. 6169.

**Power to designate jury duty as vacation.** — The duly constituted board of regents of the school for the deaf is authorized to make decisions according to its sound judgment. It may, or it may not, designate absence of a school employee for jury duty as a vacation period during which time the employee will receive regular pay. 1961-62 Op. Att'y Gen. No. 62-73 (see Section 38-5-18 NMSA 1978).

**Scope and effect of statutory powers.** — The New Mexico school for the deaf is not subject to the Personnel Act (see 10-9-1 NMSA 1978 and notes thereto). Rather, the control of its employees and the appropriations for the school are placed in the hands of the board of regents of that school under this section, which authorizes the board to make rules and regulations governing the institution. 1961-62 Op. Att'y Gen. No. 62-73.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 3, 5, 7, 11, 35, 39; 63A Am. Jur. 2d Public Officers and Employees §§ 460 to 462, 476; 68 Am. Jur. 2d Schools § 30.

Public officer's rights and duties in respect of mileage and other allowances incident to duties of his office but which represented no actual expense or outlay by him, 81 A.L.R. 493.

Allowance of mileage or traveling expenses to officer as offended by use of his own vehicle for transportation, 112 A.L.R. 172.

Constitutionality of statute requiring or limiting, selection or appointment of public officers or agents from members of a political party or parties, 140 A.L.R. 471, 170 A.L.R. 198.

When does change in "educational placement" occur for purposes of § 615(b)(1)(C) of the Education for All Handicapped Children Act of 1975 (20 USCS § 1415(b)(1)(C)), requiring notice to parents prior to such change, 54 A.L.R. Fed. 570.

14A C.J.S. Colleges and Universities §§ 14 to 17; 29 C.J.S. Election 1 (7); 67 C.J.S. Officers and Public Employees §§ 36, 40 to 43, 66, 69, 224, 225.



**21-6-2. Purposes; admission age; admission of nonresidents; tuition; change of name; expenditures for graduates in college; audiological clinic; scholarships; president's powers.**

A. Except as otherwise provided in this section, the New Mexico school for the deaf shall be devoted exclusively to the care and instruction of persons of either sex who are residents within the state and between the ages of five years and the age of majority and who are deaf or hard-of-hearing; provided that the board of regents, in its discretion, may admit residents of this state who have attained the age of one year for daytime care and instruction, but not for residential purposes, and may also admit residents of this state who are over the age of majority.

B. The board of regents may make expenditures for undergraduate collegiate expenses of graduates of the New Mexico school for the deaf. The board of regents may permit the use of facilities of the school by public and private agencies in the state in carrying on a conservation-of-hearing program when the agencies participate in the cost of the operation, upon such terms and conditions as the board of regents may prescribe.

C. The board of regents may contract with the veterans' administration and the vocational rehabilitation division of the public education department to provide instruction for adults with a disability in vocations or lip reading taught at the school, but such adults may not be housed at the school. The board of regents may lease for a nominal sum for periods not to exceed three months to the public schools, institutions and agencies of the state any hearing test equipment owned by the school.

D. The board of regents, for the purpose of creating a source of teachers of the deaf, may pay tuition and other necessary expenses of graduates of New Mexico colleges desiring to take training to teach the deaf in out-of-state training centers and intending to make the teaching of the deaf in New Mexico their profession.

E. All instruction shall be free. Deaf or hard-of-hearing children from other states or territories may be received and educated in the school under such rules and regulations as the board of regents may prescribe, but in no event shall such children be admitted except upon the payment or guaranty of at least one thousand dollars (\$1,000) for the school year, on the basis of nine months for a school year. The president of the board of regents is authorized to make and enter into on behalf of the school all necessary agreements and contracts with the United States government and the proper authorities of other states and territories for the reception and education of such children, and the president is further authorized to receive and receipt for all money paid upon such account and to endorse and transfer all checks, vouchers or other evidences of payment made or received in behalf of the school.

**History:** Laws 1899, ch. 42, § 3; Code 1915, § 5103; C.S. 1929, § 130-405; 1941 Comp., § 55-2304; Laws 1945, ch. 80, § 1; 1953, ch. 26, § 1; 1953 Comp., § 73-24-4; Laws 1955, ch. 63, § 1; 1973, ch. 138, § 30; 2007, ch. 46, § 9.

The 2007 amendment, effective June 15, 2007, amended the section to make non-substantive language changes.

**ANNOTATIONS**

**Scope of power to care.** — The board of the deaf school (New Mexico school for the deaf) is vested by law with power to care for children under its control and to provide food, clothing, quarters, medical and such other care as may be necessary to the children's welfare. 1945-46 Op. Att'y Gen. No. 45-4803.

**Power to spend funds limited.** — The statute's language would seem to preclude the power to spend the funds of the institution in instructing other than those persons in the institution. The legislature did not intend that personnel from school be dispatched, at institution expense, to places outside the school to prepare others in

communicating and otherwise being able to get along with students from the school. 1955-56 Op. Att'y Gen. No. 55-6170.

**Meaning of "resident".** — The term "resident" as used in this statute means a person who maintains his "domicile" in this state. Domicile is defined as that place where a person maintains his residence with the intention to live there indefinitely. Once established he may leave it and the place may remain his domicile if he intends to return. 1955-56 Op. Att'y Gen. No. 55-6302.

**Effect of absence from state for military service.** — Mere absence from this state by reason of being in the military service does not change that person's domicile in New Mexico, and thus his or her children would be eligible for admission without payment of the nonresident fee. 1955-56 Op. Att'y Gen. No. 55-6302.

**Effect of mere presence by nonresident.** — The mere presence of a soldier or sailor from another state at a post in New Mexico does not by that fact alone establish his residence here and for that reason his or her children would not be eligible for admission without payment of a nonresident fee. However, such a person could establish his residence here. 1955-56 Op. Att'y Gen. No. 55-6302.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 19 to 22; 68 Am. Jur. 2d Schools §§ 212, 213.

Validity of exaction of fees from children attending elementary or secondary public schools, 41 A.L.R.3d 752. 79 C.J.S. School and School Districts §§ 449, 455, 466.

### 21-6-3. [Reports by clerks of school districts and boards of education; notice to parents; transportation; compulsory attendance; noncompliance; penalty.]

It is hereby made the duty of the clerks of all school districts and boards of education within the state of New Mexico, to report to the school superintendent of their respective counties, the names, age, sex and residence of all deaf or hard-of-hearing persons of school age residing within their respective districts together with the post-office address of the parents or guardians of such children, this report to be incorporated in the regular report from such school district at the time provided by laws; and it shall be the duty of such school superintendent to at once send a report to the superintendent of the New Mexico school for the deaf, including the names and addresses of all such children within this county.

It shall then be the duty of the superintendent of the New Mexico school for the deaf to at once notify the parents or guardians of such children to send the same to this school for proper instruction at a time to be fixed by him.

If the parent or guardian of any such child shall make a statement that by reason of his limited financial circumstances he is unable to suitably clothe such child and provide means of transportation for it from its home to such school, or provide for medical care for said child, and a representative of the state department of public welfare or the county superintendent of schools, or the superintendent of any city, town, village or consolidated school, of such county in which the child lives shall certify that such is the fact, then and in that case the superintendent of the New Mexico school for the deaf is authorized to draw a voucher upon the board of trustees for a sufficient amount of money to suitably clothe such child and pay for its transportation to this school and provide for medical care for such child, which voucher shall be honored by such board, and such child shall thereupon be sent by its parents or guardian to such school for instruction; provided that the above statement and certificate shall be renewed each year. The provisions of the laws of New Mexico in regard to compulsory attendance upon the public schools shall be applicable to attendance upon some school for the deaf or the hard of hearing, and the school directors of the several districts are hereby required and directed to enforce the same with regard to this school in the same manner as is provided by those laws for enforcing attendance upon the district schools.

Any failure on the part of any person hereinbefore mentioned to comply with the duties herein provided shall be deemed a misdemeanor and punished as such.

**History:** Laws 1899, ch. 42, § 4; Code 1915, § 5104; C.S. 1929, § 130-406; 1941 Comp., § 55-2305; Laws 1947, ch. 40, § [1]; 1953 Comp., § 73-24-5.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Extent of legislative power with respect to attendance and curriculum, 39 A.L.R. 477, 53 A.L.R. 832.

Transportation of school pupils at expense of public, 63 A.L.R. 413, 118 A.L.R. 806, 146 A.L.R. 625.

78 C.J.S. Schools and School Districts § 100 et seq.; 78A C.J.S. Schools and School Districts § 734 et seq.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools §§ 228 to 239.

## ARTICLE 7

### University of New Mexico

**Sec.**  
21-7-1. Established as the state university; congressional benefits vested.  
21-7-2. Object.  
21-7-3. Board of regents.  
21-7-4. Corporate powers of board.  
21-7-5. Annual organization meeting of board; election of officers; bond of secretary-treasurer; conditions.

**Sec.**  
21-7-6. President; secretary and treasurer; duties and powers.  
21-7-7. Board of regents; rules and regulations.  
21-7-8. Departmental organization.  
21-7-9. Departmental faculties; course of instruction; books, degrees and diplomas; removal of officers.  
21-7-9.1. Purpose [of Spanish resource center.]



Sec. 21-7-9.2. El centro de la raza created; purpose.

21-7-10. Admission of students; rules and regulations.

21-7-11. Sectarianism prohibited.

21-7-12. Meetings of board of regents; quorum.

21-7-13. Building and improvement bonds; purposes; authority of board of regents.

21-7-14. Resolution for issuance of building and improvement bonds.

21-7-15. Form and conditions of bonds.

21-7-16. Sale of building and improvement bonds; notice, publication and contents; conduct; delivery of bonds; purchase by state treasurer; acceptance by public officials.

21-7-17. Disposition of proceeds of building and improvement bond sales.

21-7-18. Interest and retirement fund for building and improvement bonds; establishment; replenishment.

21-7-19. Income pledged for redemption of building and improvement bonds.

21-7-20. Income from investment of permanent fund derived from trust land sales pledged to repay building and improvement bonds.

Sec.

21-7-21. Payment of principal and interest on building and improvement bonds.

21-7-22. Restrictions on use of building and improvement bond proceeds.

21-7-23. Payments by state treasurer relating to building and improvement bonds.

21-7-24. Issuance of building and improvement bonds in series; restrictions.

21-7-25. Tax exemption of building and improvement bonds.

21-7-26. Temporary provision; medical residency programs; state cooperation.

21-7-27. Temporary provision; university of New Mexico; physician assistant training program.

21-7-28. Creation of the Taos branch community college of the university of New Mexico.

21-7-29. Rio Rancho campus for the university of New Mexico and other institutions.

21-7-30. State digital geospatial data clearinghouse designated; powers and duties.

21-7-31. Stephen Easley center for telehealth.

21-7-32. Off-campus instructional center for university of New Mexico in Valencia county.

## 21-7-1. [Established as the state university; congressional benefits vested.]

The university of New Mexico is intended to be the state university, and as such is entitled to all the donations of land and all other benefits under all acts of congress enacted for the benefit of such educational institutions in the state.

**History:** Laws 1889, ch. 138, § 7; C.L. 1897, § 3569; Code 1915, § 5117; C.S. 1929, § 130-901; 1941 Comp., § 55-2401; 1953 Comp., § 73-25-1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For confirmation as state educational institution, see N.M. Const., art. XII, § 11.

For acceptance of land grants, see N.M. Const., art. XII, § 12.

For management and control, see N.M. Const., art. XII, § 13.

### ANNOTATIONS

**Effect of misnomer in contract.** — A slight misnomer of the corporation in a contract is immaterial, where the identity of the corporation appears, or can be made to appear, by parol evidence. *State v. Regents of Univ. of N.M.*, 1927-NMSC-047, 32 N.M. 428, 258 P. 571.

**Law reviews.** — For note, "Student Discipline Cases in State Universities of New Mexico - Procedural Due Process," see 1 N.M.L. Rev. 231 (1971).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 14A C.J.S. Colleges and Universities §§ 4, 35, 37, 38.

## 21-7-2. [Object.]

The object of the university shall be to provide the inhabitants of the state of New Mexico with the means of acquiring a thorough knowledge of the various branches of literature, science and arts.

**History:** Laws 1889, ch. 138, § 8; C.L. 1897, § 3570; Code 1915, § 5118; C.S. 1929, § 130-902; 1941 Comp., § 55-2402; 1953 Comp., § 73-25-2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 14A C.J.S. Colleges and Universities § 41.

## 21-7-3. Board of regents.

The management and control of the university of New Mexico, the care and preservation of all its property, the erection and construction of all buildings necessary for its use and the disbursements and expenditures of all money shall be vested in a board of seven regents.

**History:** Laws 1889, ch. 138, § 9; C.L. 1897, § 3571; Code 1915, § 5119; C.S. 1929, § 130-903; 1941 Comp., § 55-2403; 1953 Comp., § 73-25-3; Laws 1987, ch. 53, § 1.

**Cross references.** — For penalty for interest in contracts for supplies, see 21-1-35 NMSA 1978.

For building and improvement bonds, see 21-7-13 NMSA 1978.

For management by board of regents, see N.M. Const., art. XII, § 13.

For cooperation with bureau of geology and mineral resources, see 69-1-2 NMSA 1978.

**Temporary provisions.** — Laws 2011, ch. 76, § 1 directed the health sciences center to conduct a study of the feasibility of a program to allow qualified students to matriculate directly from a bachelor of arts degree program to dental school for a doctor of dental science or doctor of dental surgery degree.

**Appropriations.** — Laws 2012, ch. 62, § 1, effective May 16, 2012, appropriated \$1,000,000 from the tobacco settlement program fund to the board of regents of the university of New Mexico for the health sciences center for expenditure in fiscal year 2013 to conduct lung biology research focused on smoking studies, lung cancer and chronic obstructive pulmonary disease drug development under the Speaker Ben Lujan Lung Cancer Research Project.

#### ANNOTATIONS

**Scope of powers.** — The legislature has expressly recognized the authority of institutions of higher learning

to receive benefits and donations from the United States and from private individuals and corporations; to buy, sell, lease or mortgage real estate and to do all things which will be for the best interests of the institutions in the accomplishment of their purposes or objects and, therefore, the legislature lacks authority to appropriate these funds or to control the use thereof through the power of appropriation. *State ex rel. Sego v. Kirkpatrick*, 1974-NMSC-059, 86 N.M. 359, 524 P.2d 975.

**Taxpayer's suit in mandamus not allowed.** — The regents of a state university owe their duties to the state of New Mexico, not to a private person, and a taxpayer has no standing to enforce by mandamus a duty owing to the public. *Womack v. Regents of Univ. of N.M.*, 1971-NMSC-043, 82 N.M. 460, 483 P.2d 934.

**Regents to be ultimate authority.** — In establishing the university of New Mexico, the legislature contemplated that the regents would exercise ultimate authority in the management and control of the university. 1969 Op. Att'y Gen. No. 69-104.

**Final action not to be delegated.** — It is not within the power of the regents to delegate the right of final action to any other group or body within the university. 1969 Op. Att'y Gen. No. 69-104.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 32 to 35.

14A C.J.S. Colleges and Universities §§ 10, 11, 17.

### 21-7-4. [Corporate powers of board.]

The regents of the university and their successors in office shall constitute a body corporate under the name and style of, the regents of the university of New Mexico, with the right, as such, of suing and being sued, or contracting and being contracted with, of making and using a common seal and altering the same at pleasure.

**History:** Laws 1889, ch. 138, § 11; C.L. 1897, § 3573; Code 1915, § 5120; C.S. 1929, § 130-904; 1941 Comp., § 55-2404; 1953 Comp., § 73-25-4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Extent of obligation to injured workmen.** — This statute imposes upon board of regents no legal obligation to compensate financially for injuries sustained by their workmen in the course of their employment. *Zamora v.*

*Regents of Univ. of N.M.*, 1955-NMSC-077, 60 N.M. 41, 287 P.2d 237.

**Power to transfer university land.** — A transfer of property owned by the university of New Mexico should be made by the board of regents. 1914 Op. Att'y Gen. No. 14-1230.

**The board of regents is a public corporation** of this state as distinguished from a private or business corporation. 1964 Op. Att'y Gen. No. 64-54.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 3,

14A C.J.S. Colleges and Universities § 2.

### 21-7-5. [Annual organization meeting of board; election of officers; bond of secretary-treasurer; conditions.]

The board of regents of the university of New Mexico shall meet and organize by the election of its officers at Albuquerque, in Bernalillo county, on the second Monday in March in each year; all officers so elected shall hold their offices until their successors are duly elected and qualified. At such elections they shall elect a president and a secretary and treasurer from their number. The person so elected as secretary and treasurer shall, before entering upon the discharge of his duties as such, execute a good and sufficient bond to the state of New Mexico, with two or more sufficient sureties, residents of this state, in the penal sum of not less than twenty thousand dollars [(\$20,000)], conditioned for the faithful performance of his duties as such secretary and treasurer, and that he will faithfully account for and pay over to the person or persons entitled thereto all



moneys which shall come into his hands as such officer, which said bond shall be approved by the governor of the state, and shall be filed with the secretary of state.

**History:** Laws 1889, ch. 138, § 12; C.L. 1897, § 3574; Code 1915, § 5121; C.S. 1929, § 130-905; 1941 Comp., § 55-2405; 1953 Comp., § 73-25-5.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For tenure of office of state officers, see N.M. Const., art. XX, § 2.

#### ANNOTATIONS

**Effect on secretary-treasurer of New Mexico state university.** — This section and 21-8-4 NMSA 1978 require the secretary-treasurer of the board of regents of the college of agriculture and mechanic arts (New Mexico state university) to execute a bond to the state of \$20,000 before entering on the discharge of his duties. *State v. Llewellyn*, 1917-NMSC-031, 23 N.M. 43, 167 P. 414, cert. denied, 245 U.S. 666, 38 S. Ct. 63, 62 L. Ed. 538 (1917).

**Term of treasurer.** — The treasurer of the board would still continue as such until the election and qualification of his successor under this section. *Bowman Bank & Trust Co. v. First Nat'l Bank*, 1914-NMSC-014, 18 N.M. 589, 139 P. 148.

**Treasurer of state university may transfer a certificate of deposit from one depository to another.** *State v. Llewellyn*, 1917-NMSC-031, 23 N.M. 43, 167 P. 414, cert. denied, 245 U.S. 666, 38 S. Ct. 63, 62 L. Ed. 538 (1917); *Bowman Bank & Trust Co. v. First Nat'l Bank*, 1914-NMSC-014, 18 N.M. 589, 139 P. 148.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63A Am. Jur. 2d Public Officers and Employees §§ 487, 488.

Malfeasance in office, public officer's bond as subject to forfeiture for, 4 A.L.R.2d 1348.

14A C.J.S. Colleges and Universities § 14.

## 21-7-6. President; secretary and treasurer; duties and powers.

The president of the board of regents of the university of New Mexico shall preside at all meetings of the board, except that when the president is absent the board may appoint a president pro tem, and sign all instruments required to be executed by the board. The president shall appoint committees of the board. The secretary shall provide for attesting all instruments required to be signed by the president of the board, shall keep a true record of all the proceedings of the board and generally do all other things required of the secretary by the board.

**History:** Laws 1889, ch. 138, § 13; C.L. 1897, § 3575; Code 1915, § 5122; C.S. 1929, § 130-906; 1941 Comp., § 55-2406; 1953 Comp., § 73-25-6; 1995, ch. 167, § 2.

**Compiler's notes.** — Notwithstanding the section heading, this section, as a result of the 1995 amendment, no longer provides for the office of treasurer.

**Cross references.** — For prohibition of interest in contracts for supplies, see 21-1-35 NMSA 1978.

**The 1995 amendment,** effective June 16, 1995, re-wrote this section to the extent that a detailed comparison is impracticable.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 5, 11, 16.

14A C.J.S. Colleges and Universities §§ 15 to 17.

## 21-7-7. Board of regents; rules and regulations.

The board of regents shall have power and it shall be its duty to enact laws, rules and regulations for the government of the university of New Mexico. The board of regents may hire a president for the university of New Mexico as its chief executive officer and shall determine the scope of the president's duties and authority.

**History:** Laws 1889, ch. 138, § 14; C.L. 1897, § 3576; Code 1915, § 5123; C.S. 1929, § 130-907; 1941 Comp., § 55-2407; 1953 Comp., § 73-25-7; 1995, ch. 167, § 3.

**The 1995 amendment,** effective June 16, 1995, inserted "board of", substituted "its" for "their", substituted "the university of New Mexico" for "the university", and added the last sentence.

#### ANNOTATIONS

**Employee must comply with internal grievance procedures.** — An employee must substantially comply with mandatory internal grievance procedures contained in an employee manual or handbook before filing suit for breach of contract claims based on an alleged failure of an employer to follow its employment policies. *Lucero v. UNM Board of Regents*, 2012-NMCA-055, 278 P.3d 1043, cert. denied, 2012-NMCERT-004.

Where a university manager was terminated by the university; the manager did not follow the grievance process contained in the university's employee handbook by filing a grievance; the handbook governed the manager's employment with the university; and the manager filed an action in district court for breach of contract and wrongful termination alleging that the employee handbook created a contract and that the university breached the contract by failing to abide by the handbook's policies and procedures governing workplace performance, disciplinary action, a harassment-free workplace, employer-employee relations, progressive discipline and by disciplining the manager without just cause, the manager's claims were barred because the manager failed to exhaust the handbook's internal grievance procedures before filing the breach of contract action based on an alleged failure of the university to follow policies in the handbook. *Lucero v. UNM Board of Regents*, 2012-NMCA-055, 278 P.3d 1043, cert. denied, 2012-NMCERT-004.



**Independence of board of regents.** — The board of regents is an independent governing body which has a very real, though somewhat ill-defined, independence from outside control. The reason for the regents' autonomy is to assure that the educational process is free of interference from the capricious whims of the political process. *Regents of the Univ. of N.M. v. N.M. Fed'n of Teachers*, 1998-NMSC-020, 125 N.M. 401, 962 P.2d 1236.

**Constitutionality of Public Employees Bargaining Act.** — The Public Employees Bargaining Act, compiled in Chapter 10, Article 7E, which requires government entities, including the University of New Mexico, to allow all employees except those specifically exempted by that act to engage in collective bargaining, does not violate the autonomy of the University's Board of Regents as granted by N.M. Const., art. 12, § 13. *Regents of Univ. of N.M. v. N.M. Fed'n of Teachers*, 1998-NMSC-020, 125 N.M. 401, 962 P.2d 1236.

**Legislative intent.** — In establishing the university of New Mexico, the legislature contemplated that the regents would exercise ultimate authority in the management and control of the university. 1969 Op. Att'y Gen. No. 69-104.

**Review and approval of actions below.** — The explicit references in 21-7-8 and 21-7-9 NMSA 1978 to the

regents' duties and responsibilities require that the board review and approve the actions taken below in exercise of limited power to immediate government. 1969 Op. Att'y Gen. No. 69-104.

**Duty to review mandatory.** — The regents' duty of review and approval of actions below is mandatory and cannot be waived or circumvented by the board. 1969 Op. Att'y Gen. No. 69-104.

**Traffic control jurisdiction.** — The board of regents of the university of New Mexico is specifically given traffic control jurisdiction on its property and may employ and assign duties of campus security officers for the institution. 1969 Op. Att'y Gen. No. 69-48.

**Limited applicability of city's ordinances.** — Ordinances of the city of Albuquerque dealing with crimes do not apply to land under the control of the board of regents of the university of New Mexico except for traffic offenses as provided in 35-14-2 NMSA 1978. 1969 Op. Att'y Gen. No. 69-48.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 25.

Clothes of pupils, validity of regulation as to, 14 A.L.R.3d 1201.

14A C.J.S. Colleges and Universities § 17.

## 21-7-8. [Departmental organization.]

The university shall have departments, which shall be opened at such times as the board of regents deem best, for instruction in science, literature and the arts, law, medicine, engineering and such other departments and studies as the board of regents may, from time to time, decide upon, including military training and tactics.

**History:** Laws 1889, ch. 138, § 15; C.L. 1897, § 3577; Code 1915, § 5124; C.S. 1929, § 130-908; 1941 Comp., § 55-2408; 1953 Comp., § 73-25-8.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### ANNOTATIONS

**Review and approval of actions below.** — The explicit references in this section and 21-7-9 NMSA 1978 to

the regents' duties and responsibilities require that the board review and approve the actions taken below in exercise of limited power of immediate government. 1969 Op. Att'y Gen. No. 69-104.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 25.

14A C.J.S. Colleges and Universities § 4.

## 21-7-9. [Departmental faculties; course of instruction; books, degrees and diplomas; removal of officers.]

The immediate government of the several departments shall be entrusted to their respective faculties, but the regents shall have the power to regulate the course of instruction, and prescribe the books and authorities to be used in the several departments, and also confer such degrees and grant such diplomas as are usually conferred and granted by other universities. The regents shall have power to remove any officer connected with the university when in their judgment the interests require it.

**History:** Laws 1889, ch. 138, § 16; C.L. 1897, § 3578; Code 1915, § 5125; C.S. 1929, § 130-909; 1941 Comp., § 55-2409; 1953 Comp., § 73-25-9.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For removal of president or faculty member for cause after trial, see 21-1-7 NMSA 1978.

### ANNOTATIONS

**Removal of football coach.** — Whether the head football coach is an "officer" under this section is not

something an appellate court can resolve as a matter of law; rather it is a question of fact. *Feldman v. Regents of Univ. of N.M.*, 1975-NMCA-111, 88 N.M. 392, 540 P.2d 872.

**Discretion and judgment at lower levels provided for.** — In this section and 21-7-8 NMSA 1978 the legislature provided for the exercise of discretion and judgment at subordinate levels subject to the ultimate control of the regents. 1969 Op. Att'y Gen. No. 69-104.

**Powers of administration and government are permitted various faculty groups,** and are characterized as those of "immediate government." 1969 Op. Att'y Gen. No. 69-104.



**Review and approval of actions below.** — The explicit references in this section and 21-7-8 NMSA 1978 to the regents' duties and responsibilities require that the board review and approve the actions taken below in exercise of limited power of immediate government. 1989 Op. Att'y Gen. No. 89-104.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 1, 5, 11 to 13, 31, 41.

Instructors, imposing noneducational functions upon, 67 A.L.R. 1032.

Teacher in state college or university as officer or employee, 75 A.L.R. 1352.

Validity of governmental requirement of oath of allegiance or loyalty, 18 A.L.R.2d 268.

Dismissal or rejection of public schoolteacher because of disloyalty, 27 A.L.R.2d 487.

Elements and measure of damages in action by school teacher for wrongful discharge, 22 A.L.R.3d 1047.

Student's right to compel school officials to issue degree, diploma, or the like, 11 A.L.R.4th 1182.

14A C.J.S. Colleges and Universities §§ 17, 19, 25, 29.

### 21-7-9.1. Purpose [of Spanish resource center.]

Pursuant to a memorandum of understanding between the ministry of education and science of Spain and the university of New Mexico providing for the establishment of a Spanish resource center in New Mexico, the center for southwest research will:

- A. receive from the ministry of education and science of Spain:
  - (1) approximately two thousand volumes of Spanish language children's literature representative of the best materials published;
  - (2) a methodological and pedagogical collection of scholarly Spanish language works, including essays, university studies and special publications;
  - (3) approximately one thousand volumes of Spanish language classical and contemporary literature;
  - (4) a significant collection of Spanish language educational, technical and instructional materials;
  - (5) more than four thousand hours of recorded Spanish language audio and audiovisual materials; and
  - (6) an important library of current and classical Spanish language movies;
- B. make the items received from the ministry of education and science of Spain available to scholars, teachers, university students, bilingual coordinators, administrators and others researching or interested in Hispanic language and culture;
- C. organize, coordinate with the state department of public education and sponsor with the ministry of education and science of Spain various workshops, seminars and other educational and training events for bilingual teachers that focus on:
  - (1) Spanish language;
  - (2) bilingual and other language instruction methodologies;
  - (3) Spanish language classroom resources; and
  - (4) specific topics related to Hispanic history, arts and culture;
- D. support, through pilot projects, research related to bilingualism and teaching Spanish as a foreign language;
- E. provide exhibitions and showings of the materials in the Spanish resource center's Spanish language collections; and
- F. promote statewide cultural activities related to the collections and activities of the Spanish resource center.

**History:** Laws 1992, ch. 73, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 21-7-9.2. El centro de la raza created; purpose.

The "el centro de la raza" is created as a service center within the division of student affairs of the university of New Mexico. The center shall provide training, technical assistance, research assistance, student academic support in the form of instruction and tutoring and information dissemination for Hispanic student recruitment and retention. The training, technical assistance, research assistance and information dissemination shall be made available to persons who

participate in el centro de la raza. El centro de la raza shall prepare an annual report for the legislature showing the progress of the center in providing services to Hispanic students.

**History:** Laws 2005, ch. 164, § 1.

**Effective dates.** — Laws 2005, ch. 164 contained no effective date provision; but, pursuant to N.M. Const.,

art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 21-7-10. [Admission of students; rules and regulations.]

The university shall be open to the children of all residents of this state and such others as the board of regents may determine, under such rules and regulations as may be prescribed by said board, whenever the finances of the institution shall warrant it, and it is deemed expedient by said board of regents.

**History:** Laws 1889, ch. 138, § 16a; C.L. 1897, § 3579; Code 1915, § 5126; C.S. 1929, § 130-910; 1941 Comp., § 55-2410; 1953 Comp., § 73-25-10.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For tuition and matriculation fees, see 21-1-2 NMSA 1978.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 2, 7, 8, 17.

Mandamus to compel enrollment of student, 39 A.L.R. 1019.

Failure of student to attain or maintain prescribed scholastic rating, as ground for dropping him, 86 A.L.R. 484.

Standing to challenge college or professional school admissions program which gives preference to minority or disadvantaged applicants, 60 A.L.R. Fed. 612.

## 21-7-11. [Sectarianism prohibited.]

No sectarian tenets or opinions shall be required to entitle any person to be admitted as a student or employed as a tutor, or other instructor in said university, but the same shall forever be strictly nonsectarian in character.

**History:** Laws 1889, ch. 138, § 17; C.L. 1897, § 3580; Code 1915, § 5127; C.S. 1929, § 130-911; 1941 Comp., § 55-2411; 1953 Comp., § 73-25-11.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Sectarianism in schools, 5 A.L.R. 866, 141 A.L.R. 1144, 45 A.L.R. 2d 742.

14A C.J.S. Colleges and Universities § 7; 16A C.J.S. Constitutional Law §§ 518 to 521, 523.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 16 Am. Jur. 2d Constitutional Law §§ 465, 466, 481.

## 21-7-12. [Meetings of board of regents; quorum.]

The meetings of the board may be called in such manner as the board of regents may prescribe, and the majority of said board shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time.

**History:** Laws 1889, ch. 138, § 18; C.L. 1897, § 3581; Code 1915, § 5128; C.S. 1929, § 130-912; 1941 Comp., § 55-2412; 1953 Comp., § 73-25-12.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 21-7-13. [Building and improvement bonds; purposes; authority of board of regents.]

That for the purpose of erecting, altering, improving, furnishing or equipping any necessary buildings at the university of New Mexico at Albuquerque, or for acquiring any necessary land for the use of said university, or for retiring the whole or any part of any series of bonds previously issued under the provisions hereof, or for any of such purposes, the board of regents of the university



of New Mexico is hereby authorized to borrow money in conformity with the terms of this act [21-7-13, 21-7-14, 21-7-16 through 21-7-25 NMSA 1978].

**History:** Laws 1927, ch. 47, § 1; 1929, ch. 30, § 1; C.S. 1929, § 130-913; 1941 Comp., § 55-2413; 1953 Comp., § 73-25-13.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For purchase of university bonds by state treasurer, *see* 21-7-24 NMSA 1978.

#### ANNOTATIONS

**Use of income.** — The legislature has power to authorize the state university to make such use of its income as is deemed best. *Seward v. Bowers*, 1933-NMSC-056, 37 N.M. 385, 24 P.2d 253; *State v. Regents of Univ. of N.M.*, 1927-NMSC-047, 32 N.M. 428, 258 P. 571.

**Nature of bond obligations.** — Bonds issued by the university of New Mexico under 21-7-13 to 21-7-25 NMSA 1978 are not obligations of the state, and no provision

for taxation to provide interest and sinking fund need be made, and the approval by the voters is not necessary. They are the obligations of the university. *State v. Regents of Univ. of N.M.*, 1927-NMSC-047, 32 N.M. 428, 258 P. 571.

**Power to borrow money.** — Regents of the state university may borrow money for certain building purposes and pledge sufficient of their income from permanent funds to repay such sums borrowed and issue bonds therefor, provided that the limitation of the amount of bonds that can be issued, as contained in 21-7-24 NMSA 1978 does not work as a bar. 1933-34 Op. Att'y Gen. No. 33-650.

**State treasurer may purchase bonds of state university** herein authorized. 1931-32 Op. Att'y Gen. No. 32-443.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 35.

14A C.J.S. Colleges and Universities § 17.

### 21-7-14. [Resolution for issuance of building and improvement bonds.]

Whenever the said board, by the affirmative vote of a majority of its members, duly entered in the minutes of said board, shall by resolution determine that it is necessary to erect, alter, improve, furnish or equip any building or buildings at said university, or acquire any land for the use thereof, or to retire the whole or any part of any series of bonds previously issued in conformity with the provisions of this act [21-7-13, 21-7-14, 21-7-16 through 21-7-25 NMSA 1978], or for either of said purposes, said board is hereby empowered and authorized to issue and sell, subject to the terms of this act, building and improvement bonds of the university of New Mexico.

**History:** Laws 1927, ch. 47, § 2; 1929, ch. 30, § 2; C.S. 1929, § 130-914; 1941 Comp., § 55-2414; 1953 Comp., § 73-25-14.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations § 120.

14A C.J.S. Colleges and Universities §§ 4, 10.

### 21-7-15. Form and conditions of bonds.

Bonds issued pursuant to Sections 21-7-13 through 21-7-25 NMSA 1978 shall be in such form and denominations as the board of regents of the university of New Mexico shall determine, due and payable not later than twenty years from date of issue. The bonds shall be payable in consecutive order commencing not later than two years from date of issue.

**History:** 1978 Comp., § 21-7-15, enacted by Laws 1983, ch. 265, § 39.

**Repeals and reenactments.** — Laws 1983, ch. 265, § 39 repealed former 21-7-15 NMSA 1978 and enacted a new section.

Power and discretion of officer or board authorized to issue bonds of governmental units as regards terms or conditions to be included therein, 119 A.L.R. 190.

47 C.J.S. Interest and Usury; Consumer Credit § 18.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations §§ 195, 196, 202, 205, 399 to 453.

### 21-7-16. [Sale of building and improvement bonds; notice, publication and contents; conduct; delivery of bonds; purchase by state treasurer; acceptance by public officials.]

The board shall offer said bonds for sale, after publication of notice of the time and place of sale, in some newspaper of general circulation in Albuquerque, New Mexico, and also in some financial

newspaper published in the city of New York, once each week for four successive weeks prior to the date fixed for said sale. Such notice shall specify the amount, denomination, maturity dates and the description of the bonds to be offered for sale, and the place, day and hour at which sealed bids therefor will be received and opened, and that only unconditional bids will be considered, and that each bid must be accompanied by a certified check drawn on a solvent bank or trust company, payable to the order of the secretary and treasurer of said board, for not less than five per centum of the par value of the bonds offered for sale, as a guaranty that the bonds will be taken by the bidder if his bid is accepted and the bidder does not take and pay for the bonds in accordance therewith. At the place and time specified in such notice, the board or the executive committee thereof shall publicly open the bids and award the bonds to the responsible bidder or bidders offering the highest price therefor, but no bid shall be accepted for less than the par value of said bonds, plus the accrued interest from the last preceding interest date to the date of delivery of said bonds. Before delivery of the bonds to the purchaser, the secretary and treasurer of the board shall detach and cancel all matured interest coupons. Said board or the executive committee thereof, shall have and reserve the right to reject any and all bids at such sale, and readvertise the same. The state treasurer may, with the approval of the state board of finance and the other officials whose approval may be required by law for the investment of public funds, purchase such bonds at par and accrued interest to date of delivery for such investment, without the necessity of them being advertised or publicly offered for sale by the board, or after rejection of bids for all or any part of any issue. Such bonds shall be accepted at their par value by all public officials in this state as security for the repayment of all deposits of public monies of this state, or of any county, municipality or public institution thereof, and as security for the faithful performance of any obligation or duty to guarantee the performance of which such officials are now authorized by law to accept a deposit of the bonds of this state or of the United States of America.

**History:** Laws 1927, ch. 47, § 4; 1929, ch. 30, § 3; C.S. 1929, § 130-916; 1941 Comp., § 55-2416; 1953 Comp., § 73-25-16.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations §§ 120, 228, 229, 240, 452, 453, 488.

Sale of municipal or other public bonds at less than par or face value, 91 A.L.R. 7, 162 A.L.R. 396.

### 21-7-17. [Disposition of proceeds of building and improvement bond sales.]

The proceeds from the sale of said bonds shall be paid to the secretary and treasurer of said board, and shall be by him placed in a separate fund to be known as "permanent improvement fund" to be used and paid out only for the specified purposes in this act [21-7-13, 21-7-14, 21-7-16 through 21-7-25 NMSA 1978] enumerated upon order of the board, on checks signed by the president or vice president of said board and by the secretary and treasurer thereof, except such portion thereof as may have been received on account of accrued interest on said bonds to date of delivery, which amount shall be placed in the "interest and retirement fund" for the liquidation of said bonds as hereinafter provided. The cost of preparing, advertising and selling said bonds, including any necessary expense for legal opinions thereon, shall be paid out of the proceeds of the sale of said bonds.

**History:** Laws 1927, ch. 47, § 5; C.S. 1929, § 130-917; 1941 Comp., § 55-2417; 1953 Comp., § 73-25-17.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 33.  
14A C.J.S. Colleges and Universities § 14.

### 21-7-18. [Interest and retirement fund for building and improvement bonds; establishment; replenishment.]

The board of regents shall, at the time of issuing said bonds, establish for the payment of the principal and interest thereof a fund to be known as "interest and retirement fund" into which



fund said board shall immediately place a sum not less than the amount necessary to pay the interest and maturing principal of said bonds for the ensuing twelve months, and annually thereafter shall continue to place in said fund a sufficient amount to pay principal and interest maturing in the succeeding twelve months.

**History:** Laws 1927, ch. 47, § 6; C.S. 1929, § 130-918; 1941 Comp., § 55-2418; 1953 Comp., § 73-25-18.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations § 266.

### 21-7-19. [Income pledged for redemption of building and improvement bonds.]

For the faithful and prompt payment of all interest and principal of said bonds as and when the same shall mature according to the tenor thereof, the issue thereof shall constitute an irrevocable pledge by said board of so much of each year's income from the permanent fund of the university of New Mexico in the hands of the treasurer of this state, as shall be necessary to provide the "interest and retirement fund" herein mentioned, for the ensuing year, and to at all times fully and faithfully keep the same in not less than the amount necessary to pay the interest and principal maturing as aforesaid; and in addition thereto the issue of said bonds shall constitute an irrevocable pledge by said board of so much of each year's income from the income and current fund derived from the lease of such of its lands as remain unsold, as may be necessary to fully protect the "interest and retirement fund" for the ensuing year, and keep the same at all times in proper amount as herein provided.

**History:** Laws 1927, ch. 47, § 7; C.S. 1929, § 130-919; 1941 Comp., § 55-2419; 1953 Comp., § 73-25-19.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Securities and Obligations § 199.

### 21-7-20. [Income from investment of permanent fund derived from trust land sales pledged to repay building and improvement bonds.]

That from and after the passage and approval of this act [21-7-13, 21-7-14, 21-7-16 through 21-7-25 NMSA 1978], all permanent funds thereafter derived from the sale or disposition of the lands held in trust for said university, shall be invested in bonds of the United States or of the state of New Mexico, the income from which shall likewise form a part of the pledged income for the payment of the principal and interest of said bonds issued by said board.

**History:** Laws 1927, ch. 47, § 8; C.S. 1929, § 130-920; 1941 Comp., § 55-2420; 1953 Comp., § 73-25-20.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 15A Am. Jur. 2d Colleges and Universities § 35. 14A C.J.S. Colleges and Universities § 14.

### 21-7-21. [Payment of principal and interest on building and improvement bonds.]

It shall be the duty of the secretary and treasurer of said board of regents to forward to the bank at which said bonds are payable, prior to the date on which any coupons or any principal amount of any of said bonds shall mature, out of the "interest and retirement fund" a sufficient sum of money to meet said coupons and maturing bonds as the same become due, plus any service charge which said bank shall be entitled to receive for its services.

**History:** Laws 1927, ch. 47, § 9; C.S. 1929, § 130-921; 1941 Comp., § 55-2421; 1953 Comp., § 73-25-21.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations §§ 197, 198.  
11 C.J.S. Bonds § 59 et seq.

## **21-7-22. [Restrictions on use of building and improvement bond proceeds.]**

None of the funds derived from the sale of said bonds, except so much thereof as shall be necessary to defray the cost of the issuance thereof and the accrued interest from the date thereof to the time of delivery, shall ever be used or expended by said board for any other purposes than those for which authority is herein given to issue the same, as set forth in Section 1 [21-7-13 NMSA 1978] hereof.

**History:** Laws 1927, ch. 47, § 10; C.S. 1929, § 130-922; 1941 Comp., § 55-2422; 1953 Comp., § 73-25-22.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## **21-7-23. [Payments by state treasurer relating to building and improvement bonds.]**

It is hereby made the duty of the treasurer of this state, upon receiving written notice from the secretary and treasurer of said board that it has issued bonds as provided for herein, to forthwith forward and pay over to the secretary and treasurer of said board out of the income from the permanent funds of said university, a sum sufficient to make and establish the income [interest] and retirement fund, as herein provided, and annually thereafter to pay over a sufficient amount for said purpose, to the end that said interest and retirement fund shall at all times be kept in the proper amount. In the event there should not be sufficient undistributed income from permanent funds of said university, then said state treasurer shall use so much of the income and current fund of said university in his hands as shall be necessary to establish and at all times maintain said interest and retirement fund.

**History:** Laws 1927, ch. 47, § 11; C.S. 1929, § 130-923; 1941 Comp., § 55-2423; 1953 Comp., § 73-25-23.

**Bracketed material.** — The bracketed material was inserted by the compiler to correspond with 21-7-17 to 21-7-19 and 21-7-21 NMSA 1978, and is not part of the law.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 35.  
14A C.J.S. Colleges and Universities § 14.

## **21-7-24. [Issuance of building and improvement bonds in series; restrictions.]**

In the event the board of regents aforesaid should find it advisable to issue bonds under this act [21-7-13, 21-7-14, 21-7-16 through 21-7-25 NMSA 1978] in more than one series, or at different times, for any of the purposes aforesaid, then each series of said bonds shall be designated by the letter "A," "B" or in some other designation to the end that each series shall be kept separate, and all of the requirements of this act shall apply to and be faithfully followed, done and carried out as to each of said series; provided, however, that said board of regents shall not have power to issue bonds hereunder, the aggregate annual requirements for which to meet interest and principal, shall exceed the amount of the income from the permanent funds of said university received by the state treasurer for the fiscal year next preceding the date of the issuance of said bonds or any series thereof.

**History:** Laws 1927, ch. 47, § 12; 1929, ch. 30, § 4; C.S. 1929, § 130-924; 1941 Comp., § 55-2424; 1953 Comp., § 73-25-24.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 35.  
14A C.J.S. Colleges and Universities § 14.



## 21-7-25. [Tax exemption of building and improvement bonds.]

Bonds issued under the provisions of this act [21-7-13, 21-7-14, 21-7-16 through 21-7-25 NMSA 1978], being for the sole purposes specified in Section 1 [21-7-13 NMSA 1978] hereof, shall forever be and remain free and exempt from taxation by this state or any subdivision thereof.

**History:** Laws 1927, ch. 47, § 13; C.S. 1929, § 130-925; 1941 Comp., § 55-2425; 1953 Comp., § 73-25-25.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Constitutional enumeration of subjects of tax exemption as affecting power of legislature to free government securities or property from taxation, 9 A.L.R. 436. 84 C.J.S. Taxation § 260.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 495, 526.

## 21-7-26. Temporary provision; medical residency programs; state cooperation.

A. The legislature finds that the expansion of hospital physician residency programs may extend and expand limited health delivery resources into rural and other medically underserved areas of the state.

B. The department of health and the university of New Mexico school of medicine shall assist hospitals in the state to develop and expand physician residencies in family practice, internal medicine, obstetrics, gynecology and pediatrics in rural or other medically underserved areas. The department and the school of medicine shall provide information and technical assistance to enhance hospital physician residency programs in rural or other medically underserved areas.

**History:** Laws 1994, ch. 57, § 17.

## 21-7-27. Temporary provision; university of New Mexico; physician assistant training program.

The board of regents of the university of New Mexico shall establish a primary care physician assistant training program designed to meet the needs of the state.

**History:** Laws 1994, ch. 57, § 18.

## 21-7-28. Creation of the Taos branch community college of the university of New Mexico.

On July 1, 2003, the "Taos branch community college" of the university of New Mexico is created.

**History:** Laws 2002, ch. 73, § 1.

**Effective dates.** — Laws 2002, ch. 73 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 15, 2002, 90 days after adjournment of the legislature.

## 21-7-29. Rio Rancho campus for the university of New Mexico and other institutions.

The board of regents of the university of New Mexico may create a campus of the university in Rio Rancho, which it may operate separately or jointly with any other post-secondary educational institution.

**History:** Laws 2009, ch. 40, § 1.

**Effective dates.** — Laws 2009, ch. 40 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## 21-7-30. State digital geospatial data clearinghouse designated; powers and duties.

A. The resource geographic information system within the earth data analysis center of the university of New Mexico is designated as the "state digital geospatial data clearinghouse" to serve as a publicly accessible repository for digital geospatial data. For the purposes of this section, "digital geospatial data" means electronic information that includes the geographic or spatial location and characteristics of features and boundaries on, above or below the earth's surface.

B. The state digital geospatial data clearinghouse shall:

(1) coordinate, acquire, manage, inventory, maintain, secure and deliver geospatial data to state agencies, local governments, tribal governments, universities, federal agencies or private sector entities;

(2) ensure compliance with the Public Records Act [Chapter 14, Article 3 NMSA 1978] for geospatial data that originate with a state agency or local government;

(3) provide online access to other geospatial data repositories, distributed data resources and mapping services developed or maintained and for use by state agencies, local governments, tribal governments, universities, federal agencies or private sector entities;

(4) support the data needs for pilot and prototype geospatial mapping projects in conjunction with state agencies, local governments, tribal governments, universities, federal agencies or private sector entities;

(5) participate in the updates to and implementation of the state geospatial information technology strategic plan;

(6) provide access to reference maps, images and data for geospatial information system projects for and among state agencies, local governments, tribal governments, universities, federal agencies or private sector entities;

(7) collaborate with state agencies, local governments, tribal governments, universities, federal agencies or private sector entities to facilitate the coordination of geospatial data acquisition;

(8) serve as the reference repository for geospatial data in the state; provided, however, that the originating agency or entity retains custody and responsibility of the data generated by the agency or entity;

(9) implement systems that are compliant with web-based standards and best-practice technologies;

(10) participate in the identification, development and implementation of state geospatial standards and facilitate adherence to those standards; and

(11) submit an annual report to the information technology commission, the legislative finance committee and an appropriate interim legislative committee that includes:

(a) an inventory of publicly accessible geospatial information available from the clearinghouse;

(b) descriptions of how geospatial information is managed and accessed; and

(c) a summary of clearinghouse enhancements, collaborations and data acquisitions toward maintaining best-available geospatial information.

C. The state digital geospatial data clearinghouse may:

(1) enter into contracts and agreements with state agencies, local governments, tribal governments, universities, federal agencies or private sector entities to share or provide geospatial data;

(2) coordinate geospatial data-acquisition projects with state agencies, local governments, tribal governments, universities, federal agencies or private sector entities; and

(3) leverage funds and data from state agencies, local governments, tribal governments, universities, federal agencies or private sector entities to carry out the purposes of the clearinghouse.

**History:** Laws 2013, ch. 18, § 1.

**Effective dates.** — Laws 2013, ch. 18 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.



## 21-7-31. Stephen Easley center for telehealth.

The center for telehealth at the university of New Mexico shall be named the "Stephen Easley telehealth videoconferencing center", after Representative Stephen Easley, who died in office on August 14, 2013.

**History:** Laws 2015, ch. 158, § 1. **Effective dates.** — Laws 2015, ch. 158 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.

## 21-7-32. Off-campus instructional center for university of New Mexico in Valencia county.

Pursuant to Section 21-1-26.9 NMSA 1978, the board of regents of the university of New Mexico is authorized to create an off-campus instructional center in Valencia county.

**History:** Laws 2019, ch. 178, § 1. **Effective dates.** — Laws 2019, ch. 178 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

# ARTICLE 8

## New Mexico State University

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| <p>Sec. 21-8-1. Objects; admission; rules and regulations.</p> <p>21-8-2. Construction of other names for college used in statutes.</p> <p>21-8-3. Curriculum; management vested in board of regents; number and qualifications; corporate style and powers; quorum.</p> <p>21-8-4. Officers.</p> <p>21-8-5. Powers and duties of board of regents.</p> <p>21-8-6. Rules; calling meetings of board of regents.</p> <p>21-8-7. Course of instruction; books; diplomas and degrees; removal of officers.</p> <p>21-8-8. Agricultural and horticultural laws; administration and enforcement vested in board of regents; inspectors and agents.</p> <p>21-8-9. Agricultural experiment station; direction; federal benefits.</p> <p>21-8-10. Contracts for acceptance and administration of funds.</p> <p>21-8-11. Acceptance of congressional grant of 1887 for experiment station.</p> <p>21-8-12. Acceptance of Adams Act grant for experiment station.</p> <p>21-8-13. Acceptance of Purnell Act grant for experiment station.</p> <p>21-8-14. Acceptance of congressional grant of 1890 for New Mexico state university.</p> <p>21-8-15. Authorized to borrow money.</p> <p>21-8-16. Board may issue building and improvement bonds.</p> <p>21-8-17. Form and conditions of bonds.</p> <p>21-8-18. Sale of building and improvement bonds; notice, publication and contents; bids; purchase by state treasurer; acceptance by public officials.</p> <p>21-8-19. Disposition of building and improvement bond proceeds; permanent improvement fund; interest and retirement fund; costs of sale.</p> <p>21-8-20. Establishment and replenishment of interest and retirement fund for building and improvement bonds.</p> | <p>Sec. 21-8-21. Income pledged to pay building and improvement bonds.</p> <p>21-8-22. Payment of interest and principal of building and improvement bonds.</p> <p>21-8-23. Use of proceeds of building and improvement bonds restricted.</p> <p>21-8-24. State treasurer's payments relating to building and improvement bonds.</p> <p>21-8-25. Issuance of building and improvement bonds in series; restrictions.</p> <p>21-8-26. Bonds exempt from taxation.</p> <p>21-8-27. Board constituted custodian for grave of Eugene Manlove Rhodes.</p> <p>21-8-28. Building materials research and testing institute established.</p> <p>21-8-29. Function of testing institute.</p> <p>21-8-30. Equipment.</p> <p>21-8-31. Director.</p> <p>21-8-32. Institute not conducted for gain.</p> <p>21-8-33. Use of services.</p> <p>21-8-34. Fees for services.</p> <p>21-8-35. Center for broadcasting and international communications established.</p> <p>21-8-36. Activities of center.</p> <p>21-8-37. Findings.</p> <p>21-8-38. International business facilitation center established; duties.</p> <p>21-8-39. Waste management education and research consortium created; purpose.</p> <p>21-8-40. Water resources research institute created; purpose.</p> <p>21-8-41. College assistance migrant program.</p> <p>21-8-42. Regional educational technology assistance center created.</p> <p>21-8-43. Alliance for underrepresented students created; purpose.</p> <p>21-8-44. Public-private partnership for university campus in San Luis Potosi, Mexico.</p> |
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## 21-8-1. [Objects; admission; rules and regulations.]

The New Mexico college of agriculture and mechanic arts [New Mexico state university] shall be an institution of learning open to the children of all the residents of this state, and such other persons as the board of regents may determine, under such terms, rules and regulations as may be prescribed by said board of regents; shall be nonsectarian in character and devoted to practical instruction in agriculture, mechanic arts, natural sciences connected therewith, as well as a thorough course of instruction in all branches of learning bearing upon agriculture, and other industrial pursuits.

**History:** Laws 1889, ch. 138, § 19; C.L. 1897, § 3552; Code 1915, § 5129; C.S. 1929, § 130-1001; 1941 Comp., § 55-2501; 1953 Comp., § 73-26-1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893, ch. 61, § 24, changed the name of the agricultural college and agricultural (experiment) station of New Mexico to the New Mexico college of agriculture and mechanic arts. Article XII, Section 11, of the constitution of New Mexico, as repealed and reenacted November 8, 1960, further changed the name to the New Mexico state university. See also 21-8-2 NMSA 1978.

**Cross references.** — For designation as state educational institution, see N.M. Const., art. XII, § 11.

For acceptance of land grants, see N.M. Const., art. XII, § 12.

For management by board of regents, see N.M. Const., art. XII, § 13.

### ANNOTATIONS

**Employee must comply with internal grievance procedures.** — An employee must substantially comply with mandatory internal grievance procedures contained in an employee manual or handbook before filing suit for breach of contract claims based on an alleged failure of an employer to follow its employment policies. *Lucero v. UNM Board of Regents*, 2012-NMCA-055, 278 P.3d 1043, cert. denied, 2012-NMCERT-004.

Where a university manager was terminated by the university, the manager did not follow the grievance process

contained in the university's employee handbook by filing a grievance; the handbook governed the manager's employment with the university; and the manager filed an action in district court for breach of contract and wrongful termination alleging that the employee handbook created a contract and that the university breached the contract by failing to abide by the handbook's policies and procedures governing workplace performance, disciplinary action, a harassment-free workplace, employer-employee relations, progressive discipline and by disciplining the manager without just cause, the manager's claims were barred because the manager failed to exhaust the handbook's internal grievance procedures before filing the breach of contract action based on an alleged failure of the university to follow policies in the handbook. *Lucero v. UNM Board of Regents*, 2012-NMCA-055, 278 P.3d 1043, cert. denied, 2012-NMCERT-004.

**Powers of board of regents.** — The board of regents has the power to enact laws, rules and regulations for the government of the college, and may make reasonable rules and regulations for the government and discipline of the students under this section. 1939-40 Op. Att'y Gen. 134.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 24; 15A Am. Jur. 2d Colleges and Universities § 17; 16 Am. Jur. 2d Constitutional Law §§ 465, 466, 481.

Sectarianism in schools, 5 A.L.R. 866, 141 A.L.R. 1144, 45 A.L.R.2d 742.

Validity and application of provisions governing determination of residency for purpose of fixing fee differential for out-of-state students in public college, 56 A.L.R.3d 641.

14A C.J.S. Colleges and Universities §§ 4, 7; 16A C.J.S. Constitutional Law §§ 518 to 521, 523.

## 21-8-2. [Construction of other names for college used in statutes.]

Wherever in the statutes of the state of New Mexico, the term "agricultural college of New Mexico," or "agricultural and mechanical college," or "college of agriculture and mechanic arts," or "agricultural college," or "state college," or "New Mexico agricultural college," or any other similar designation, where the context shows the meaning to be "New Mexico college of agriculture and mechanic arts," the same shall be construed and held to mean "New Mexico college of agriculture and mechanic arts [New Mexico state university]."

**History:** Laws 1939, ch. 28, § 2; 1941 Comp., § 55-2502; 1953 Comp., § 73-26-2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893, ch. 61, § 24, changed the name of the agricultural college and agricultural (experiment) station of New Mexico to

the New Mexico college of agriculture and mechanic arts. Article XII, Section 11, of the constitution of New Mexico, as repealed and reenacted November 8, 1960, further changed the name to the New Mexico state university. See also 21-8-2 NMSA 1978.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 14A C.J.S. Colleges and Universities § 9.



### 21-8-3. [Curriculum; management vested in board of regents; number and qualifications; corporate style and powers; quorum.]

The course of instruction of the college [New Mexico state university] hereby created shall embrace the English language, literature, mathematics, philosophy, civil engineering, chemistry and animal and vegetable anatomy and physiology, the veterinary art, entomology, geology, and political, rural and household economy, horticulture, moral philosophy, history, mechanics and such other sciences and courses of instruction as shall be prescribed by the regents of this institution of learning. The management of said college [university] and experiment station, the care and preservation of all property, of which such institution shall become possessed, the erection and construction of all buildings necessary for the use of said college [university] and station, and the disbursement and expenditure of all moneys provided for by this act, shall be vested in a board of five regents. Said five regents shall possess the same qualifications, as required for the regents of the university of New Mexico. Said regents and their successors in office shall constitute a body corporate, with the name and style of the the [sic] regents of the New Mexico college of agriculture and mechanic arts [New Mexico state university], with the right as such of suing and being sued, of contracting and being contracted with, of making and using a common seal, and altering the same at pleasure, of causing all things to be done necessary to carry out the provisions of law. A majority of the board shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time.

**History:** Laws 1889, ch. 138, § 20; C.L. 1897, § 3553; Code 1915, § 5130; C.S. 1929, § 130-1002; Laws 1939, ch. 28, § 1; 1941 Comp., § 55-2503; 1953 Comp., § 73-26-3.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893, ch. 61, § 24, changed the name of the agricultural college and agricultural (experiment) station of New Mexico to the New Mexico college of agriculture and mechanic arts. Article XII, Section 11, of the constitution of New Mexico, as repealed and reenacted November 8, 1960, further changed the name to the New Mexico state university. See also 21-8-2 NMSA 1978.

**Compiler's notes.** — "This act" refers to Laws 1889, ch. 138. For the compilation of operative sections, consult the tables of corresponding code sections.

**Cross references.** — For board of regents, number, appointment, qualifications and duties, see N.M. Const., art. XII, § 13.

#### ANNOTATIONS

**Term of treasurer of board.** — The treasurer of the board would still continue as such until the election and qualifications of his successor. *Bowman Bank & Trust Co. v. First Nat'l Bank*, 1914-NMSC-014, 18 N.M. 589, 139 P. 148.

**Scope of powers.** — The legislature has expressly recognized the authority of institutions of higher learning to receive benefits and donations from the United States and from private individuals and corporations; to buy, sell, lease or mortgage real estate; and to do all things, which in the opinions of the respective boards of regents, will be for the best interests of the institutions in the accomplishment of their purposes or objects and, therefore, the legislature lacks authority to appropriate these funds or to control the use thereof through the power of appropriation. *State ex rel. Sego v. Kirkpatrick*, 1974-NMSC-059, 86 N.M. 359, 524 P.2d 975.

**Exemption from zoning ordinances.** — Zoning ordinances and regulations of the city of Las Cruces are ineffective on property belonging to the university of New Mexico, even if the university is annexed to the city, and they cannot prohibit or interfere with the uses of university property as desired by the board of regents. 1969 Op. Att'y Gen. No. 69-143.

**University officials may preclude the sale of ice cream** by private individuals from a mobile ice cream truck on university streets, providing the reasons for the regulation directly concern the health, safety, education and welfare of the students and are not so unreasonable and arbitrary as to offend "due process" of law under the Fourteenth Amendment. 1961-62 Op. Att'y Gen. No. 62-38.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 3, 32 to 35.

14A C.J.S. Colleges and Universities §§ 2, 10, 11, 17.

### 21-8-4. [Officers.]

The officers of the college of agriculture and mechanic arts [New Mexico state university] shall be the same, be elected in the same manner, at the same time, perform like duties, and possess the same qualifications, as is provided for the officers of the university of New Mexico.

**History:** Laws 1889, ch. 138, §§ 21, 65; 1891, ch. 42, § 1; C.L. 1897, §§ 3554, 3642; Code 1915, § 5131; C.S. 1929, § 130-1003; Laws 1941, ch. 82, § 1; 1941 Comp., § 55-2504; 1953 Comp., § 73-26-4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893,



ch. 61, § 24, changed the name of the agricultural college and agricultural (experiment) station of New Mexico to the New Mexico college of agriculture and mechanic arts. Article XII, Section 11, of the constitution of New Mexico, as repealed and reenacted November 8, 1960, further changed the name to the New Mexico state university. See also 21-8-2 NMSA 1978.

**Cross references.** — For officers of New Mexico state university, see 21-7-5 and 21-7-6 NMSA 1978.

For approval by president of New Mexico state university for expenditures from county farm and range improvement fund, see 6-11-6 NMSA 1978.

#### ANNOTATIONS

**Bond of secretary-treasurer required.** — Secretary-treasurer of the board of regents of the New Mexico college of agriculture and mechanic arts (now New Mexico state university) is required to execute a bond to the state of New Mexico in not less than the penal sum of \$20,000 before entering upon the discharge of his duties. *State v. Llewellyn*, 1917-NMSC-031, 23 N.M. 43, 167 P. 414, cert. denied, 245 U.S. 666, 38 S. Ct. 63, 62 L. Ed. 538 (1917).

**Regulation of student conduct.** — The power to control, manage and govern the New Mexico state university is vested in the regents, the proper exercise of which necessarily includes the exercise of broad discretion. An inherent part of the power is that of requiring students to adhere to generally accepted standards of conduct. *Futrell v. Ahrens*, 1975-NMSC-044, 88 N.M. 284, 540 P.2d 214.

**Of visitation in university bedrooms.** — A regulation of the board of regents of the New Mexico state university which limits visitation by persons of the opposite sex in residence halls or dormitory bedrooms maintained by the regents on the university campus, does not interfere appreciably, if at all, with the intercommunication important to the students of the university. The regulation is reasonable, serves legitimate educational purposes and promotes the welfare of the students at the university. *Futrell v. Ahrens*, 1975-NMSC-044, 88 N.M. 284, 540 P.2d 214.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 5, 11, 16.

14A C.J.S. Colleges and Universities §§ 15 to 17.

### 21-8-5. [Powers and duties of board of regents.]

The board of regents shall direct the disposition of any moneys belonging to or appropriated to the agricultural college [New Mexico state university] and experiment station and shall make all rules and regulations necessary for the government and management of the same, adopt plans and specifications for necessary buildings and superintend the construction of said buildings, and fix the salaries of professors, teachers and other employes [employees], and the tuition fees to be charged in said college [university].

**History:** Laws 1889, ch. 138, § 23; C.L. 1897, § 3556; Code 1915, § 5132; C.S. 1929, § 130-1004; 1941 Comp., § 55-2505; 1953 Comp., § 73-26-5.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893, ch. 61, § 24, changed the name of the agricultural college and agricultural (experiment) station of New Mexico to the New Mexico college of agriculture and mechanic arts. Article XII, Section 11, of the constitution of New Mexico, as repealed and reenacted November 8, 1960, further changed the name to the New Mexico state university. See also 21-8-2 NMSA 1978.

**Cross references.** — For penalty for interest in contracts for supplies, see 21-1-35 NMSA 1978.

For administration of agricultural laws, see 21-8-8 NMSA 1978.

#### ANNOTATIONS

**Funds may be transferred.** — Treasurer of board of agricultural college (now New Mexico state university) has the power to transfer a certificate of deposit from one depository to another. *State v. Llewellyn*, 1917-NMSC-031, 23 N.M. 43, 167 P. 414, cert. denied, 245 U.S. 666, 38 S. Ct. 63, 62 L. Ed. 538 (1917); *Bowman Bank & Trust Co. v. First Nat'l Bank*, 1914-NMSC-014, 18 N.M. 589, 139 P. 148.

**To any bank.** — Treasurer of board can deposit funds of agricultural college (now New Mexico state university) in any bank he sees fit. *Bowman Bank & Trust Co. v. First Nat'l Bank*, 1914-NMSC-014, 18 N.M. 589, 139 P. 148.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 35.

14A C.J.S. Colleges and Universities §§ 17.

### 21-8-6. [Rules; calling meetings of board of regents.]

The board of regents shall have power and it shall be their duty to enact laws for the government of said college [New Mexico state university] and experiment station and the meetings of said board may be called in such manner as the regents may prescribe.

**History:** Laws 1889, ch. 138, § 26; C.L. 1897, § 3559; Code 1915, § 5137; C.S. 1929, § 130-1011; 1941 Comp., § 55-2506; 1953 Comp., § 73-26-6.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893,

ch. 61, § 24, changed the name of the agricultural college and agricultural (experiment) station of New Mexico to the New Mexico college of agriculture and mechanic arts. Article XII, Section 11, of the constitution of New Mexico, as repealed and reenacted November 8, 1960, further changed the name to the New Mexico state university. See also 21-8-2 NMSA 1978.



### ANNOTATIONS

**Regulation of student conduct.** — The power to control, manage and govern the New Mexico state university is vested in the regents, the proper exercise of which necessarily includes the exercise of broad discretion. An inherent part of the power is that of requiring students to adhere to generally accepted standards of conduct, and the prohibition embodied in the regulation in question forbidding visitation by persons of the opposite sex in residence hall or dormitory bedrooms is consistent with generally accepted standards of conduct. *Futrell v. Ahrens*, 1975-NMSC-044, 88 N.M. 284, 540 P.2d 214.

**Of visitation in university bedrooms.** — A regulation of the board of regents of the New Mexico state university which limits visitation by persons of the opposite sex in residence hall or dormitory bedrooms maintained by the

regents on the university campus, does not interfere appreciably, if at all, with the intercommunication important to the students of the university. The regulation is reasonable, serves legitimate educational purposes and promotes the welfare of the students at the university. *Futrell v. Ahrens*, 1975-NMSC-044, 88 N.M. 284, 540 P.2d 214.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 25.

Mandamus to compel enrollment or reinstatement of student, 39 A.L.R. 1019.

Failure of student to attain or maintain prescribed scholastic rating as ground for dropping him, 86 A.L.R. 484.

Validity of regulation as to clothes of pupils, 14 A.L.R.3d 1201.

14A C.J.S. Colleges and Universities § 18.

## 21-8-7. [Course of instruction; books; diplomas and degrees; removal of officers.]

The immediate government of the several departments shall be intrusted to their respective faculties, but the regents shall have the power to regulate the course of instruction and prescribe, under the advice of the faculty, the books and authorities to be used in the several departments, and also to confer such degrees and grant such diplomas as are usually conferred and granted by other agricultural colleges. The regents shall have power to remove any officer connected with the agricultural college [New Mexico state university] or experiment station when, in their judgment, the best interests of the college [university] require it.

**History:** Laws 1889, ch. 138, § 27; C.L. 1897, § 3560; Code 1915, § 5138; C.S. 1929, § 130-1012; 1941 Comp., § 55-2507; 1953 Comp., § 73-26-7.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893, ch. 61, § 24, changed the name of the agricultural college and agricultural (experiment) station of New Mexico to the New Mexico college of agriculture and mechanic arts. Article XII, Section 11, of the constitution of New Mexico, as repealed and reenacted November 8, 1960, further changed the name to the New Mexico state university. See also 21-8-2 NMSA 1978.

**Cross references.** — For tuition and matriculation fees, see 21-1-2 NMSA 1978.

For removal of faculty member for cause after trial, see 21-1-7 NMSA 1978.

degrees. Implicit in that power must be the authority to revoke degrees. *Hand v. Matchett*, 957 F.2d 791 (10th Cir. 1992).

To the extent a power to revoke degrees is recognized, it is vested exclusively in the Regents. None of the statutes governing the university expressly allow the Regents to delegate this or any other power. *Hand v. Matchett*, 957 F.2d 791 (10th Cir. 1992).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 1, 5, 11 to 13, 31, 41.

Dismissal or rejection of public school teacher because of disloyalty, 27 A.L.R.2d 487.

Elements and measure of damages in action by school teacher for wrongful discharge, 22 A.L.R.3d 1047.

Student's right to compel school officials to issue degree, diploma, or the like, 11 A.L.R.4th 1182.

14A C.J.S. Colleges and Universities §§ 17, 19, 25, 29.

### ANNOTATIONS

**Power to revoke degrees.** — The plain language of this section gives the Regents exclusive power to confer

## 21-8-8. [Agricultural and horticultural laws; administration and enforcement vested in board of regents; inspectors and agents.]

That the board of regents of the college of agriculture and mechanic arts [New Mexico state university] is hereby given supervision of the administration and enforcement of all laws of this state, relating to agriculture, agricultural projects, horticulture, feeds and feed stuffs, insect pests, plant diseases and such subjects pertaining to agriculture and horticulture as the legislature shall hereafter provide, and shall have power to delegate inspectors and agents to assist in the enforcement of such laws.



**History:** Laws 1919, ch. 77, § 1; C.S. 1929, § 130-1005; 1941 Comp., § 55-2508; 1953 Comp., § 73-26-8.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893, ch. 61, § 24, changed the name of the agricultural college and agricultural (experiment) station of New Mexico to the New Mexico college of agriculture and mechanic arts. Article XII, Section 11, of the constitution of New Mexico, as repealed and reenacted November 8, 1960, further changed the name to the New Mexico state university. *See also* 21-8-2 NMSA 1978.

**Cross references.** — For establishment of state chemical laboratory at New Mexico state university, *see* 21-9-1 NMSA 1978.

For department of agriculture under control of regents, *see* 76-1-2 NMSA 1978.

For agricultural extension service, *see* 76-2-1 through 76-2-12 NMSA 1978.

For enforcement of Plant Protection Act, *see* 76-5-11 through 76-5-28 NMSA 1978 et seq.

For duties under Bee Act, *see* 76-9-1 through 76-9-13 NMSA 1978.

For seeds, *see* 76-10-1 through 76-10-10 NMSA 1978.

For New Mexico Seed Law, *see* 76-10-11 through 76-10-22 NMSA 1978.

For enforcement of New Mexico Fertilizer Act, *see* Chapter 76, Article 11 NMSA 1978.

For enforcement of Produce Marketing Act, *see* 76-15-10 through 76-15-21 NMSA 1978.

For regulations concerning pecans, *see* 76-16-1 through 76-16-9 NMSA 1978.

For enforcement of act regulating commercial feeding stuffs, *see* 76-19-1 through 76-19-14 NMSA 1978.

For predatory wild animals and rodent pests, *see* 77-15-1 through 77-15-5 NMSA 1978.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 42 to 57.

Disease or infection, validity of statutes, ordinances, or regulations for protection of vegetation against, 70 A.L.R.2d 852.

3 C.J.S. Agriculture §§ 5 to 7, 19.

## 21-8-9. [Agricultural experiment station; direction; federal benefits.]

The agricultural experiment station in connection with said college [New Mexico state university] shall be under the direction of the said board of regents of said college [university] for the purpose of conducting experiments in agriculture according to the terms of Section 1 of an act of congress approved March 2, 1887, and entitled, an act to establish agricultural experiment stations in connection with the colleges established in the several states under the provisions of an act approved July 2, 1862, and of the acts supplementary thereto. The said college [university] and experiment station shall be entitled to receive all the benefits and donations made and given to similar institutions of learning in other states and territories of the United States by the legislation of the congress of the United States and particularly to the benefit and donations given by the provisions of an act of congress of the United States entitled, an act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and mechanic arts, approved July 2, 1862, and of all acts supplementary thereto, including the act entitled, an act to establish agricultural experiment stations in connection with colleges established in the several states under the provisions of an act approved July 2, 1862, and of the acts supplementary thereto, which said last mentioned act was approved March 2, 1887.

**History:** Laws 1889, ch. 138, § 24; C.L. 1897, § 3557; Code 1915, § 5133; C.S. 1929, § 130-1006; 1941 Comp., § 55-2509; 1953 Comp., § 73-26-9.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893, ch. 61, § 24, changed the name of the agricultural college and agricultural (experiment) station of New Mexico to the New Mexico college of agriculture and mechanic arts. Article XII, Section 11, of the constitution of New Mexico, as repealed and reenacted November 8, 1960, further changed the name to the New Mexico state university. *See also* 21-8-2 NMSA 1978.

**Compiler's notes.** — The act of congress approved March 2, 1887, as amended by the act of August 11, 1955, referred to in this section, is compiled in the United States Code as 7 U.S.C. §§ 361a to 361i. Section 1 is compiled as 7 U.S.C. § 361a.

The act of congress approved July 2, 1862, referred to in this section, is compiled in the United States Code as 7 U.S.C. §§ 301 to 305, 307, 308.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 20, 44, 45, 53, 55, 57; 15A Colleges and Universities §§ 2, 5, 37.

14A C.J.S. Colleges and Universities §§ 7, 8, 14, 17.

## 21-8-10. [Contracts for acceptance and administration of funds.]

The board of regents of the New Mexico state university, as the department of agriculture, is authorized to enter into a contract or contracts, agreement or agreements with the United States, the state of New Mexico or agencies of either of them, corporations, foundations and private persons to



receive, accept and administer funds or other assets upon such terms and conditions and for such purposes, as the board of regents shall find appropriate.

**History:** 1953 Comp., § 73-26-9.1, enacted by Laws 1961, ch. 59, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 5.  
14A C.J.S. Colleges and Universities § 17.

### 21-8-11. [Acceptance of congressional grant of 1887 for experiment station.]

The assent of the legislature of the state of New Mexico, is hereby given in pursuance of the requirements of Section [nine] of said act of congress, approved March 2, 1887, to the granting of money therein made to the establishment of experiment stations in accordance with Section one of said last mentioned act, and assent is hereby given to carry out, within the state of New Mexico, all and singular the provisions of said act.

**History:** Laws 1889, ch. 138, § 25; C.L. 1897, § 3558; Code 1915, § 5136; C.S. 1929, § 130-1009; 1941 Comp., § 55-2510; 1953 Comp., § 73-26-10.

**Compiler's notes.** — Section 9 of the act of March 2, 1887, required the assent of legislators prior to amendment in 1955. The act of August 11, 1955, amended the act of March 2, 1887 in its entirety and superseded Section 9. See 7 U.S.C. §§ 361a to 361i.

Section 1 of the act of March 2, 1887, as amended by the act of August 11, 1955, is compiled as 7 U.S.C. § 361a.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 43.  
14A C.J.S. Colleges and Universities § 7.

### 21-8-12. [Acceptance of Adams Act grant for experiment station.]

That the assent of the legislature of the state of New Mexico is hereby given, in pursuance of the requirements of Section 2 [repealed] of an act of congress entitled, "An act to provide for an increased annual appropriation for agricultural experiment stations and regulating the expenditures thereof, approved March 16, 1906," commonly known as the Adams Act, to the purpose of the grants of money authorized by such act to the carrying out, within the state of New Mexico, of all and singular the provisions of said act.

**History:** Laws 1907, ch. 13, § 1; Code 1915, § 5135; C.S. 1929, § 130-1008; 1941 Comp., § 55-2511; 1953 Comp., § 73-26-11.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The act of August 11, 1955, c. 790, 69 Stat. 674, compiled as 7 U.S.C. §§ 361a to 361i, repealed Section 2 of the act of March 16, 1906.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 43.  
14A C.J.S. Colleges and Universities § 7.

### 21-8-13. [Acceptance of Purnell Act grant for experiment station.]

That the assent of the legislature of the state of New Mexico is hereby given in pursuance of the requirements of Section 2 [repealed] of the act of congress entitled, "An act to authorize the more complete endowment of agricultural experiment stations and for other purposes," approved February 24, 1925, and commonly known as the "Purnell Act," to the purpose of the grants of monies authorized by such act to the carrying out, within the state of New Mexico, of all and singular the provisions of said act.

**History:** Laws 1927, ch. 83, § 1; C.S. 1929, § 130-1013; 1941 Comp., § 55-2512; 1953 Comp., § 73-26-12.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The act of August 11, 1955, c. 790, 69 Stat. 674, compiled as 7 U.S.C. §§ 361a to 361i, repealed Section 2 of the act of February 24, 1925.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 43.  
14A C.J.S. Colleges and Universities § 7.

## 21-8-14. [Acceptance of congressional grant of 1890 for New Mexico state university.]

The assent of the legislature of New Mexico is hereby given in pursuance of the requirement of Section two of an act of congress entitled, an act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts, established under the provisions of an act of congress approved July 2, 1862, approved August 30th, 1890, to the granting of moneys for the benefit of the agricultural college of New Mexico [New Mexico state university], and the said legislature accepts and consents to all of the terms and conditions of said act of congress, and assent is further given to carry out within the state of New Mexico, all and singular, the provisions of said act of congress.

**History:** Laws 1891, ch. 78, § 1; C.L. 1897, § 3567a; Code 1915, § 5134; C.S. 1929, § 130-1007; 1941 Comp., § 55-2513; 1953 Comp., § 73-26-13.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893, ch. 61, § 24, changed the name of the agricultural college and agricultural (experiment) station of New Mexico to the New Mexico college of agriculture and mechanic arts. Article XII, Section 11, of the constitution of New Mexico,

as repealed and reenacted November 8, 1960, further changed the name to the New Mexico state university. See also 21-8-2 NMSA 1978.

**Compiler's notes.** — Section two of the act of August 30, 1890, was compiled as 7 U.S.C. § 324.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture § 43.  
14A C.J.S. Colleges and Universities § 7.

## 21-8-15. Authorized to borrow money.

That for the purpose of erecting, altering, improving, furnishing or equipping any necessary buildings at the New Mexico college of agriculture and mechanic arts [New Mexico state university] at state college, or for acquiring any necessary land for the use of said college [university], or both, or for the retiring [of] the whole or any part of any series of bonds previously issued under the provisions hereof, or for any of such purposes, the board of regents of the New Mexico college of agriculture and mechanic arts [New Mexico state university] is hereby authorized to borrow money in conformity with the terms of this act [21-8-15, 21-8-16, 21-8-18 through 21-8-26 NMSA 1978].

**History:** Laws 1929, ch. 40, § 1; C.S. 1929, § 130-1014; Laws 1937, ch. 225, § 1; 1941 Comp., § 55-2514; 1953 Comp., § 73-26-14.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893, ch. 61, § 24, changed the name of the agricultural college and agricultural (experiment) station of New Mexico to

the New Mexico college of agriculture and mechanic arts. Article XII, Section 11, of the constitution of New Mexico, as repealed and reenacted November 8, 1960, further changed the name to the New Mexico state university. See also 21-8-2 NMSA 1978.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 35.  
14A C.J.S. Colleges and Universities § 17.

## 21-8-16. Board may issue building and improvement bonds.

Whenever the said board, by the affirmative vote of a majority of its members, duly entered in the minutes of said board, shall by resolution determine that it is necessary to erect, alter, improve, furnish or equip any building or buildings at said college [university], or acquire any land for the use thereof, or both, or to retire the whole or any part of any series of bonds previously issued in conformity with the provisions of this act [21-8-15, 21-8-16, 21-8-18 through 21-8-26 NMSA 1978], or to refund the same, or for either of said purposes, the board of regents of the New Mexico college of agriculture and mechanic arts [New Mexico state university] is hereby empowered and



authorized to issue and sell, subject to the terms of this act, building and improvement bonds of the New Mexico college of agriculture and mechanic arts [university].

**History:** Laws 1929, ch. 40, § 2; C.S. 1929, § 130-1015; Laws 1937, ch. 225, § 2; 1941 Comp., § 55-2515; 1953 Comp., § 73-26-15.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893, ch. 61, § 24, changed the name of the agricultural college and agricultural (experiment) station of New Mexico to the New Mexico college of agriculture and mechanic arts. Article XII, Section 11, of the constitution of New Mexico, as repealed and reenacted November 8, 1960, further

changed the name to the New Mexico state university. See also 21-8-2 NMSA 1978.

**Compiler's notes.** — The words "this act" would mean, by strict interpretation, the sections of the 1937 amendatory act by which they were inserted, compiled as 21-8-15, 21-8-16, 21-8-25 NMSA 1978. However, reference was apparently intended to the whole of the original 1929 act as amended.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations § 120.  
14A C.J.S. Colleges and Universities §§ 4, 10.

## 21-8-17. Form and conditions of bonds.

Bonds issued pursuant to Sections 21-8-15 through 21-8-26 NMSA 1978 shall be in such form and denominations as the board of regents of New Mexico state university shall determine, due and payable not later than twenty years from date of issue. The bonds shall be payable in consecutive order commencing not later than two years from date of issue.

**History:** 1978 Comp., § 21-8-17, enacted by Laws 1983, ch. 265, § 40.

**Repeals and reenactments.** — Laws 1983, ch. 265, § 40, repealed former 21-8-17 NMSA 1978, relating to form of bonds issued by the board of regents of the New Mexico college of agriculture and mechanic arts, effective April 7, 1983, and enacted a new section.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations §§ 195, 196, 202, 205, 399 to 453.

Power and discretion of officer or board authorized to issue bonds of governmental units as regards terms or conditions to be included therein, 119 A.L.R. 190.

47 C.J.S. Interest and Usury; Consumer Credit § 18.

## 21-8-18. [Sale of building and improvement bonds; notice, publication and contents; bids; purchase by state treasurer; acceptance by public officials.]

The board shall offer said bonds for sale, after publication of notice of the time and place of sale, in some newspaper of general circulation in Albuquerque, New Mexico, once each week for four successive weeks prior to the date fixed for said sale. Such notice shall specify the amount, denomination, maturity dates and the description of the bonds to be offered for sale, and the place, day and hour at which sealed bids therefor will be received and opened, and that only unconditional bids will be considered, and that each bid must be accompanied by a certified check drawn on a solvent bank or trust company, payable to the order of the secretary and treasurer of said board, for not less than five per centum of the par value of the bonds offered for sale, as a guaranty that the bonds will be taken by the bidder if his bid is accepted and the bidder does not take and pay for the bonds in accordance therewith. At the place and time specified in such notice, the board or the executive committee thereof shall publicly open the bids and award the bonds to the responsible bidder or bidders offering the highest price therefor, but no bid shall be accepted for less than the par value of said bonds, plus the accrued interest from the last preceding interest date to the date of delivery of said bonds. Before delivery of the bonds to the purchaser, the secretary and treasurer of the board shall detach and cancel all matured interest coupons. Said board or the executive committee thereof, shall have and reserve the right to reject any and all bids at such sale, and readvertise the same. The state treasurer may, with the approval of the state board of finance and the other officials whose approval may be required by law for the investment of public funds, purchase such bonds at par and accrued interest to date of delivery for such investment, without the necessity of them being advertised or publicly offered for sale by the board, or after rejection of bids for all or any part of any issue. Such bonds shall be accepted at their par value by all public officials

in this state as security for the repayment of all deposits of public moneys of this state, or of any county, municipality or public institution thereof, and as security for the faithful performance of any obligation or duty to guarantee the performance of which such officials are now authorized by law to accept a deposit of the bonds of this state or of the United States of America.

**History:** Laws 1929, ch. 40, § 4; C.S. 1929, § 130-1017; Laws 1941, ch. 156, § 1; 1941 Comp., § 55-2517; 1953 Comp., § 73-26-17.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations §§ 120, 228, 229, 240, 452, 453, 488.

Sale of municipal or other public bonds at less than par or face value, 91 A.L.R. 7, 162 A.L.R. 396.

### 21-8-19. [Disposition of building and improvement bond proceeds; permanent improvement fund; interest and retirement fund; costs of sale.]

The proceeds from the sale of said bonds shall be paid to the secretary and treasurer of said board, and shall be by him placed in a separate fund to be known as "permanent improvement fund" to be used and paid out only for the specified purposes in this act [21-8-15, 21-8-16, 21-8-18 through 21-8-26 NMSA 1978] enumerated upon order of the board, on checks signed by the president or vice president of said board and by the secretary and treasurer thereof, except such portion thereof as may have been received on account of accrued interest on said bonds to date of delivery, which amount shall be placed in the "interest and retirement fund" for the liquidation of said bonds as hereinafter provided. The cost of preparing, advertising and selling said bonds, including any necessary expense for legal opinions thereon, shall be paid out of the proceeds of the sale of said bonds.

**History:** Laws 1929, ch. 40, § 5; C.S. 1929, § 130-1018; 1941 Comp., § 55-2518; 1953 Comp., § 73-26-18.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 33. 14A C.J.S. Colleges and Universities § 14.

### 21-8-20. [Establishment and replenishment of interest and retirement fund for building and improvement bonds.]

The board of regents shall at the time of issuing said bonds, establish for the payment of the principal and interest thereof a fund to be known as "interest and retirement fund" into which fund said board shall immediately place a sum not less than the amount necessary to pay the interest and maturing principal of said bonds for the ensuing twelve months, and annually thereafter shall continue to place in said fund a sufficient amount to pay principal and interest maturing in the succeeding twelve months.

**History:** Laws 1929, ch. 40, § 6; C.S. 1929, § 130-1019; 1941 Comp., § 55-2519; 1953 Comp., § 73-26-19.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations § 266.

### 21-8-21. [Income pledged to pay building and improvement bonds.]

For the faithful and prompt payment of all interest and principal of said bonds as and when the same shall mature according to the tenor thereof, the issue thereof shall constitute an irrevocable pledge by said board of so much of each year's income from the permanent fund of the New Mexico college of agriculture and mechanic arts [New Mexico state university] in the hands of the treasurer of this state, as shall be necessary to provide the "interest and retirement fund" herein mentioned, for the ensuing year, and to at all times fully and faithfully keep the same in not less than the amount necessary to pay the interest and principal maturing as aforesaid; and in addition



thereto the issue of said bonds shall constitute an irrevocable pledge by said board of so much of each year's income from the income and current fund derived from the lease of such of its lands as remain unsold, as may be necessary to fully protect the "interest and retirement fund" for the ensuing year, and keep the same at all times in proper amount as herein provided.

**History:** Laws 1929, ch. 40, § 7; C.S. 1929, § 130-1020; 1941 Comp., § 55-2520; 1953 Comp., § 73-26-20.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893, ch. 61, § 24, changed the name of the agricultural college and agricultural (experiment) station of New Mexico to

the New Mexico college of agriculture and mechanic arts. Article XII, Section 11, of the constitution of New Mexico, as repealed and reenacted November 8, 1960, further changed the name to the New Mexico state university. See also 21-8-2 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations § 199.

### 21-8-22. [Payment of interest and principal of building and improvement bonds.]

It shall be the duty of the secretary and treasurer of said board of regents to forward to the bank at which said bonds are [are] payable, prior to the date on which any coupons or any principal amount of any of said bonds shall mature, out of the "interest and retirement fund" a sufficient sum of money to meet said coupons and maturing bonds as the same become due, plus any service charge which said bank shall be entitled to receive for its services.

**History:** Laws 1929, ch. 40, § 9; C.S. 1929, § 130-1022; 1941 Comp., § 55-2521; 1953 Comp., § 73-26-21.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations §§ 197, 198.  
11 C.J.S. Bonds § 59 et seq.

### 21-8-23. [Use of proceeds of building and improvement bonds restricted.]

None of the funds derived from the sale of said bonds, except so much thereof as shall be necessary to defray the cost of the issuance thereof and the accrued interest from the date thereof to the time of delivery, shall ever be used or expended by said board for any other purposes than those for which authority is herein given to issue the same, as set forth in Section 1 [21-8-15 NMSA 1978] hereof.

**History:** Laws 1929, ch. 40, § 10; C.S. 1929, § 130-1023; 1941 Comp., § 55-2522; 1953 Comp., § 73-26-22.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 35.  
14A C.J.S. Colleges and Universities § 14.

### 21-8-24. [State treasurer's payments relating to building and improvement bonds.]

It is hereby made the duty of the treasurer of this state, upon receiving written notice from the secretary and treasurer of said board that it has issued bonds as provided for herein, to forthwith forward and pay over to the secretary and treasurer of said board out of the income from the permanent funds of said college [New Mexico state university], a sum sufficient to make and establish the income [interest] and retirement fund, as herein provided, and annually thereafter to pay over a sufficient amount for said purpose, to the end that said interest and retirement fund shall at all times be kept in the proper amount. In the event there should not be sufficient undistributed income from permanent funds of said college [university], then said state treasurer shall use so much of the income and current fund of said college [university] in his hands as shall be necessary to establish and at all times maintain said interest and retirement fund.

**History:** Laws 1929, ch. 40, § 11; C.S. 1929, § 130-1024; 1941 Comp., § 55-2523; 1953 Comp., § 73-26-23.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The bracketed word "interest" in the first sentence was inserted by the compiler to correspond to 21-8-20 to 21-8-22 NMSA 1978 and the subsequent reference in this section.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station

of New Mexico, as an institution of learning. Laws 1893, ch. 61, § 24, changed the name of the agricultural college and agricultural (experiment) station of New Mexico to the New Mexico college of agriculture and mechanic arts. Article XII, Section 11, of the constitution of New Mexico, as repealed and reenacted November 8, 1960, further changed the name to the New Mexico state university. See also 21-8-2 NMSA 1978.

## 21-8-25. [Issuance of building and improvement bonds in series; restrictions.]

In the event the board of regents aforesaid should find it advisable to issue bonds under this act [21-8-15, 21-8-16, 21-8-18 through 21-8-26 NMSA 1978] in more than one series, or at different times, for any of the purposes aforesaid, then each series of said bonds shall be designated by the letter "A," "B" or in some other proper designation to the end that each series shall be kept separate, and all of the requirements of this act shall apply to and be faithfully followed, done and carried out as to each of said series, provided, however, that said board of regents shall not have power to issue bonds hereunder, the aggregate interest and principal requirements for which, for any year, together with the aggregate interest and principal requirements for all outstanding bonds of such board of such institution for such year, shall exceed the amount of the income from the permanent funds and from the aforesaid income and current fund of such institution received by the state treasurer for the fiscal year next preceding the fiscal year in which any bonds of such board of such institution are authorized to be issued by resolution of the board adopted pursuant to this act.

**History:** Laws 1929, ch. 40, § 12; C.S. 1929, § 130-1025; Laws 1937, ch. 225, § 3; 1941 Comp., § 55-2524; 1953 Comp., § 73-26-24.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The words "this act," at the end of the section, would mean by strict interpretation the sections of Laws 1937, ch. 225, by which they were inserted, compiled as 21-8-15, 21-8-16, 21-8-25 NMSA 1978.

However, reference was apparently intended to apply to the whole of the original 1929 act as amended.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 35.  
14A C.J.S. Colleges and Universities § 14.

## 21-8-26. [Bonds exempt from taxation.]

Bonds issued under the provisions of this act [21-8-15, 21-8-16, 21-8-18 through 21-8-26 NMSA 1978], being for the sole purposes specified in Section 1 [21-8-15 NMSA 1978] hereof, shall forever be and remain free and exempt from taxation by this state or any subdivision thereof. Such bonds may be deposited as security for public monies by depositaries thereof within the state of New Mexico.

**History:** Laws 1929, ch. 40, § 13; C.S. 1929, § 130-1026; 1941 Comp., § 55-2525; 1953 Comp., § 73-26-25.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Constitutional enumeration of subjects of tax exemption as affecting power of legislature to free government securities or property from taxation, 9 A.L.R. 436.  
84 C.J.S. Taxation § 260.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 495, 526.

## 21-8-27. [Board constituted custodian for grave of Eugene Manlove Rhodes.]

That the board of regents of the New Mexico college of agriculture and mechanic arts [New Mexico state university] shall be and hereby is designated and declared to be custodian of the grave of



Eugene Manlove Rhodes, and shall be and hereby is given all lawful authority to enter upon the lot and assume responsibility therefor, and to expend such sum or sums of money from the general funds of the college [university] as shall be necessary or required from time to time to cause the grave, the fence surrounding it, and the monument erected thereon, in his memory, by the artists and writers of New Mexico, to be maintained in good order and condition, all to the end that the last resting place of one of New Mexico's most valiant souls shall not suffer decay from wind, rain and the passage of time after the family and friends of 'Gene Rhodes have gone to be with him in the great beyond.

**History:** 1941 Comp., § 55-2526, enacted by Laws 1951, ch. 89, § 1; 1953 Comp., § 73-26-26.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893, ch. 61, § 24, changed the name of the agricultural college and agricultural (experiment) station of New Mexico to the New Mexico college of agriculture and mechanic arts.

Article XII, Section 11, of the constitution of New Mexico, as repealed and reenacted November 8, 1960, further changed the name to the New Mexico state university. See also 21-8-2 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 14 Am. Jur. 2d Cemeteries § 34.  
14 C.J.S. Cemeteries § 26.

### 21-8-28. Building materials research and testing institute established.

The board of regents of New Mexico state university shall establish a building materials research and testing institute to be affiliated with, and operated at, that institution in connection with the college of engineering.

**History:** 1953 Comp., § 73-26-27, enacted by Laws 1967, ch. 130, § 1.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 14A C.J.S. Colleges and Universities §§ 4, 35, 37, 38.

### 21-8-29. Function of testing institute.

The function of the building materials research and testing institute is:

A. to make technical investigations and determinations concerning the physical and chemical properties of all materials used in the construction of, or in connection with the construction of, buildings and dwellings;

B. to supply technical and engineering data which will tend to increase the economy, efficiency and safety of the manufacture and use of construction materials in this state; and

C. to establish and recommend standards for the physical and chemical properties of the materials and for the manufacture and use of these construction materials.

**History:** 1953 Comp., § 73-26-28, enacted by Laws 1967, ch. 130, § 2.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 13 Am. Jur. 2d Buildings §§ 12, 13.  
39A C.J.S. Health and Environment § 28.

### 21-8-30. Equipment.

The various laboratories of the college of engineering and their equipment shall be available for the use of the building materials research and testing institute, provided that their use for instruction and research in the regular work of the university shall take precedence over their use by the building materials research and testing institute. The director of the building materials research and testing institute may procure, for temporary or permanent use, additional equipment to carry on the functions of the institute.

**History:** 1953 Comp., § 73-26-29, enacted by Laws 1967, ch. 130, § 3.

**21-8-31. Director.**

The board of regents shall appoint a director of the building materials research and testing institute on the recommendation of the president of the university. Subject to the rules and regulations of the board of regents, the director shall be responsible for the administration and operation of the institute.

**History:** 1953 Comp., § 73-26-30, enacted by Laws 1967, ch. 130, § 4.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. — 15A**  
 Am. Jur. 2d Colleges and Universities §§ 11, 15.  
 14A C.J.S. Colleges and Universities § 4.

**21-8-32. Institute not conducted for gain.**

The building materials research and testing institute shall not be conducted for the private or personal gain of anyone connected with it, or for the sole benefit of any individual, firm or corporation.

**History:** 1953 Comp., § 73-26-31, enacted by Laws 1967, ch. 130, § 5.

Power of corporation organized for religious, educational, or charitable purpose, to engage in enterprise for profit, 100 A.L.R. 579.

**ANNOTATIONS**

14A C.J.S. Colleges and Universities § 8.

**Am. Jur. 2d, A.L.R. and C.J.S. references. — 15A**  
 Am. Jur. 2d Colleges and Universities §§ 9, 43.

**21-8-33. Use of services.**

A. Any department, agency or institution of state government or its political subdivision may seek assistance from the building materials research and testing institute and such requests shall take precedence over all nongovernmental requests.

B. Any individual, firm or corporation may seek the assistance of the building materials research and testing institute.

**History:** 1953 Comp., § 73-26-32, enacted by Laws 1967, ch. 130, § 6.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. — 15A**  
 Am. Jur. 2d Colleges and Universities § 8.

**21-8-34. Fees for services.**

The board of regents shall establish and charge fees to be paid by any person, firm, corporation or governmental department, agency or institution using the services of the building materials research and testing institute which shall be sufficient to defray the cost of providing the service to such person, firm, corporation or governmental department, agency or institution.

**History:** 1953 Comp., § 73-26-33, enacted by Laws 1967, ch. 130, § 7.

**21-8-35. Center for broadcasting and international communications established.**

The center for broadcasting and international communications is established at New Mexico state university.

**History:** 1953 Comp., § 73-26-34, enacted by Laws 1971, ch. 302, § 1.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. — 14A**  
 C.J.S. Colleges and Universities § 4.



### 21-8-36. Activities of center.

The center for broadcasting and international communications:

- A. may establish educational television programs to serve individual viewers, educational institutions and public educational programs in the southern region of the state as well as the adjoining area of Mexico;
- B. may develop, produce and distribute bilingual television materials;
- C. shall cooperate with all other existing educational television facilities in the state to accomplish the most efficient use of any public funds made available for educational television services; and
- D. may enter into contracts and be the recipient of federal or other funds for the purpose of carrying out the activities enumerated in this section.

History: 1953 Comp., § 73-26-35, enacted by Laws 1971, ch. 302, § 2.

#### ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 74 Am. Jur. 2d Telecommunications §§ 24, 150, 192.

### 21-8-37. Findings.

The legislature finds and declares that the establishment of an international business facilitation center at New Mexico state university will:

- A. enable New Mexico businesses to become significant players in the development of Mexican and international industries;
- B. provide a research base to link the specific products and services of New Mexico businesses with the needs of Mexican and international businesses;
- C. provide an educational base, utilizing the resources of all public post-secondary institutions, to develop skills necessary to compete in international markets; and
- D. be instrumental in providing a significant increase in the flow of trade between Mexican and international industries and New Mexican businesses located in communities throughout the state.

History: Laws 1992, ch. 99, § 1.

### 21-8-38. International business facilitation center established; duties.

The "international business facilitation center" is established at the college of business administration and economics, New Mexico state university. The purpose of the center shall be to:

- A. collect and analyze information about production-sharing opportunities with Mexican and international industries and provide that information to New Mexico businesses;
- B. assist New Mexico businesses with research and informational services concerning development of and participation in international trade flows;
- C. promote linkages between New Mexican businesses and Mexican and international industries in the American free trade zone; and
- D. utilize the resources of all public post-secondary institutions in New Mexico to develop skills necessary to compete in international markets.

History: Laws 1992, ch. 99, § 2.

### 21-8-39. Waste management education and research consortium created; purpose.

- A. The "waste management education and research consortium" is created and shall be a division of New Mexico state university.

B. Participating institutions in the consortium shall be New Mexico state university, the university of New Mexico, New Mexico institute of mining and technology, Dine college, Sandia national laboratories and Los Alamos national laboratory. The purposes of the consortium are to:

- (1) engage in theoretical and practical education of and research on environmental and natural resource issues;
  - (2) disseminate knowledge acquired through educational programs;
  - (3) provide assistance in efforts to address environmental and natural resource problems;
- and
- (4) cooperate with state and federal agencies.

C. The board of regents of New Mexico state university shall prepare reports showing the progress and condition of the consortium as the board deems necessary. The reports of the consortium may be printed and distributed by the board as appropriate, and revenue from the sale of the reports shall be paid into the account of New Mexico state university.

D. The consortium may receive appropriations from the legislature through the board and may receive any or other items of value from public or private sources.

**History:** Laws 2003, ch. 40, § 1.

**Effective dates.** — Laws 2003, ch. 40 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective on June 20, 2003, 90 days after adjournment of the legislature.

## **21-8-40. Water resources research institute created; purpose.**

A. The "water resources research institute" is created and shall be a division of New Mexico state university.

B. Participating institutions associated with the water resources research institute shall be New Mexico state university, the university of New Mexico, New Mexico institute of mining and technology, New Mexico highlands university, eastern New Mexico university and western New Mexico university. The purposes of the institute are to:

- (1) provide research and training in water conservation, planning and management; atmospheric-surface-ground water relations; and water quality;
- (2) transfer water information through the use of technical and miscellaneous publications, newsletters, conferences and presentations;
- (3) provide expertise, specialized assistance and information to address water problems; and
- (4) cooperate with local, state and federal water agencies.

C. The board of regents of New Mexico state university shall prepare reports showing the progress and condition of the water resources research institute as the board deems necessary. The reports of the institute may be printed and distributed by the board as appropriate, and revenue from the sale of the reports shall be paid into the account of New Mexico state university.

D. The water resources research institute may receive appropriations from the legislature through the board of regents of New Mexico state university and may receive any other items of value from public or private sources.

**History:** Laws 2005, ch. 37, § 1.

**Effective dates.** — Laws 2005, ch. 37 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## **21-8-41. College assistance migrant program.**

A. The "college assistance migrant program" is created at New Mexico state university to serve educational needs of migrants and seasonal farm workers who are students at the university by offering sufficient support to ensure participants' success in the first year of college and by maintaining communication with former participants to ensure they receive the support they need to graduate.

B. The program shall:



- (1) address the achievement gap of farm worker students in higher education and bridge educational outreach issues within that population;
- (2) assist each student to graduate from New Mexico state university with a bachelor's degree;
- (3) provide students with assistance with housing and meal costs, comprehensive health examinations, art and cultural activities, tutoring and mentoring services, leadership training workshops and school supplies; and
- (4) provide overall educational support and communication with family, community members and university administrators and faculty that serve as the educational support network for each student.

**History:** Laws 2007, ch. 118, § 1. . . . IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

**Effective dates.** — Laws 2007, ch. 118, contained no effective date provision, but, pursuant to N.M. Const., art.

## 21-8-42. Regional educational technology assistance center created.

The "regional educational technology assistance center" is created as a professional development center at New Mexico state university's college of extended learning. The center shall provide technology integration training into teaching and learning; professional development dossier creation; use of data to drive instruction to improve student learning outcomes; internet safety, online teaching and learning and technical assistance; faculty development in integrating technology and distance learning tools; and implementing the New Mexico learning network. All of the services provided shall be available to pre-kindergarten through college throughout New Mexico. The regional educational technology assistance center shall prepare an annual report for the legislature detailing the activities and accomplishments of the center.

**History:** Laws 2007, ch. 281, § 1. . . . IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

**Effective dates.** — Laws 2007, ch. 281 contained no effective date provision, but, pursuant to N.M. Const., art.

## 21-8-43. Alliance for underrepresented students created; purpose.

- A. "The alliance for underrepresented students" is created at New Mexico state university.
- B. Participating organizations in the alliance shall be the New Mexico alliance for minority participation and the regional alliance for science, engineering and mathematics for students with disabilities. The purposes of the alliance are to:
  - (1) promote science, technology, engineering and mathematics education and retention at the undergraduate and graduate level for underrepresented students;
  - (2) engage in research on and development of programs that support student retention and achievement;
  - (3) disseminate knowledge acquired through education and retention programs; and
  - (4) collaborate with and provide assistance to kindergarten through twelfth grade educators and post-secondary educational institutions to support science, technology, engineering and mathematics education and student achievement.
- C. The alliance shall submit an annual report to the board of regents of New Mexico state university and the legislature detailing the activities and accomplishments of the alliance. The reports of the alliance may be printed and distributed by the university as appropriate, and revenue from the sale of the reports shall be paid into the account of the New Mexico state university.
- D. The alliance may receive appropriations from the legislature through the board of regents and may receive gifts, grants and donations from public or private sources.

**History:** Laws 2007, ch. 280, § 1. . . . IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

**Effective dates.** — Laws 2007, ch. 280 contained no effective date provision, but, pursuant to N.M. Const., art.

## 21-8-44. Public-private partnership for university campus in San Luis Potosi, Mexico.

A. The board of regents of New Mexico state university may establish a New Mexico state university campus in San Luis Potosi, Mexico.

B. The university shall not use state funds for capital investment or make financial contributions to private investors for the operation of the San Luis Potosi campus. Student and other data from the San Luis Potosi campus shall not be used to calculate instruction and general purposes for New Mexico state university or for capital funding.

C. Any contract between New Mexico state university and any private vendor or contractor entered into pursuant to the authority granted by this section shall be subject to resolution of disputes by international arbitration or to the jurisdiction of the district court of the third judicial district of New Mexico. The university's financial information related to the operation and financing of the San Luis Potosi campus is subject to the Audit Act [12-6-1 through 12-6-14 NMSA 1978]. Nothing in this section serves as a waiver of the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978], the Open Meetings Act [Chapter 10, Article 15 NMSA 1978] or the Procurement Code [13-1-28 to 13-1-199 NMSA 1978].

**History:** Laws 2019, ch. 267, § 1. **Effective dates.** — Laws 2019, ch. 267 contained no adjournment of the legislature effective date provision, but, pursuant to N.M. Const., art.

## ARTICLE 9

### State Chemist and Laboratory

Sec.

21-9-1. Establishment of state laboratory and office of state chemist.

21-9-2. Methods of analysis.

Sec.

21-9-3. Methods of collecting samples.

21-9-4. Official seal of the state chemist.

### 21-9-1. [Establishment of state laboratory and office of state chemist.]

That there is hereby established a state chemical laboratory for the analysis and examination of such foods, drugs, feeds, fertilizers and other material as the interests of the state may demand. The said state chemical laboratory shall be established at the New Mexico college of agriculture and mechanic arts [New Mexico state university], and shall be in [the] charge of a professor of chemistry at the said college, who shall be known as the state chemist of New Mexico. All chemical work which the public interests of the state may demand shall be done by or be under the supervision of the said state chemist. All charges for the work done by the said state chemist shall be just and equitable, and all money collected for such work shall go into a fund for the maintenance of the said state chemical laboratory.

**History:** Laws 1919, ch. 169, § 1; C.S. 1929, § 131-101; 1941 Comp., § 3-1001; 1953 Comp., § 4-13-1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1889, ch. 138, § 2, created and established the agricultural college and agricultural experiment station of New Mexico, as an institution of learning. Laws 1893, ch. 61, § 24, changed the name of the agricultural college and agricultural (experiment) station of New Mexico to the New Mexico college of agriculture and mechanic arts. Article XII, Section 11, of the constitution of New Mexico, as repealed and reenacted November 8, 1960, further changed the name to the New Mexico state university. See also 21-8-2 NMSA 1978.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 25 Am. Jur. 2d Drugs, Narcotics and Poisons § 33; 35 Am. Jur. 2d Food § 13; 42 Am. Jur. 2d Inspection Laws §§ 6, 11.

Constitutionality, construction, and application of statutes relating to testing or sampling of agricultural fertilizers, 105 A.L.R. 348, 147 A.L.R. 765.

Validity, construction, and application of statutes or ordinances relating to inspection of food sold at retail, 127 A.L.R. 322.

3 C.J.S. Agriculture § 15; 15 C.J.S. Commerce § 9; 28 Supp. C.J.S. Drugs and Narcotics §§ 8 to 10.



### 21-9-2. Methods of analysis.

The methods of analysis employed by the state chemist of New Mexico shall be those prescribed by the association of official agricultural chemists, and those of the United States pharmacopoeia.

**History:** Laws 1919, ch. 169, § 2; C.S. 1929, § 131-102; 1941 Comp., § 3-1002; 1953 Comp., § 4-13-2.

### 21-9-3. Methods of collecting samples.

All samples of material for analysis and examination shall be collected under the directions from the state chemical laboratory and must be sealed and shipped in accordance with instructions set forth in such directions for taking samples.

**History:** Laws 1919, ch. 169, § 3; C.S. 1929, § 131-103; 1941 Comp., § 3-1003; 1953 Comp., § 4-13-3.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3 Am. Jur. 2d Agriculture §§ 53, 57, 71.

### 21-9-4. Official seal of the state chemist.

The official seal of the state chemist of New Mexico shall bear the words "The Official Seal of the State Chemist of New Mexico" in a circle around the state seal of New Mexico.

**History:** Laws 1919, ch. 169, § 4; C.S. 1929, § 131-104; 1941 Comp., § 3-1004; 1953 Comp., § 4-13-4.

## ARTICLE 10

### Development of Indian Resources

Sec. 21-10-1. Purpose.	Sec. 21-10-7. Contracts with other institutions.
21-10-2. Indian resources development program created.	21-10-8. Organizational structure and operating policies.
21-10-3. Contracts with other institutions.	21-10-9. Cooperative federal-state funding.
21-10-4. Short title.	21-10-10. Purpose.
21-10-5. Purpose.	21-10-11. Advisory committee.
21-10-6. Indian resources development institutes created.	21-10-12. Contracts with other institutions.

#### 21-10-1. Purpose.

The purpose of this act [21-10-1 through 21-10-3 NMSA 1978] is to provide funds to New Mexico state university in order that agricultural and engineering education and work experience opportunities may be provided to Indian students to help prepare them for agricultural sciences, engineering sciences and management positions in irrigation projects and energy resources development to the end that the economic growth and public welfare of New Mexico will be promoted.

**History:** 1953 Comp., § 73-26-37, enacted by Laws 1977, ch. 280, § 1.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 41 Am. Jur. 2d Indians § 29.  
42 C.J.S. Indians § 38 et seq.

#### 21-10-2. Indian resources development program created.

There is created the "Indian resources development program" to assist the education and training, through practical on-the-job experience opportunities, of Indian students in the agricultural,

engineering and associated management sciences for the purpose of insuring the successful development and management of the agricultural and energy resources on Indian lands.

**History:** 1953 Comp., § 73-26-38, enacted by Laws 1977, ch. 280, § 2.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 41 Am. Jur. 2d Indians § 29.

### **21-10-3. Contracts with other institutions.**

New Mexico state university shall contract with other institutions of higher education, located within this state, as needed for required services pursuant to the provisions and purposes of this act [21-10-1 through 21-10-3 NMSA 1978]. Qualified Indian students who are residents of New Mexico and who are majoring in agricultural, engineering and associated management sciences at any institution of higher education located within this state shall be eligible for the services provided by the funds appropriated for such development program in this act.

**History:** 1953 Comp., § 73-26-39, enacted by Laws 1977, ch. 280, § 3.

### **21-10-4. Short title.**

This act [21-10-4 through 21-10-9 NMSA 1978] may be cited as the "Indian Resources Development Act".

**History:** Laws 1979, ch. 371, § 1.

**Cross references.** — For Mineral Resources Development Act, see 69-10-1 NMSA 1978 et seq.

### **21-10-5. Purpose.**

The purpose of the Indian Resources Development Act [21-10-4 through 21-10-9 NMSA 1978] is to create statewide Indian resources development institutes, located at New Mexico state university and the university of New Mexico, in order that the state can participate with the federal government and Indian tribes for the purpose of assisting Indian tribes in developing agricultural, mineral, energy, forestry, wildlife, recreation and business resources and associated technical and managerial resources and other areas deemed necessary to promote their economic self-sufficiency to the end that the economic growth and public welfare of New Mexico will be promoted.

**History:** Laws 1979, ch. 371, § 2.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 41 Am. Jur. 2d Indians § 58 et seq.

### **21-10-6. Indian resources development institutes created.**

There are created the "Indian resources development institutes" to provide research, educational and service programs that will directly and indirectly contribute to the more effective utilization of the natural and human resources and related business activities on Indian lands. The institutes may provide programs to enhance the development and efficient utilization [utilization] of natural and human resources and associated businesses on Indian lands, including dryland and irrigated agriculture, rangelands, oil, gas, coal, uranium, other mineral resources, ground and surface water resources, forestry, wildlife and outdoor-based recreational resources. The institutes may also provide programs for education and training and other necessary areas that will directly contribute toward providing Indian people the technical and managerial knowledge and experience necessary for efficient utilization of their natural resources.



History: Laws 1979, ch. 371, § 3.

**Bracketed material.** — The bracketed word in the second sentence was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

## 21-10-7. Contracts with other institutions.

New Mexico state university and the university of New Mexico may contract with other institutions of higher education located within the state and federal research laboratories, as needed, for required services pursuant to the provisions and purposes of the Indian Resources Development Act [21-10-4 through 21-10-9 NMSA 1978].

History: Laws 1979, ch. 371, § 4.

## 21-10-8. Organizational structure and operating policies.

The organizational structure, operating policies and program directors of the institutes shall be established by the presidents of New Mexico state university and the university of New Mexico, who shall jointly designate and coordinate program responsibility areas for each institute.

History: Laws 1979, ch. 371, § 5.

## 21-10-9. Cooperative federal-state funding.

The institutes may enter into cooperative federal-state funding arrangements for the purposes of funding the institutes and their programs. The board of educational finance, or its successor agency, shall annually make recommendations to the legislature for the furtherance of the purposes of the Indian Resources Development Act [21-10-4 through 21-10-9 NMSA 1978]. Appropriations made for the purposes of the Indian Resources Development Act shall be expended only for the benefit of New Mexico residents.

History: Laws 1979, ch. 371, § 6.

## 21-10-10. Purpose.

The purpose of this act [21-10-10 through 21-10-12 NMSA 1978] is to provide funds to New Mexico state university to create an Indian scientific educational assistance and work experience program in order that agriculture, engineering and business education and related work experience opportunities may be provided to Indian students to help prepare them for agricultural sciences, engineering sciences and management positions in irrigation projects, energy resources development, forestry projects, outdoor recreation activities and small business developments to the end that the economic growth and public welfare of New Mexico will be promoted.

History: Laws 1981, ch. 313, § 1.

## ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 41 Am. Jur. 2d Indians § 29.

## 21-10-11. Advisory committee.

The president of New Mexico state university shall appoint a committee to work with the program director in establishing operating policies and program priorities. The committee shall consist of three members: one individual nominated by the Jicarilla and Mescalero Apache tribal presidents; one nominated by the chairman of the all Indian pueblo council; and one nominated by the chairman of the Navajo tribal council. The committee members shall serve a minimum term of two years with reappointment thereafter subject to the pleasure of the above-described Indian tribes.

History: Laws 1981, ch. 313, § 2.

## 21-10-12. Contracts with other institutions.

New Mexico state university shall contract with other institutions of higher education located within this state as needed for required services pursuant to the provisions and purposes of this act [21-10-10 through 21-10-12 NMSA 1978]. Qualified Indian students who are residents of New Mexico and who are majoring in agricultural, engineering and associated management sciences at any institution of higher education located within this state shall be eligible for the services provided by the funds appropriated for such development program in this act.

**History:** Laws 1981, ch. 313, § 3.

## ARTICLE 11

### New Mexico Institute of Mining and Technology

Sec.		Sec.	
21-11-1.	Object; curriculum.	21-11-12.	Charges for assays and other services; disposition of amounts collected.
21-11-2.	Use of name "New Mexico institute of mining and technology" for common convenience.	21-11-13.	Designated the state's school of mines.
21-11-3.	New diplomas for qualified graduates.	21-11-14.	Preparatory department to be maintained.
21-11-4.	Operations vested in board of regents; corporate powers; quorum.	21-11-15.	Authority to borrow money; purposes.
21-11-5.	Officers of board of regents; bond of secretary-treasurer.	21-11-16.	Authority to issue and retire building and improvement bonds.
21-11-6.	Powers and duties of president of board of regents; president pro tem.	21-11-17.	Form and conditions of bonds.
21-11-7.	Duties of secretary-treasurer of board of regents.	21-11-18.	Sale of bonds; publication of notice; bids.
21-11-8.	Powers and duties of board of regents.	21-11-19.	Permanent improvement and interest and retirement funds.
21-11-8.1.	Institute for complex additive systems analysis established; function of institute.	21-11-20.	Interest and retirement fund established.
21-11-8.2.	Geophysical research center.	21-11-21.	Pledge of income to retirement of bonds and payment of interest.
21-11-8.3.	Energetic materials research and testing center established; function of center.	21-11-22.	Forwarding of funds for payment of bonds and interest coupons.
21-11-8.4.	National cave and karst research institute created; purpose.	21-11-23.	Use of funds restricted to designated purposes.
21-11-8.5.	Repealed.	21-11-24.	State treasurer to transfer income from permanent funds; income and current fund.
21-11-8.6.	Technology research collaborative created; purpose.	21-11-25.	Bonds designated serially.
21-11-9.	Departmental faculties.	21-11-26.	Bonds exempt from taxation.
21-11-10.	Conferring degrees; granting diplomas.	21-11-27.	Repealed.
21-11-11.	Removal of officers, faculty members and employees.	21-11-28.	Repealed.

#### 21-11-1. Object; curriculum.

The object of the New Mexico school of mines [New Mexico institute of mining and technology] is to furnish facilities for the education of such persons as may desire to receive instruction in chemistry, metallurgy, mineralogy, geology, mining, milling, engineering, mathematics, mechanics, drawing, the fundamental laws of the United States, and the rights and duties of citizenship, and such other courses of study, not including agriculture, as may be prescribed by the board of regents; further, to engage in research projects approved by the board of regents, and incidental to such research to negotiate and enter into research contracts with appropriate governmental agencies, private foundations, individuals or associations.

**History:** Laws 1889, ch. 138, § 28; C.L. 1897, § 3593; Code 1915, § 5139; C.S. 1929, § 130-1101; 1941 Comp., § 55-2601; Laws 1947, ch. 78, § 1; 1953 Comp., § 73-27-1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changed the name of the New Mexico school of mines to the New Mexico institute of mining and technology. See 21-11-2 NMSA 1978.

**Cross references.** — For acceptance of land grants, see N.M. Const., art. XII, § 12.

For management of the institute, see N.M. Const., art. XII, § 13.

For the bureaus of mines and mineral resources, see 69-1-1 through 69-2-7 NMSA 1978.



**ANNOTATIONS**

**Eleventh Amendment barred federal jurisdiction over suit against regents.** — A student at the New Mexico school of mines (now New Mexico institute of mining and technology) was barred from bringing an action in the United States district court, seeking damages for personal injuries alleged to have resulted from the negligence of the school's board of regents in the operation of the

school, because the action was in effect against the state of New Mexico and U.S. Const., amend. XI, barred federal jurisdiction. *Korgich v. Regents of N.M. Sch. of Mines*, 582 F.2d 549 (10th Cir. 1978).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 7.  
14A C.J.S. Colleges and Universities § 4.

## 21-11-2. [Use of name "New Mexico institute of mining and technology" for common convenience.]

Except for financial transactions the use of the name "New Mexico institute of mining and technology" is hereby permitted in lieu of the name "New Mexico school of mines" for common convenience.

**History:** 1941 Comp., § 55-2601a, enacted by Laws 1951, ch. 46, § 1; 1953 Comp., § 73-27-2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 14A C.J.S. Colleges and Universities § 9.

## 21-11-3. [New diplomas for qualified graduates.]

That the board of trustees of the New Mexico institute of mining and technology shall within six (6) months, after this act [21-11-2, 21-11-3 NMSA 1978] is in full force and effect, issue to all qualified graduates of said school of mines a diploma bearing such words or identifications of said institution as may be hereafter issued by said New Mexico institute of mining and technology.

**History:** 1941 Comp., § 55-2601b, enacted by Laws 1951, ch. 46, § 2; 1953 Comp., § 73-27-3.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 1, 5, 31.  
14A C.J.S. Colleges and Universities § 41.

## 21-11-4. [Operations vested in board of regents; corporate powers; quorum.]

The management and control of said school of mines [New Mexico institute of mining and technology], the care and preservation of all property of which it shall become possessed, the erection and construction of all buildings necessary for its use, and the disbursement and expenditure of all moneys, shall be vested in a board of five regents. Said regents and their successors in office shall constitute a body corporate, under the name and style of, the regents of the New Mexico school of mines [New Mexico institute of mining and technology], with the right, as such, of suing and being sued, of contracting and being contracted with, of making and using a common seal and altering the same at pleasure, and of causing all things to be done necessary to carry out the provisions of this article. A majority of the board shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time.

**History:** Laws 1889, ch. 138, § 29; C.L. 1897, § 3594; Code 1915, § 5140; C.S. 1929, § 130-1102; 1941 Comp., § 55-2602; 1953 Comp., § 73-27-4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changed the name of the New Mexico school of mines to the New Mexico institute of mining and technology. See 21-11-2 NMSA 1978.

**Compiler's notes.** — The words "this article," substituted by the 1915 Code compilers for "this act," refer to Article 7 of Chapter 101 of the 1915 Code, compiled as 21-11-1, 21-11-4 to 21-11-14 NMSA 1978.

**Cross references.** — For number, appointment, qualifications and terms of members of the board of regents, see N.M. Const., art. XII, § 13.

**ANNOTATIONS**

**Institute is state educational institution.** — The New Mexico school of mines (now the New Mexico institute of mining and technology) was confirmed by N.M. Const., art. XII, § 11, as a state educational institution with its location at Socorro, New Mexico. Under this section, the management and control of the above institution is vested in a board of regents whose duty is to keep

all books and records in its official office. *Taylor v. Via*, 1955-NMSC-047, 59 N.M. 320, 284 P.2d 211.

**Control over funds from nonstate sources.** — The legislature has expressly recognized the authority of institutions of higher learning to receive benefits and donations from the United States, private individuals and corporations, to buy, sell, lease or mortgage real estate and to do all things which in the opinions of the respective boards of regents, will be for the best interests of

the institutions in the accomplishment of their purposes or objects. The legislature lacks authority to appropriate funds received from nonstate sources or to control the use thereof through the power of appropriation. *State ex rel. Sego v. Kirkpatrick*, 1974-NMSC-059, 86 N.M. 359, 524 P.2d 975.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 3, 5, 10, 11. 14A C.J.S. Colleges and Universities §§ 2, 14, 49.

## 21-11-5. [Officers of board of regents; bond of secretary-treasurer.]

The school [New Mexico institute of mining and technology] officers shall be the same regents, be elected in the same manner and at the same time, and possess the same qualifications as the officers of the university of New Mexico, and the secretary and treasurer so elected shall give bond in the sum of ten thousand dollars [(\$10,000)] in the manner provided in Section 21-7-5 NMSA 1978.

**History:** Laws 1889, ch. 138, § 30; C.L. 1897, § 3595; Code 1915, § 5141; C.S. 1929, § 130-1103; 1941 Comp., § 55-2603; 1953 Comp., § 73-27-5.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changed the name of the New Mexico school of mines to the New Mexico institute of mining and technology. See 21-11-2 NMSA 1978.

**Cross references.** — For election duties of officers of state university, see 21-7-5, 21-7-6 NMSA 1978.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 11, 15; 63A Am. Jur. 2d Public Officers and Employees §§ 487, 488. 14A C.J.S. Colleges and Universities § 15.

## 21-11-6. [Powers and duties of president of board of regents; president pro tem.]

The president of said board shall be the chief executive officer, shall preside at all meetings thereof, except that when he is absent the board may appoint a president pro tem, sign all instruments required to be executed by said board; he shall also direct the affairs generally of the said school of mines [New Mexico institute of mining and technology], shall nominate and, by and with the advice of said board of regents, appoint all professors, instructors, tutors and other employees [employees] necessary to the proper conduct of said school of mines [institute], and in like manner shall determine the amount of their respective salaries.

**History:** Laws 1889, ch. 138, § 31; C.L. 1897, § 3596; Code 1915, § 5142; C.S. 1929, § 130-1104; 1941 Comp., § 55-2604; 1953 Comp., § 73-27-6.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changed the name of the New Mexico

school of mines to the New Mexico institute of mining and technology. See 21-11-2 NMSA 1978.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 5. 14A C.J.S. Colleges and Universities §§ 14, 15, 19, 25.

## 21-11-7. [Duties of secretary-treasurer of board of regents.]

The secretary and treasurer shall be the financial and recording officer of said board, shall keep a true and correct account of all moneys received and expended by him, shall attest all instruments required to be signed by the president of said board, and shall keep a true and correct record of all the proceedings of said board and, generally, do all other things required of him by said board.

**History:** Laws 1889, ch. 138, § 32; C.L. 1897, § 3597; Code 1915, § 5143; C.S. 1929, § 130-1105; 1941 Comp., § 55-2605; 1953 Comp., § 73-27-7.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.



## 21-11-8. Powers and duties of board of regents.

The board of regents shall have power and it shall be their [its] duty to enact bylaws, rules and regulations for the government of such school of mines [New Mexico institute of mining and technology], not inconsistent with the laws of the state; and they [it] shall also prescribe the textbooks to be used, the course of study, the fields of research to be engaged in, the branches to be taught, the number of departments into which said school [institute] shall be divided and to change the same from time to time; to fix the scholastic year, provide apparatus, mineral and geological cabinets, to establish and operate branches of said school [institute] in such place or places in the state of New Mexico as may be designated by said board, and do all and everything necessary in and about the premises with a view to promoting the best interests of said institution; provided that the primary functions for which said school [institute] was established shall be performed at Socorro only.

**History:** Laws 1889, ch. 138, § 33; C.L. 1897, § 3598; Code 1915, § 5144; C.S. 1929, § 130-1106; 1941 Comp., § 55-2606; Laws 1947, ch. 78, § 2; 1953 Comp., § 73-27-8.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changed the name of the New Mexico school of mines to the New Mexico institute of mining and technology. See 21-11-2 NMSA 1978.

**Cross references.** — For tuition and matriculation fees, see 21-1-2 NMSA 1978.

For penalty for interest in educational sales, see 21-1-35 NMSA 1978.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 5, 23.

Mandamus to compel enrollment or reinstatement of pupil, 39 A.L.R. 1019.

Failure of student to attain or maintain prescribed scholastic rating as ground for dropping him, 86 A.L.R. 484.

Clothes of pupils, validity of regulations as to, 14 A.L.R.3d 1201.

14A C.J.S. Colleges and Universities §§ 4, 17, 29, 35, 37, 38.

### 21-11-8.1. Institute for complex additive systems analysis established; function of institute.

A. The board of regents of the New Mexico institute of mining and technology shall establish an institute for complex additive systems analysis.

B. The function of the institute for complex additive systems analysis is to:

- (1) offer formal degree programs that integrate components of the computer science, engineering and management departments at the New Mexico institute of mining and technology;
- (2) use joint faculty appointments and fellowships to recruit teachers from the ranks of academia, government and private industry;
- (3) perform basic research and applied research for the purpose of analyzing and understanding complex interdependent systems;
- (4) use research developed at the institute to help solve issues regarding complex interdependent systems that arise in the public and private sectors; and
- (5) stimulate commerce by serving as an information age extension service for New Mexico businesses.

**History:** Laws 2001, ch. 39, § 1.

**Effective dates.** — Laws 2001, ch. 39, § 2 made the act effective July 1, 2001.

### 21-11-8.2. Geophysical research center.

A. The "geophysical research center" is created at the New Mexico institute of mining and technology. The center may enter into contracts and receive public and private gifts, grants and donations to carry out its activities.

B. The geophysical research center shall conduct research:

- (1) in areas related to and affected by water, with emphasis on atmospheric, surface and underground water;
- (2) on the relationships among lightning, thunderstorms and precipitation;

- (3) in earthquake, volcanology and environmental geophysics; and
- (4) in basic geophysical processes and their applications to state and national issues.

**History:** Laws 2003, ch. 44, § 1.

**Effective dates.** — Laws 2003, ch. 44 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

### **21-11-8.3. Energetic materials research and testing center established; function of center.**

A. The board of regents of the New Mexico institute of mining and technology shall establish the energetic materials research and testing center.

B. The function of the energetic materials research and testing center is to:

- (1) conduct research, development, testing and evaluation of ordinance, explosives and energetic materials;
- (2) conduct programs in energetic materials and related technologies that provide research opportunities for New Mexico institute of mining and technology undergraduate students, graduate students, faculty and staff;
- (3) conduct training courses for governmental, academic and commercial entities in explosives handling and safety, emergency response, terrorist incident response and counterterrorism methods;
- (4) prepare, publish and distribute reports and other documentation presenting the scientific and technical results of the energetic materials research and testing center efforts; and
- (5) actively participate in technical and professional societies and organizations, including attending and presenting papers and talks at their functions and conferences.

**History:** Laws 2003, ch. 121, § 1.

**Effective dates.** — Laws 2003, ch. 121 contained no effective date provision, but, pursuant to N.M. Const.,

art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

### **21-11-8.4. National cave and karst research institute created; purpose.**

A. The "national cave and karst research institute" is created in Carlsbad and shall be a division of the New Mexico institute of mining and technology.

B. The purposes of the institute are to:

- (1) further the science of speleology;
- (2) centralize and standardize speleological information;
- (3) foster interdisciplinary cooperation in cave and karst research programs;
- (4) promote public education;
- (5) promote national and international cooperation in protecting the environment for the benefit of cave and karst land forms; and
- (6) promote and develop environmentally sound and sustainable resource management practices.

C. The board of regents of New Mexico institute of mining and technology shall prepare reports showing the progress and condition of the institute as the board deems necessary. The reports of the institute may be printed and distributed by the board as appropriate, and revenue from the sale of the reports shall be paid into the account of the New Mexico institute of mining and technology.

D. The institute may receive appropriations from the legislature through the board of regents of New Mexico institute of mining and technology and may receive any other items of value from public or private sources.

**History:** Laws 2004, ch. 33, § 1.

**Effective dates.** — Laws 2004, ch. 33 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.



## 21-11-8.5. Repealed.

**Repeals.** — Laws 2009, ch. 66, § 15 repealed 21-11-8.5 NMSA 1978, as enacted by Laws 2005, ch. 81, § 1, relating to the technology research collaborative, effective

April 2, 2009. For provisions of former section, see the 2008 NMOneSource.com.

## 21-11-8.6. Technology research collaborative created; purpose.

A. The "technology research collaborative" is created. The New Mexico institute of mining and technology shall be the fiscal agent for the collaborative.

B. Participating institutions associated with the collaborative shall include national laboratories, other major research institutes and all of the post-secondary educational institutions in New Mexico.

C. The purpose of the collaborative is to:

(1) establish advanced technology centers based on the wealth of scientific and technical talent that exists in the member institutions;

(2) develop and create new intellectual property for the state, encourage new opportunities for business and increase jobs;

(3) commercialize the intellectual property that is created; and

(4) create a work force to support enterprises based on the intellectual property that is created.

D. Intellectual property created by an employee or agent of an institution associated with the collaborative shall be owned by that institution. Intellectual property created jointly by the collaborative and an institution shall be owned jointly by those entities. If the intellectual property is created using federal funds, the applicable federal laws and regulations shall govern the ownership.

E. The collaborative may receive appropriations from the legislature through the board of regents of the New Mexico institute of mining and technology and may receive any other items of value from public or private sources.

F. The "board of the technology research collaborative" is created. The board shall consist of eleven members as follows:

(1) the governor or the governor's designee, who shall chair the collaborative;

(2) the presidents, or their designees, of the university of New Mexico, New Mexico state university and New Mexico institute of mining and technology;

(3) five members at large, appointed by the governor with the consent of the senate;

(4) the director of Sandia national laboratories or the director's designee; and

(5) the director of Los Alamos national laboratory or the director's designee.

G. Appointed members shall serve for two-year terms at the pleasure of the governor. Members shall serve until their successors have been appointed. The governor may fill any vacancy on the board for the remainder of an unexpired term.

H. The board may elect officers as it deems necessary to carry out its duties. A majority of the members of the board shall constitute a quorum for the transaction of business, and the board shall meet four times per year. Board members shall not vote by proxy.

I. Public members of the board shall receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

J. The board shall:

(1) employ a director and other staff, who shall be exempt from the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978], as the board deems necessary to provide continuity and management of the collaborative; and

(2) prepare annual reports to the legislature on the expenditures and progress of the collaborative.

**History:** Laws 2013, ch. 130, § 1.

**Effective dates.** — Laws 2013, ch. 130 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14 2013, 90 days after the adjournment of the legislature.

### 21-11-9. [Departmental faculties.]

The immediate government of their several departments shall be entrusted to their several faculties.

**History:** Laws 1889, ch. 138, § 34; C.L. 1897, § 3599; Code 1915, § 5145; C.S. 1929, § 130-1107; 1941 Comp., § 55-2607; 1953 Comp., § 73-27-9.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 14A C.J.S. Colleges and Universities § 4.

### 21-11-10. [Conferring degrees; granting diplomas.]

The board of regents shall have power to confer such degrees and grant such diplomas as are usually conferred and granted by other similar schools.

**History:** Laws 1889, ch. 138, § 35; C.L. 1897, § 3600; Code 1915, § 5146; C.S. 1929, § 130-1108; 1941 Comp., § 55-2608; 1953 Comp., § 73-27-10.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 1, 5, 31.

Student's right to compel school officials to issue degree, diploma, or the like, 11 A.L.R.4th 1182.

14A C.J.S. Colleges and Universities § 41.

### 21-11-11. [Removal of officers, faculty members and employees.]

The regents shall have power to remove any officer, tutor or instructor, or employee connected with said school [New Mexico institute of mining and technology], when in their judgment the best interests of said school [institute] require it.

**History:** Laws 1889, ch. 138, § 36; C.L. 1897, § 3601; Code 1915, § 5147; C.S. 1929, § 130-1109; 1941 Comp., § 55-2609; 1953 Comp., § 73-27-11.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changed the name of the New Mexico school of mines to the New Mexico institute of mining and technology. See 21-11-2 NMSA 1978.

**Cross references.** — For removal of faculty member for cause after trial, see 21-1-7 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 5, 11 to 13.

Dismissal or rejection of public schoolteacher because of disloyalty, 27 A.L.R.2d 487.

Tort liability, 33 A.L.R.3d 703.

14A C.J.S. Colleges and Universities §§ 19, 25.

### 21-11-12. [Charges for assays and other services; disposition of amounts collected.]

The board of regents shall require such compensation for all assays, analyses, mill tests or other services performed by said institution as they [it] may deem reasonable, and the same shall be collected and paid into the treasury of the school of mines [New Mexico institute of mining and technology] for said institution, and an accurate account thereof shall be kept in a book to be provided for that purpose.

**History:** Laws 1889, ch. 138, § 38; C.L. 1897, § 3603; Code 1915, § 5149; C.S. 1929, § 130-1111; 1941 Comp., § 55-2610; 1953 Comp., § 73-27-12.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changed the name of the New Mexico school of mines to the New Mexico institute of mining and technology. See 21-11-2 NMSA 1978.

### 21-11-13. [Designated the state's school of mines.]

The New Mexico school of mines [New Mexico institute of mining and technology] shall be the state school of mines.



**History:** Laws 1889, ch. 138, § 39; C.L. 1897, § 3604; Code 1915, § 5150; C.S. 1929, § 130-1112; 1941 Comp., § 55-2611; 1953 Comp., § 73-27-13.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changed the name of the New Mexico

school of mines to the New Mexico institute of mining and technology. See 21-11-2 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 14A C.J.S. Colleges and Universities § 9.

### 21-11-14. [Preparatory department to be maintained.]

The New Mexico school of mines [New Mexico institute of mining and technology] shall, in addition to the course now provided for, maintain a preparatory department.

**History:** Laws 1895, ch. 2, § 6; C.L. 1897, § 3605; Code 1915, § 5151; C.S. 1929, § 130-1113; 1941 Comp., § 55-2612; 1953 Comp., § 73-27-14.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changed the name of the New Mexico school of mines to the New Mexico institute of mining and technology. See 21-11-2 NMSA 1978.

### 21-11-15. [Authority to borrow money; purposes.]

For the purpose of erecting, altering, improving, furnishing or equipping any necessary buildings at the New Mexico school of mines [New Mexico institute of mining and technology], or for acquiring any necessary land for the use of said school [institute], or both, or for the purpose of acquiring lands and buildings for use as a branch of said school [institute], or for the purpose of retiring the whole or any part of any series of bonds previously issued, the board of regents of the New Mexico school of mines [institute] is hereby authorized to borrow money in conformity with the terms of this act [21-11-15, 21-11-16, 21-8-18 through 21-11-26 NMSA 1978].

**History:** 1941 Comp., § 55-2613, enacted by Laws 1947, ch. 119, § 1; 1953 Comp., § 73-27-15.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changed the name of the New Mexico

school of mines to the New Mexico institute of mining and technology. See 21-11-2 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 35.  
14A C.J.S. Colleges and Universities § 17.

### 21-11-16. [Authority to issue and retire building and improvement bonds.]

Whenever the said board, by affirmative vote of a majority of its members, duly entered in the minutes of said board, shall, by resolution, determine that it is necessary to erect, alter, improve, furnish or equip any building or buildings at said school [New Mexico institute of mining and technology], or acquire any land for the use thereof, or to acquire land and buildings for use as a branch of said school [institute], or to retire the whole or any part of any series of bonds previously issued by said school [institute] or to refund the same, or for any of said purposes, the board of regents of the New Mexico school of mines [institute] is hereby empowered and authorized to issue and sell, subject to the terms of this act [21-11-15, 21-11-16, 21-11-18 through 21-11-26 NMSA 1978], building and improvement bonds of the New Mexico school of mines [institute].

**History:** 1941 Comp., § 55-2614, enacted by Laws 1947, ch. 119, § 2; 1953 Comp., § 73-27-16.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changed the name of the New Mexico school of mines to the New Mexico institute of mining and technology. See 21-11-2 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations § 120.  
14A C.J.S. Colleges and Universities §§ 4, 10.

## 21-11-17. Form and conditions of bonds.

Bonds of the New Mexico institute of mining and technology issued pursuant to Chapter 21, Article 11 NMSA 1978 shall be in such form and denominations as the board of regents of the institute shall determine, due and payable not later than twenty-five years from date of issue. The bonds shall be payable in consecutive order commencing not later than two years from date of issue.

**History:** 1978 Comp., § 21-11-17, enacted by Laws 1983, ch. 265, § 41.

**Repeals and reenactments.** — Laws 1983, ch. 265, § 41, repealed former 21-11-17 NMSA 1978, and enacted a new section.

Power and discretion of officer or board authorized to issue bonds of governmental units as regards terms or conditions to be included therein, 119 A.L.R. 190.

47 C.J.S. Interest and Usury; Consumer Credit § 15.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations §§ 195, 196, 202, 205, 399 to 453.

## 21-11-18. [Sale of bonds; publication of notice; bids.]

The regents shall offer said bonds for sale after publication of notice of the time and place of sale, in some newspaper of general circulation in Albuquerque, New Mexico, once each week for four (4) consecutive weeks prior to the date fixed for said sale. Such notice shall specify the amount, denomination, maturity dates and the description of the bonds to be offered for sale, and the place, day and hour at which sealed bids therefor will be received and opened, and that only unconditional bids will be considered, and that each bid must be accompanied by a certified check on a solvent bank, payable to the order of the secretary of the board of regents, for not less than five (5) per centum of the par value of the bonds offered for sale, as a guaranty that the bonds will be taken by the bidder if his bid is accepted. At the place and time specified in such notice, the board of regents shall publicly open the bids and award the bonds to the responsible bidder or bidders offering the highest price therefor, but no bid shall be accepted for less than the par value of said bonds, plus the accrued interest from the last preceding interest date to the date of delivery of said bonds. Before delivery of the bonds to the purchaser, the secretary and treasurer of the board shall detach and cancel all matured interest coupons. The said board shall have and reserve the right to reject any and all bids at such sale and to readvertise the same. The state treasurer may, with the approval of the state [state] board of finance and the other officials whose approval may be required by law for the investment of public funds, purchase such bonds at par and accrued interest to date of delivery for such investment, without the necessity of advertising or publicly offering said bonds for sale; and said treasurer is hereby authorized to invest moneys of the permanent school fund in said bonds. Such bonds shall be accepted at their par value by all public officials in this state as security for the repayment of all deposits of public moneys of this state, or of any county, municipality or public institution thereof, and as security for the faithful performance of any obligation or duty to guarantee the performance of which such officials are now authorized by law to accept a deposit of the bonds of this state or of the United States of America.

**History:** 1941 Comp., § 55-2616, enacted by Laws 1947, ch. 119, § 4; 1953 Comp., § 73-27-18.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For legal newspapers, see 14-11-2 NMSA 1978.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations §§ 120, 228, 229, 240, 452, 453, 488.

Sale of municipal or other public bonds at less than par or face value, 91 A.L.R. 7, 162 A.L.R. 396.

## 21-11-19. [Permanent improvement and interest and retirement funds.]

The proceeds from the sale of said bonds shall be paid to the secretary and treasurer of said regents, and shall be placed in a separate fund to be known as "permanent improvement fund" to



be used and paid out only for the specified purposes enumerated in this act [21-11-15, 21-11-16, 21-11-18 through 21-11-26 NMSA 1978] and upon order of the board of regents, on checks signed by the president or vice president and by the secretary or treasurer of said board. Provided, however, that moneys received on account of accrued interest on said bonds to date of delivery shall be placed in the "interest and retirement fund" for the liquidation of said bonds as hereinafter provided. The cost of preparing, advertising and selling said bonds, including any necessary legal expenses thereon, shall be paid out of the proceeds of the sale of said bonds.

**History:** 1941 Comp., § 55-2617, enacted by Laws 1947, ch. 119, § 5; 1953 Comp., § 73-27-19.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 33.  
14A C.J.S. Colleges and Universities § 14.

### 21-11-20. [Interest and retirement fund established.]

At the time of issuing said bonds the regents shall establish for the payment of the principal and interest thereof a fund to be known as "interest and retirement fund" into which fund said regents shall immediately place a sum not less than the amount necessary to pay the interest and maturing principal of said bonds for the ensuing twelve (12) months, and annually thereafter shall continue to place in said fund a sufficient amount to pay principal and interest maturing in the succeeding twelve (12) months.

**History:** 1941 Comp., § 55-2618, enacted by Laws 1947, ch. 119, § 6; 1953 Comp., § 73-27-20.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations § 266.

### 21-11-21. [Pledge of income to retirement of bonds and payment of interest.]

For the faithful and prompt payment of all interest and principal of said bonds as and when the same shall mature according to the tenor thereof, the issue thereof shall constitute an irrevocable pledge by said regents of so much of each year's income from the permanent fund of the New Mexico school of mines [New Mexico institute of mining and technology] in the hands of the treasurer of this state, as shall be necessary to provide the "interest and retirement fund" herein mentioned, for the ensuing year, and to at all times fully and faithfully keep the same in not less than the amount necessary to pay the interest and principal maturing as aforesaid; and in addition thereto the issue of said bonds shall constitute an irrevocable pledge by said regents of so much of each year's income from the income and current fund derived from the lease of such of its lands as remain unsold, as may be necessary to fully protect the "interest and retirement fund" for the ensuing year, and to keep the same at all times in proper amount as herein provided. Whenever bonds are issued under the authority of this act [21-11-15, 21-11-16, 21-11-18 through 21-11-26 NMSA 1978] for the purpose of acquiring lands and buildings for use as a branch of said New Mexico school of mines [institute] and said branch is operated under contracts which produce revenue as rentals, use charges, or otherwise, the regents shall, in addition to the income from the permanent fund and the income and current fund derived from the lease of such of its lands as remain unsold, have power to pledge irrevocably as security for the principal and interest on said bonds the entire rentals, use charges or other revenues derived from the contracts under which said branch is operated.

**History:** 1941 Comp., § 55-2619, enacted by Laws 1947, ch. 119, § 7; 1953 Comp., § 73-27-21.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changed the name of the New Mexico

school of mines to the New Mexico institute of mining and technology. See 21-11-2 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations § 199.

## 21-11-22. [Forwarding of funds for payment of bonds and interest coupons.]

The secretary and treasurer of said regents shall forward to the bank at which said bonds are payable, prior to the date on which any coupons or principal of any of said bonds shall mature, out of the "interest and retirement fund" a sufficient sum of money to meet said coupons and maturing bonds as the same become due, plus any service charge which said bank shall be entitled to receive for its services.

**History:** 1941 Comp., § 55-2620, enacted by Laws 1947, ch. 119, § 8; 1953 Comp., § 73-27-22.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations §§ 197, 198.  
11 C.J.S. Bonds § 59 et seq.

## 21-11-23. [Use of funds restricted to designated purposes.]

None of the funds derived from the sale of said bonds, except so much thereof as shall be necessary to defray the cost of the issuance thereof, shall ever be used or expended by said board for any purposes other than those for which authority is herein given.

**History:** 1941 Comp., § 55-2621, enacted by Laws 1947, ch. 119, § 9; 1953 Comp., § 73-27-23.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 35.  
14A C.J.S. Colleges and Universities § 14.

## 21-11-24. [State treasurer to transfer income from permanent funds; income and current fund.]

The state treasurer of the state of New Mexico shall forward and pay over to the secretary and treasurer of said board of regents out of the income from the permanent funds of said school [New Mexico institute of mining and technology], a sum sufficient to make and establish the interest and retirement fund, as herein provided, and to annually pay over a sufficient amount for said purpose, to the end that said interest and retirement fund shall at all times be kept in the proper amount. The state treasurer shall use so much of the income and current fund of said school [institute] in his hands as shall be necessary to establish and at all times maintain said "interest and retirement fund" in the event there shall not be sufficient undistributed income from the permanent funds of said school [institute].

**History:** 1941 Comp., § 55-2622, enacted by Laws 1947, ch. 119, § 10; 1953 Comp., § 73-27-24.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

N.M. Const., art. XII, § 11, as repealed and reenacted November 8, 1960, changed the name of the New Mexico

school of mines to the New Mexico institute of mining and technology. See 21-11-2 NMSA 1978.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 35.  
14A C.J.S. Colleges and Universities § 14.

## 21-11-25. [Bonds designated serially.]

Each series of bonds issued under the authority of this act [21-11-15, 21-11-16, 21-11-18 through 21-11-26 NMSA 1978] shall be designated by the letters "A," "B" and so forth, to the end that each series shall be kept separate, and all of the requirements of this act shall apply to and shall be faithfully followed, done and carried out as to each of said series.

**History:** 1941 Comp., § 55-2623, enacted by Laws 1947, ch. 119, § 11; 1953 Comp., § 73-27-25.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.



## 21-11-26. [Bonds exempt from taxation.]

Bonds issued under the provisions of this act [21-11-15, 21-11-16, 21-11-18 through 21-11-26 NMSA 1978] shall forever be and remain free and exempt from taxation by this state or any subdivision thereof.

**History:** 1941 Comp., § 55-2624, enacted by Laws 1947, ch. 119, § 12; 1953 Comp., § 73-27-26.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Constitutional enumeration of subjects of tax exemption as affecting power of legislature to free government securities or property from taxation, 9 A.L.R. 436. 84 C.J.S. Taxation § 260.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 495, 526.

## 21-11-27. Repealed.

**Repeals.** — Laws 2001, ch. 185, § 1 repealed 21-11-27 NMSA 1978, as enacted by Laws 1947, ch. 119, § 13, relating to classroom facilities outside the city of Socorro,

effective June 15, 2001. For provisions of former section, see the 2000 NMSA 1978 on *NMOneSource.com*.

## 21-11-28. Repealed.

**Repeals.** — Laws 1999, ch. 28, § 2 repealed 21-11-28 NMSA 1978, as enacted by Laws 1982, ch. 4, § 5, relating to the New Mexico tech sinking fund, effective June 18,

1999. For provisions of former section, see the 1998 NMSA 1978 on *NMOneSource.com*.

## ARTICLE 12

### New Mexico Military Institute

Sec.  
21-12-1. Board of regents; appointment; term; political affiliations; compensation.  
21-12-2. Election of officers; duties; bond of secretary-treasurer.  
21-12-3. Board of regents; duty; educational standard.  
21-12-4. Rules and regulations; teachers; contracts; buildings; improvements.  
21-12-5. Sale of lands.  
21-12-6. Deeds and contracts signed by president.  
21-12-7. Increase in tuition fee authorized.  
21-12-8. Officers to be governor's aides; rank; uniforms.  
21-12-9. Organization of cadets; cadet commissions; authority of superintendent.  
21-12-10. Ordnance and quartermaster's stores; care and custody; annual report.  
21-12-11. General Richard T. Knowles legislative scholarship program created; purpose.

Sec.  
21-12-12. Program administration; criteria.  
21-12-13. Fund created.  
21-12-14. Investment of fund.  
21-12-15. New Mexico military institute; transfer of budget balances.  
21-12-16. Public safety education; scholarships.  
21-12-17. Corrections education; scholarships.  
21-12-18. Luciano "Lucky" Varela opportunity scholarship created; purpose.  
21-12-19. Program administration; criteria.  
21-12-20. Luciano "Lucky" Varela opportunity scholarship fund.  
21-12-21. New Mexico military institute; transfer of budget balances.

## 21-12-1. [Board of regents; appointment; term; political affiliations; compensation.]

The New Mexico military institute, at Roswell, shall be under the supervision and control of a board of five regents, to serve without compensation, to be appointed by the governor, by and with the advice and consent of the senate for a term of four years, and not more than three of them shall belong to the same political party at the time of their appointment.

**History:** Laws 1893, ch. 41, § 2; C.L. 1897, § 3661; Code 1915, § 4988; C.S. 1929, § 120-2001; 1941 Comp., § 66-1301; 1953 Comp., § 73-28-1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — This section appears to have been superseded by N.M. Const., art. XII, § 13, which provides

for six-year terms of members of the New Mexico military institute board of regents.

**Cross references.** — For entitlement to benefits under acts of congress, *see* 21-1-20 NMSA 1978.

For confirmation as state educational institutions, *see* N.M. Const., art. XII, § 11.

For management by board of regents, *see* N.M. Const., art. XII, § 13.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 11, 15; 63A Am. Jur. 2d Public Officers and Employees §§ 53, 54.

Constitutionality of statute requiring, or limiting, selection or appointment of public officers or agents from members of a political party or parties, 140 A.L.R. 471, 170 A.L.R. 198.

14A C.J.S. Colleges and Universities § 16.

### 21-12-2. [Election of officers; duties; bond of secretary-treasurer.]

The said board of regents shall organize and elect from their number, a president, a vice president, and a secretary and treasurer, who shall do and perform all of the duties that shall be incumbent upon them as such officers. The secretary and treasurer shall, before entering upon the discharge of his duties as such, execute a good and sufficient bond to the state of New Mexico with some solvent surety company authorized to do business in the state of New Mexico as the surety, in a penal sum to be fixed by the said board of regents of not less than \$20,000, conditioned for the faithful performance of his duties as such secretary and treasurer and that he will faithfully account for and pay over to the person or persons entitled to receive the same from him all monies which shall come into his hands as such officer, which said bond shall be approved by the said board of regents and kept on file as directed by the said board.

**History:** Laws 1893, ch. 41, § 3; C.L. 1897, § 3662; Code 1915, § 4989; C.S. 1929, § 120-2002; Laws 1933, ch. 136, § 1; 1941 Comp., § 66-1302; 1953 Comp., § 73-28-2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 11, 15; 63A Am. Jur. 2d Public Officers and Employees §§ 487, 488.

14A C.J.S. Colleges and Universities § 15.

### 21-12-3. [Board of regents; duty; educational standard.]

It shall be the duty of the board of regents to maintain and control, at Roswell, a military institute for the education and training of the youth of this country, of as high a standard as like institutions in other states and territories.

**History:** Laws 1893, ch. 41, § 4; C.L. 1897, § 3663; Code 1915, § 4990; C.S. 1929, § 120-2003; 1941 Comp., § 66-1303; 1953 Comp., § 73-28-3.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 21-12-4. [Rules and regulations; teachers' contracts; buildings; improvements.]

The said board shall have full power and authority to make such rules and regulations concerning the government and course of said institute as they [it] may deem proper; to make contracts with teachers; to erect buildings and make such other improvements as the institute may require.

**History:** Laws 1893, ch. 41, § 5; C.L. 1897, § 3664; Code 1915, § 4991; C.S. 1929, § 120-2004; 1941 Comp., § 66-1304; 1953 Comp., § 73-28-4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For board of regents to fix admission requirements, *see* 21-1-1 NMSA 1978.

For removal of member of faculty, *see* 21-1-7 NMSA 1978.

For retirement of faculty and employees, *see* 21-1-8 NMSA 1978.

For penalty for interest in contracts for supplies, *see* 21-1-35 NMSA 1978.

#### ANNOTATIONS

**Purchasing real estate.** — Although there is no specific authority for the New Mexico military institute to purchase real estate, yet it may be implied from the general power of control over the institution; such purchase, if it could be made, might be paid for with any surplus of the maintenance fund, over necessities. Title should be in the name of the state. 1917-18 Op. Att'y Gen. 141.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 5, 11, 23.

14A C.J.S. Colleges and Universities §§ 11, 17, 19, 25.



## 21-12-5. Sale of lands.

With the exception of the forty-acre tract upon which the main portion of the buildings of the New Mexico military institute are now situated and excepting lands granted by acts of congress, the board of regents of the New Mexico military institute shall have authority and the power to sell, convey, lease or otherwise dispose of, for the benefit of the New Mexico military institute, any and all lands and property belonging to the New Mexico military institute or conveyed to the board of regents of the New Mexico military institute for the benefit of the New Mexico military institute, or conveyed to the state of New Mexico for the use and benefit of the New Mexico military institute.

**History:** Laws 1893, ch. 41, § 6; C.L. 1897, § 3665; Code 1915, § 4992; C.S. 1929, § 120-2005; Laws 1941, ch. 51, § 1; 1941 Comp., § 66-1305; 1953 Comp., § 73-28-5.

### ANNOTATIONS

**Constitutionality of conveyance.** — Arms-length conveyance of property from the New Mexico Military Institute to the New Mexico Military Institute Foundation

was proper, and did not violate N.M. Const., art. IX, § 14, prohibiting state aid to private enterprise, where the \$250,000 contract price bore a sufficient relationship to the actual value of the property. 1988 Op. Att'y Gen. No. 88-79.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 35.  
14A C.J.S. Colleges and Universities § 14.

## 21-12-6. [Deeds and contracts signed by president.]

That all deeds for the sale of lands and all contracts made by the said board shall be signed by the president.

**History:** Laws 1893, ch. 41, § 7; C.L. 1897, § 3666; Code 1915, § 4993; C.S. 1929, § 120-2006; 1941 Comp., § 66-1306; 1953 Comp., § 73-28-6.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 21-12-7. [Increase in tuition fee authorized.]

The regents of the New Mexico military institute may charge a larger tuition fee than provided in Section 5164 if it is deemed necessary to do so to maintain said institute.

**History:** Laws 1895, ch. 2, § 6; C.L. 1897, § 3671; Code 1915, § 4994; C.S. 1929, § 120-2007; 1941 Comp., § 66-1307; 1953 Comp., § 73-28-7.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The reference to "Section 5164" means § 5164, Code 1915, which has been repealed by

Laws 1970, ch. 9, § 1, which enacted a new section in lieu thereof that is compiled as 21-1-2 NMSA 1978.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 19 to 22.  
14A C.J.S. Colleges and Universities § 31.

## 21-12-8. Officers to be governor's aides; rank; uniforms.

For the better government and enforcement of discipline in the New Mexico military institute, the superintendent, commandant of cadets, instructors and others designated by the board of regents as officers in the New Mexico military institute, shall be commissioned as aides-de-camp on the staff of the governor of the state of New Mexico, with such military rank as the board of regents shall prescribe or designate, in addition to the number of aides-de-camp otherwise provided by law; the superintendent, commandant of cadets, instructors and others designated by the board of regents of the New Mexico military institute as officers in the New Mexico military institute shall have such rank as may be prescribed by the board of regents and shall hold office and rank, as such during the time they are employed in such capacity in said New Mexico military institute, and they will be allowed to wear the uniform of their rank while on duty as officers in the New Mexico military institute and upon all public occasions when the national guard is under arms or the staff of the governor and commander-in-chief shall be ordered out.

**History:** Laws 1901, ch. 63, § 1; Code 1915, § 4995; C.S. 1929, § 120-2008; 1941 Comp., § 66-1308; Laws 1947, ch. 6, § 1; 1953 Comp., § 73-28-8.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 25.  
6 C.J.S. Armed Services § 291.

### 21-12-9. Organization of cadets; cadet commissions; authority of superintendent.

The superintendent of the New Mexico military institute shall have power to organize the cadets of the New Mexico military institute into military units and to appoint cadet officers and noncommissioned officers who shall hold their offices at the pleasure of the superintendent. Commissions shall be issued by the superintendent to cadet officers, and shall be known as cadet commissions. The superintendent shall have power to designate and prescribe the number and rank and duties of cadet officers and noncommissioned officers.

**History:** Laws 1901, ch. 63, § 2; Code 1915, § 4996; C.S. 1929, § 120-2009; 1941 Comp., § 66-1309; Laws 1947, ch. 6, § 2; 1953 Comp., § 73-28-9.

### 21-12-10. [Ordnance and quartermaster's stores; care and custody; annual report.]

It shall be the duty of the superintendent to provide a safe and convenient place for the keeping and preservation of all ordnance and quartermaster's stores received from the state for the use of the institution, and on and before the thirty-first day of December in each year, he shall make a report to the adjutant general of the state of all such stores on hand, and in such report he shall show their condition, whether serviceable or unserviceable, and if any of such stores should be lost or destroyed, the manner of their loss or destruction.

**History:** Laws 1901, ch. 63, § 3; Code 1915, § 4997; C.S. 1929, § 120-2010; 1941 Comp., § 66-1310; 1953 Comp., § 73-28-10.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

### 21-12-11. General Richard T. Knowles legislative scholarship program created; purpose.

There is created the "General Richard T. Knowles legislative scholarship program" at the New Mexico military institute. The purpose of the program is to increase the number of New Mexico residents attending the New Mexico military institute and to increase the opportunity for promising young people who might not otherwise have the opportunity to participate in a military education and environment.

**History:** Laws 1989, ch. 44, § 1; 1989, ch. 45, § 1; 1998 (1st S.S.), ch. 4, § 1.

**The 1998 amendment,** effective on August 2, 1998, substituted "General Richard T. Knowles, legislative

scholarship program" for "legislator scholarship program" in the section heading and in the first sentence.

### 21-12-12. Program administration; criteria.

A. The General Richard T. Knowles legislative scholarship program shall be administered by the board of regents of the New Mexico military institute. The board of regents shall establish one hundred twelve scholarships available to New Mexico residents, one scholarship available for each state legislative district.

B. Annually, each state legislator may nominate four prospective scholarship recipients to the board of regents of the New Mexico military institute. If a legislator has no applicant from the



legislator's district, that senator or representative may choose to nominate an applicant from a senate or representative district contiguous to the legislator's own district, thus maintaining geographical diversity in the corps of cadets while affording a greater opportunity for more New Mexicans to receive a scholarship. In the event no applicant is available by July 1 of each year from either the legislator's district or a contiguous district, the scholarship may be awarded to any of the qualified nominees from any state legislative district.

C. Scholarships shall be awarded to qualifying New Mexico residents for a term not to exceed four years.

D. The board of regents shall establish criteria for the awarding of scholarships. Criteria shall include scholastic ability, faculty recommendations, standardized test scores, letters of recommendation, school honors and extracurricular activities.

**History:** Laws 1989, ch. 44, § 2; 1989, ch. 45, § 2; 1998 (1st S.S.), ch. 4, § 2; 2009, ch. 228, § 1.

The 2009 amendment, effective June 19, 2009, in Subsection B, added the last sentence.

The 1998 amendment, effective on August 2, 1998, in Subsection A, substituted "General Richard T. Knowles legislative scholarship program" for "legislator scholarship program", and substituted "for" for "in" near the end; and added the last sentence in Subsection B.

### 21-12-13. Fund created.

The "legislative scholarship fund" is created. No money appropriated to the legislative scholarship fund or accruing to it through gifts, grants or bequests shall be transferred to another fund; provided that up to five hundred thousand dollars (\$500,000) may be transferred annually to the Luciano "Lucky" Varela opportunity scholarship fund. The legislative scholarship fund shall not revert at the end of any fiscal year. Any interest earned from investment of the legislative scholarship fund shall be credited to the legislative scholarship fund for the purpose of implementing the General Richard T. Knowles legislative scholarship program. Money in the legislative scholarship fund is appropriated to the New Mexico military institute.

**History:** 1978 Comp., § 21-12-13, enacted by Laws 1990, ch. 109, § 1; 1998 (1st S.S.), ch. 4, § 3; 2018, ch. 20, § 5.

The 2018 amendment, effective July 1, 2018, authorized the transfer of funds from the legislative scholarship fund to the Luciano "Lucky" Varela opportunity scholarship fund; after "No money appropriated to the", added "legislative scholarship", after "transferred to another fund", added "provided that up to five hundred thousand

dollars (\$500,000) may be transferred annually to the Luciano "Lucky" Varela opportunity scholarship fund", after "The", added "legislative scholarship", after "investment of", added "legislative scholarship", and after "Money in the", added "legislative scholarship".

The 1998 amendment, effective on August 2, 1998, substituted "General Richard T. Knowles legislative scholarship program" for "legislative scholarship program" in the third sentence.

### 21-12-14. Investment of fund.

The board of regents of New Mexico military institute may invest and reinvest the legislative scholarship fund in accordance with state investment council policy for market rate investments for the severance tax permanent fund, subject to the approval of the state investment council after explanation and presentation of the investment plan.

**History:** 1978 Comp., § 21-12-14, enacted by Laws 1990, ch. 109, § 2; 1997, ch. 225, § 1.

The 1997 amendment, effective June 20, 1997, re-wrote this section.

### 21-12-15. New Mexico military institute; transfer of budget balances.

With the approval of the commission on higher education [higher education department], the board of regents of New Mexico military institute may, each fiscal year, transfer up to five hundred thousand dollars (\$500,000) of the institute's budget balances to the legislative scholarship fund established to implement the General Richard T. Knowles legislative scholarship program.

**History:** Laws 2005, ch. 161, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2005, ch. 289, § 29 provided that all references to the commission on higher education be construed to be references to the higher education department.

**Effective dates.** — Laws 2005, ch. 161 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 21-12-16. Public safety education; scholarships.

A. The board of regents of the New Mexico military institute may establish a public safety officer education program for students interested in careers in public safety.

B. Subject to available funding, the board of regents of the New Mexico military institute may offer public safety officer education scholarships to New Mexico residents who enroll in the public safety officer education program. With the advice of the department of public safety, the board of regents shall establish criteria for awarding the public safety officer education scholarships and, with the cooperation of the department of public safety, may establish internship programs with public safety agencies for scholarship recipients.

**History:** Laws 2005, ch. 162, § 1.

**Effective dates.** — Laws 2005, ch. 162 contained no effective date provision, but, pursuant to N.M. Const.,

art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 21-12-17. Corrections education; scholarships.

A. The board of regents of the New Mexico military institute may establish a corrections education program for students interested in careers in corrections.

B. Subject to available funding, the board of regents may offer corrections education scholarships to New Mexico residents who enroll in the corrections education program. With the advice of the corrections department, the board of regents shall establish criteria for awarding the corrections education scholarships and, with the cooperation of the corrections department, may establish internship programs at corrections department facilities for scholarship recipients.

**History:** Laws 2005, ch. 163, § 1.

**Effective dates.** — Laws 2005, ch. 163 contained no effective date provision; but, pursuant to N.M. Const.,

art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 21-12-18. Luciano "Lucky" Varela opportunity scholarship created; purpose.

The Luciano "Lucky" Varela opportunity scholarship is created at the New Mexico military institute. The purpose of the scholarship is to increase the number of New Mexico high school students attending the New Mexico military institute who meet need-based requirements and who might not otherwise have the opportunity to participate in a military education and environment.

**History:** Laws 2018, ch. 20, § 1.

**Effective dates.** — Laws 2018, ch. 20, § 6 made Laws 2018, ch. 20, § 1 effective July 1, 2018.

## 21-12-19. Program administration; criteria.

A. The Luciano "Lucky" Varela opportunity scholarship shall be administered by the board of regents of the New Mexico military institute. The board of regents shall annually establish a number of Luciano "Lucky" Varela opportunity scholarships available to New Mexico high school students who meet need-based requirements.

B. Scholarships shall be awarded to qualifying New Mexico residents for a term not to exceed four years.



C. The board of regents of the New Mexico military institute shall establish criteria based on need, up to the total cost of attendance, in accordance with New Mexico military institute admission requirements for New Mexico high school residents.

**History:** Laws 2018, ch. 20, § 2.

**Effective dates.** — Laws 2018, ch. 20, § 6 made Laws 2018, ch. 20, § 2 effective July 1, 2018.

## 21-12-20. Luciano "Lucky" Varela opportunity scholarship fund.

A. Subject to available funding, the "Luciano "Lucky" Varela opportunity scholarship fund" is created. Money appropriated to the fund or accruing to it through gifts, grants or bequests shall not be transferred to another fund. The fund shall not revert at the end of a fiscal year. Any interest earned from investment of the fund shall be credited to the Luciano "Lucky" Varela opportunity scholarship fund for the purpose of implementing the Luciano "Lucky" Varela opportunity scholarship. Money in the fund is appropriated to the board of regents of the New Mexico military institute.

B. The board of regents of the New Mexico military institute may invest and reinvest the Luciano "Lucky" Varela opportunity scholarship fund in accordance with state investment council policy.

**History:** Laws 2018, ch. 20, § 3.

**Effective dates.** — Laws 2018, ch. 20, § 6 made Laws 2018, ch. 20, § 3 effective July 1, 2018.

## 21-12-21. New Mexico military institute; transfer of budget balances.

With the approval of the higher education department, the board of regents of the New Mexico military institute may, each fiscal year, transfer up to five hundred thousand dollars (\$500,000) of the institute's budget balances, including existing scholarship endowments, to the Luciano "Lucky" Varela opportunity scholarship fund established to implement the Luciano "Lucky" Varela opportunity scholarship.

**History:** Laws 2018, ch. 20, § 4.

**Effective dates.** — Laws 2018, ch. 20, § 6 made Laws 2018, ch. 20, § 4 effective July 1, 2018.

# ARTICLE 13

## Community Colleges

Sec.

- 21-13-1. Short title.
- 21-13-2. Definitions.
- 21-13-3. Repealed.
- 21-13-4. Repealed.
- 21-13-4.1. Limitations on community colleges.
- 21-13-4.2. Name change.
- 21-13-5. Repealed.
- 21-13-6. Repealed.
- 21-13-7. Repealed.
- 21-13-8. Community college board.
- 21-13-8.1. Community college board; optional form.
- 21-13-9. Community college board meetings.
- 21-13-10. Board duties.
- 21-13-11. Standards and accrediting of community colleges.
- 21-13-12. Degrees and certificates awarded.
- 21-13-13. Per diem; mileage.
- 21-13-14. Repealed.
- 21-13-15. Repealed.

Sec.

- 21-13-16. Repealed.
- 21-13-17. Repealed.
- 21-13-18. Repealed.
- 21-13-18.1. Repealed.
- 21-13-18.2. Repealed.
- 21-13-19. Enrollment defined; payments.
- 21-13-20. Sharing of facilities.
- 21-13-21. Addition of school districts to existing community college districts.
- 21-13-22. Transportation system.
- 21-13-23. Dissolution of community college districts.
- 21-13-24. Repealed.
- 21-13-24.1. Establishing procedures for independence; funding; tuition; appropriation; local support level; outstanding indebtedness.
- 21-13-25. Liberal construction.
- 21-13-26. Repealed.
- 21-13-27. Creation of southeast New Mexico college; name change; governing board.

### 21-13-1. Short title.

Chapter 21, Article 13 NMSA 1978 shall be known as the "Community College Act".

**History:** 1953 Comp., § 73-33-1, enacted by Laws 1963, ch. 17, § 1; 1985, ch. 238, § 1.

### 21-13-2. Definitions.

As used in the Community College Act:

A. "community college" means a public educational institution that provides not to exceed two years of training in the arts, sciences and humanities beyond the twelfth grade of the public high school curriculum or, in lieu of that training or in addition to it, not to exceed two years of a vocational and technical curriculum and appropriate courses of study for persons who may or may not have completed the twelfth grade of public high school;

B. "community college district" means a district in which a community college is located, which district is composed of the territory of one or more school districts of the state. For the purposes of relating community college districts to existing law, community college districts and the community colleges thereof shall not:

(1) be considered a part of the uniform system of free public schools pursuant to Article 12, Section 1 and Article 21, Section 4 of the constitution of New Mexico;

(2) benefit from the permanent school fund and from the current school fund under Article 12, Sections 2 and 4 of the constitution of New Mexico;

(3) be subject, except as it relates to technical and vocational education, to the control, management and direction of the state board of education under Article 12, Section 6 of the constitution of New Mexico; and

(4) be considered school districts insofar as the restrictions of Article 9, Section 11 of the constitution of New Mexico are concerned; and

C. "qualified elector" means a person otherwise eligible to vote within the community college district.

**History:** 1953 Comp., § 73-33-2, enacted by Laws 1963, ch. 17, § 2; 1964 (1st S.S.), ch. 16, § 1; 1980, ch. 53, § 1; 1985, ch. 238, § 2; 1998, ch. 61, § 3.

**Cross references.** — For public school fund, see 22-8-14 NMSA 1978.

For current school fund, see 22-8-32 NMSA 1978.

**The 1998 amendment,** effective March 9, 1998, in Subsection A, substituted "that" for "which" near the beginning and in the first sentence in Subsection B, deleted "or proposed to be created" following "located" and substituted "is" for "shall be".

to schools and junior colleges are solely creations of the legislature. *Daniels v. Watson*, 1966-NMSC-011, 75 N.M. 661, 410 P.2d 193.

**Legislative intent.** — The legislature did not intend junior college districts to come within the general school system. *Daniels v. Watson*, 1966-NMSC-011, 75 N.M. 661, 410 P.2d 193.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 1.  
14A C.J.S. Colleges and Universities § 5.

#### ANNOTATIONS

**Applicability of constitution.** — Junior college legislation is outside the constitutional provisions relating

### 21-13-3. Repealed.

**Repeals.** — Laws 1998, ch. 61, § 16 repealed 21-13-3 NMSA 1978, as enacted by Laws 1963, ch. 17, § 3, relating to community college purpose, effective March 9, 1998.

For provisions former section, see the 1997 NMSA 1978 on *NMOneSource.com*.

### 21-13-4. Repealed.

**Repeals.** — Laws 1998, ch. 61, § 16 repealed 21-13-4 NMSA 1978, as enacted by Laws 1964 (1st S.S.), ch. 16, § 2, relating to community college districts, effective

March 9, 1998. For provisions former section, see the 1997 NMSA 1978 on *NMOneSource.com*.



### 21-13-4.1. Limitations on community colleges.

There shall be no new community college, branch campus or off-campus instructional center created after January 1, 1998 unless specifically created by the legislature.

**History:** Laws 1998, ch. 61, § 5.

**Emergency clauses.** — Laws 1998, ch. 61, § 17 contained an emergency clause and was approved March 9, 1998.

### 21-13-4.2. Name change.

A. Luna vocational-technical institute shall be known as "Luna community college", and Mesa technical college shall be known as "Mesalands community college" and shall be organized as provided in Chapter 21, Article 13 NMSA 1978.

B. The governing board of the Luna vocational-technical institute shall be the governing board of Luna community college, and the governing board of the Mesa technical college shall be the governing board of the Mesalands community college.

C. All taxes levied to pay any principal and interest on bonds of the Luna vocational-technical institute or Mesa technical college for operating, maintaining and providing facilities shall continue in effect until dissolution pursuant to procedures set forth in Chapter 21, Article 13 NMSA 1978.

D. All references in law to the Luna vocational-technical institute shall be construed to be references to Luna community college, and all references in law to the Mesa technical college shall be construed to be references to Mesalands community college.

**History:** Laws 2005, ch. 193, § 1.

**Effective dates.** — Laws 2005, ch. 193 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

**Temporary provisions.** — Laws 2005, ch. 193, § 2, provided that all functions, personnel, appropriations, money, records, equipment and other property of Luna

vocational-technical institute shall be transferred to Luna community college and of Mesa technical college shall be transferred to Mesalands community college and that all existing contracts and agreements in effect as to Luna vocational-technical institute shall be binding on Luna community college and as to Mesa technical college shall be binding on Mesalands community college.

### 21-13-5. Repealed.

**Repeals.** — Laws 1998, ch. 61, § 16 repealed 21-13-5 NMSA 1978, as enacted by Laws 1964 (1st S.S.), ch. 16, § 3; relating to feasibility survey, effective March 9, 1998.

For former section, see the 1997 NMSA 1978 on *NMOneSource.com*.

### 21-13-6. Repealed.

**Repeals.** — Laws 1998, ch. 61, § 16 repealed 21-13-6 NMSA 1978, as enacted by Laws 1964 (1st S.S.), ch. 16, § 4, relating to notice and conduct of community college

district referendum election, effective March 9, 1998. For former section, see the 1997 NMSA 1978 on *NMOneSource.com*.

### 21-13-7. Repealed.

**Repeals.** — Laws 1998, ch. 61, § 16 repealed 21-13-7 NMSA 1978, as enacted by Laws 1964 (1st S.S.), ch. 16, § 5, relating to form of ballot for referendum election,

effective March 9, 1998. For former sections, see the 1997 NMSA 1978 on *NMOneSource.com*.

### 21-13-8. Community college board.

A. Community college board members shall be qualified electors and residents of the community college district.

B. Community college board members shall be elected for staggered terms of six years. Elections shall be held pursuant to the Local Election Act [Chapter 1, Article 22 NMSA 1978].

C. All vacancies caused in any other manner than by the expiration of the term of office shall be filled by appointment by the remaining members. An individual appointed by the remaining members of the board to fill a vacancy in office shall serve until the next community college board election, at which time candidates shall file for and be elected to fill the vacant position to serve the remainder of the unexpired term.

D. A community college board shall select from its members a chair and secretary who shall serve in these offices until the next regular community college board election. After each community college board election, the members shall proceed to reorganize.

**History:** 1953 Comp., § 73-33-7, enacted by Laws 1963, ch. 17, § 7; 1964 (1st S.S.), ch. 16, § 6; 1965, ch. 277, § 2; 1980, ch. 53, § 4; 1985, ch. 238, § 8; 1995, ch. 90, § 1; 1998, ch. 61, § 4; 1999, ch. 219, § 1; 2008, ch. 43, § 1; 2018, ch. 79, § 83.

**The 2018 amendment**, effective July 1, 2018, revised the criteria for community college board members, provided that elections for community college board members shall be held pursuant to the Local Election Act, and made technical and conforming changes; in Subsection A, after "members shall be", deleted "over twenty-one years of age"; and in Subsection B, after "terms of six years", deleted "beginning on April 1, succeeding their elections"; deleted former Paragraphs B(1) and B(2) and added "pursuant to the Local Election".

**The 2008 amendment**, effective May 14, 2008, added Paragraphs (1) and (2) of Subsection B.

**The 1999 amendment**, effective July 1, 1999, added "Community college" at the beginning of Subsections A and B and made minor stylistic changes in Subsection C.

**The 1998 amendment**, effective March 9, 1998, rewrote this section.

**The 1995 amendment**, effective June 16, 1995, in Subsection A, substituted "executive director" for "secretary"

and "commission on higher education" for "board of educational finance", and, in Subsection B, added the last sentence and made minor stylistic changes.

#### ANNOTATIONS

**Immunity.** — The New Mexico junior college is a local governing body with specific discretionary powers and, following the analysis in *Daddow v. Carlsbad Mun. Sch. Dist.*, 1995-NMSC-032, 120 N.M. 97, 898 P.2d 1235, is not protected from suit under the Eleventh Amendment. *Leach v. N.M. Junior Coll.*, 2002-NMCA-039, 132 N.M. 106, 45 P.3d 46, cert. denied, 132 N.M. 83, 44 P.3d 529.

**Validity of "registered" voters provision.** — The provision of the act which requires election of board members by "registered" voters is not so indefinite as to be invalid because there is no specific provision in the act for the registration of voters. The term "registered voter" refers to one duly registered under the general election laws. *Daniels v. Watson*, 1966-NMSC-011, 75 N.M. 661, 410 P.2d 193.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 11, 15.  
14A C.J.S. Colleges and Universities §§ 4, 16.

### 21-13-8.1. Community college board; optional form.

The community college board of any community college organized pursuant to the Community College Act may, by adoption of a resolution to that effect, establish a governing board composed of five or seven members elected from single-member districts for staggered terms. The single-member districts shall be compact and contiguous and composed of populations as equal as practicable. Members shall be required to reside in the districts from which elected. Any member removing his residence from the district from which he was elected shall be deemed to have resigned his position and the vacancy created by such resignation shall be filled in the manner provided by law for the filling of vacancies on the board of a community college district.

**History:** 1978 Comp., § 21-13-8.1, enacted by Laws 1987, ch. 174, § 1.

### 21-13-9. Community college board meetings.

Regular meetings of the community college board shall be held not less than quarterly each calendar year. Special meetings may be held upon call of the chairman or a majority of the board. The secretary of the board shall notify members of the time and place of each meeting, and all notices shall be mailed to each board member at least ten days prior to the date of the meeting. Upon agreement of all the members of the board, however, the period of notice of the meeting may be shortened or waived.

**History:** 1953 Comp., § 73-33-8, enacted by Laws 1963, ch. 17, § 8; 1985, ch. 238, § 9; 1993, ch. 75, § 1.

**The 1993 amendment**, effective June 18, 1993, substituted "not less than quarterly each calendar year" for "on

the first Saturday of March, June, September and December of each year" at the end of the first sentence.



## 21-13-10. Board duties.

A. It is the duty of the community college board to determine financial and educational policies of the community college. The community college board shall provide for the management of the community college and execution of these policies by selecting a competent president for the community college, and, upon the president's recommendation, the board shall employ other administrative personnel, instructional staff or other personnel as may be needed for the operation, maintenance and administration of the community college.

B. The community college board shall have the power to fix tuition and fee rates for resident and nonresident students of the community college district, to accept gifts, to accept federal aid, to purchase, hold, sell and rent property and equipment and to promote the general welfare of the institution for the best interest of educational service to the people of the community college district.

**History:** 1953 Comp., § 73-33-9, enacted by Laws 1963, ch. 17, § 9; 1980, ch. 53, § 5; 1985, ch. 238, § 10; 1996, ch. 71, § 5; 2000, ch. 52, § 3; 2003, ch. 390, § 1; 2007, ch. 73, § 2; 2014, ch. 80, § 8.

The 2014 amendment, effective March 12, 2014, eliminated provisions relating to the lottery tuition fund; deleted former Subsection C, which authorized the community college board to award legislative lottery scholarships to qualified resident students; deleted former Subsection D, which provided that the legislative lottery scholarship applied only to full-time resident students who were accepted by a community college upon graduation from high school for up to two years; deleted Subsection E, which required the higher education department to prepare guidelines setting forth continuing eligibility criteria and guidelines for the administration; and deleted former Subsection F, which required the higher education department to define "full time" and the maximum number of semesters of eligibility for students with disabilities who required special accommodation.

The 2007 amendment, effective July 1, 2007, provides that the maximum number of consecutive semesters of

eligibility and the criteria of "full time" be adjusted for students with disability.

The 2003 amendment, effective June 20, 2003, in Subsection C, deleted the former last sentence which read "All other scholarship funds available to the board shall be used before granting any lottery tuition scholarships"; in Subsection E, substituted "resident student tuition scholarships" for "scholarship" at the end of the second sentence.

The 2000 amendment, effective July 1, 2000, added the last sentence in Subsection C and deleted "resident student tuition" preceding "scholarship" at the end of Subsection E.

The 1996 amendment, effective May 15, 1996, added Subsections C through E.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 5, 19, 20, 35.

Validity, construction and application of "hazing" statutes, 30 A.L.R.5th 683.

14A C.J.S. Colleges and Universities §§ 14, 15, 17, 19, 25, 31.

## 21-13-11. Standards and accrediting of community colleges.

A. The community college board shall prescribe the course of study for the community college and shall define, in conjunction with the higher education department, official standards of excellence in all matters relating to the administration, course of study and quality of instruction, except that the prescribed standards may not be less in quality or quantity than those prescribed for other state institutions of higher learning by the regional accrediting agency that accredits other colleges and universities of the state.

B. The department shall annually inspect, or investigate through the requirement of reports prescribed by the department, each community college. The inspection or investigation by report shall be conducted upon the facilities and program of each community college to determine the extent of compliance with the rules promulgated by the department. A report of each inspection or final investigation by report shall be made to the department.

C. In the event of any serious deviation from established practices and procedures or any deficiencies that impair the quality of the instructional program in any community college, the department shall first call these to the attention of the president of the community college and the community college board.

D. In the case of repeated failure to meet the standards provided for in Subsection A of this section, the department may take action discontinuing the approval of any community college so delinquent. Upon a showing that the unsatisfactory conditions have been remedied, the department may reinstate its approval of a disapproved community college.

**History:** 1953 Comp., § 73-33-10, enacted by Laws 1963, ch. 17, § 10; 1980, ch. 53, § 6; 1985, ch. 238, § 11; 1999, ch. 219, § 2; 2005, ch. 289, § 26.

The 2005 amendment, effective April 7, 2005, changed "commission on higher education" to "higher education department".

The 1999 amendment, effective July 1, 1999, in Subsection A deleted "board of educational finance shall, in conjunction with the" preceding "community college board", substituted the second instance of "community college" for "community colleges established pursuant to the Community College Act", and inserted "in conjunction with the commission on higher education"; deleted former

Subsection B, relating to community college board election to affiliate with the board of regents of a higher educational institution, and redesignated subsequent subsections accordingly; and rewrote Subsections B, C and D.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 7, 8, 23, 42.

Student's right to compel school officials to issue degree, diploma, or the like, 11 A.L.R.4th 1182.

14A C.J.S. Colleges and Universities §§ 4, 5.

## 21-13-12. Degrees and certificates awarded.

A. The community college board of a community college may award the appropriate degree upon the completion of a curriculum organized for that purpose and approved by the commission on higher education [higher education department]. An associate degree or certificate may be awarded only to students as recommended by the faculty, the chief academic officer and the president of the community college as having completed satisfactorily the prescribed course of study.

B. The community college board may award an appropriate certificate upon completion of an education curriculum and program leading to alternative certification for degreed individuals pursuant to Section 22-10-3.5 NMSA 1978 [repealed] or certification of educational assistant and coursework in elementary and secondary education professional development. The curriculum and program leading to alternative certification or certification of educational assistant shall be approved by the state board of education.

**History:** 1953 Comp., § 73-33-11, enacted by Laws 1963, ch. 17, § 11; 1980, ch. 53, § 7; 1985, ch. 238, § 12; 1999, ch. 219, § 3; 2001, ch. 299, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2003, ch. 153, § 73 repealed 22-10-3.5 NMSA 1978, effective April 4, 2003. For provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

Laws 2005, ch. 289, § 29 provided that all references to the commission on higher education be construed to be references to the higher education department.

The 2001 amendment, effective June 15, 2001, designated the former section as Subsection A; and added Subsection B.

The 1999 amendment, effective July 1, 1999, substituted "Degrees and certificates" for "Titles" in the section heading and in the second sentence; substituted "commission on higher education" for "board of educational finance" at the end of the first sentence; and substituted "chief academic officer and the president" for "chief academic administrative officer" in the second sentence.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 1, 5, 31.

Student's right to compel school officials to issue degree, diploma, or the like, 11 A.L.R.4th 1182.

14A C.J.S. Colleges and Universities § 41.

## 21-13-13. Per diem; mileage.

Members of the community college board shall, for attendance at meetings of the board, receive traveling expenses to and from meetings at the rate set by law for state employees, for each mile traveled by the shortest usually traveled route from their homes to the place of the meeting.

**History:** 1953 Comp., § 73-33-12, enacted by Laws 1963, ch. 17, § 12; 1985, ch. 238, § 13.

**Cross references.** — For the Per Diem and Mileage Act, see 10-8-1 NMSA 1978 et seq.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63A Am. Jur. 2d Public Officers and Employees § 462.

Allowance of mileage or traveling expenses to officer as affected by use of his own vehicle for transportation, 112 A.L.R. 172.

78 C.J.S. Schools and School Districts § 99.

## 21-13-14. Repealed.

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-13-14 NMSA 1978, as enacted by Laws 1964 (1st S.S.), ch. 16, § 7, relating to community college district bonds, interest,

form, payment, effective June 16, 1995. For provisions of former sections, see the 1994 NMSA 1978 on *NMOneSource.com*.



### 21-13-15. Repealed.

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-13-15 NMSA 1978, as enacted by Laws 1964 (1st S.S.), ch. 16, § 8, relating to payment of bonds, bond provisions,

effective June 16, 1995. For provisions of former sections, see the 1994 NMSA 1978 on *NMOneSource.com*.

### 21-13-16. Repealed.

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-13-16 NMSA 1978, as enacted by Laws 1966, ch. 3, § 3, relating to validation of community college bonds, effective

June 16, 1995. For provisions of former sections, see the 1994 NMSA 1978 on *NMOneSource.com*.

### 21-13-17. Repealed.

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-13-17 NMSA 1978, as enacted by Laws 1964 (1st S.S.), ch. 16, § 9, relating to special tax levy for community college

operation, effective June 16, 1995. For provisions of former sections, see the 1994 NMSA 1978 on *NMOneSource.com*.

### 21-13-18. Repealed.

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-13-18 NMSA 1978, as enacted by Laws 1964 (1st S.S.), ch. 16, § 10, relating to procedure for election, effective June 16,

1995. For provisions of former sections, see the 1994 NMSA 1978 on *NMOneSource.com*.

### 21-13-18.1. Repealed.

**Repeals.** — Laws 2018, ch. 79, § 175 repealed 21-13-18.1 NMSA 1978, as enacted by Laws 1993, ch. 75, § 3, relating to regular community college election, resolution,

publication, effective July 1, 2018. For provisions of former section, see the 2017 NMSA 1978 on *NMOneSource.com*.

### 21-13-18.2. Repealed.

**Repeals.** — Laws 2018, ch. 79, § 175 repealed 21-13-18.2 NMSA 1978, as enacted by Laws 1993, ch. 75, § 4, relating to declaration of candidacy, write-in candidates,

filing date, penalty, effective July 1, 2018. For provisions of former section, see the 2017 NMSA 1978 on *NMOneSource.com*.

### 21-13-19. Enrollment defined; payments.

A. For those students in community colleges taking college-level courses, full-time-equivalent students shall be defined and computed by the higher education department in the same manner in which it defines and computes full-time-equivalent students for all other college-level programs within its jurisdiction.

B. No student shall be included in any calculations made under the provisions of this section if the student is enrolled in a course the cost of which is totally reimbursed from federal, state or private sources.

C. The higher education department shall not recommend an appropriation greater than three hundred twenty-five dollars (\$325) for each full-time-equivalent student for any community college that levies a tax at a rate less than two dollars (\$2.00), unless a lower amount is required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon a rate of at least two dollars (\$2.00) on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code [Chapter 7, Articles 35 through 38 NMSA 1978], or any community college that reduces a previously authorized tax levy, except as required by the operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978.

D. The higher education department shall require from the community college such reports as the department deems necessary for the purpose of determining the number of full-time-equivalent students at the community college eligible to receive support under this section.

E. A community college board shall establish tuition and fee rates for its respective institutions for full-time, part-time, resident and nonresident students, as defined by the higher education department.

F. A community college board may establish and grant gratis scholarships to students who are residents of New Mexico in an amount not to exceed the matriculation fee or tuition and fees, or both. The gratis scholarships are in addition to the lottery tuition scholarships authorized in Section 21-13-10 NMSA 1978 and shall be granted to the full extent of available funds before lottery tuition scholarships are granted. The number of scholarships established and granted pursuant to this subsection shall not exceed three percent of the preceding fall semester enrollment in each institution and shall not be established and granted for summer sessions. The president of each institution shall select and recommend to the community college board of the president's institution, as recipients of scholarships, students who possess good moral character and satisfactory initiative, scholastic standing and personality. All of the gratis scholarships established and granted by each community college board each year shall be granted on the basis of financial need.

**History:** 1953 Comp., § 73-33-14.2, enacted by Laws 1968, ch. 70, § 2; 1974, ch. 20, § 1; 1980, ch. 53, § 12; 1985, ch. 238, § 19; 1986, ch. 32, § 10; 1988, ch. 98, § 1; 1990, ch. 25, § 1; 1999, ch. 219, § 4; 2003, ch. 390, § 2; 2007, ch. 227, § 2; 2009, ch. 47, § 2; 2014, ch. 12, § 2.

**The 2014 amendment,** effective July 1, 2014, provided for dual credit parity for home school and private school students; and deleted Subsection G which provided that a student in a home school or a private school could apply for dual credit courses if the student paid the full cost of the dual credit courses.

**The 2009 amendment,** effective June 19, 2009, in Subsection F, at the beginning of the last sentence, deleted "At least thirty-three and one-third percent" and added "All".

**The 2007 amendment,** effective June 15, 2007, eliminated the provision that the public school district transfer to the community college the tuition and fees for a student who is counted in the membership of the district and who receives credit for coursework at the college and adds Subsection G.

**The 2003 amendment,** effective June 20, 2003, in Subsection F, deleted "Except as provided for lottery scholarships" following "fees, or both", inserted the second

sentence, and inserted "pursuant to this subsection" following "established and granted".

**The 1999 amendment,** effective July 1, 1999, deleted former Subsections A and B and the first sentence in Subsection C, relating to the definition of a "full-time-equivalent student", formulas to be used for the computation of the number of full-time-equivalent students and the calculation of the community college payment; designated the second sentence of former Subsection C as Subsection A; deleted former Subsection E, relating to a distribution of \$650 to each community college for each full-time-equivalent student; redesignated subsequent subsections accordingly; deleted "approved by the electors pursuant to Section 21-13-17 NMSA 1978" following "upon a rate" near the middle of Subsection C; substituted "commission deems" for "board may deem" in Subsection D; deleted former Subsection H, relating to establishment of tuition and fee rates by the community college board; and added Subsections E and F.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 19, 20, 21. 14A C.J.S. Colleges and Universities §§ 4, 31.

## 21-13-20. Sharing of facilities.

Community college districts may contract for the use or sharing of facilities with any school. Any agreement entered into between the community college board and a school board shall provide that each district using the facilities shall bear an appropriate and equitable share of the expenses for the maintenance and operation of the facilities used.

**History:** 1953 Comp., § 73-33-15, enacted by Laws 1963, ch. 17, § 15; 1985, ch. 238, § 20.

## 21-13-21. Addition of school districts to existing community college districts.

A. The school board of a school district, group of school districts within a county or school districts in an adjoining county, not included in the community college district as originally formed, may by resolution petition the higher education department to be added to the community college district. The resolution may be initiated by the school board or upon presentation to the school board of a petition signed by ten percent of the qualified electors of the district.

B. In reviewing the resolution, the higher education department shall ascertain the attitude of the community college board and ensure that the petitioning district is not already within another



institution's service area. If the department finds that the proposed addition of the petitioning district is not within another institution's service area and the proposed addition is acceptable to the community college district, it shall approve the resolution. Thereafter, the petitioning district and the established community college district shall call an election pursuant to the provisions of the Local Election Act [Chapter 1, Article 22 NMSA 1978] on the question of the inclusion of the area in the community college district.

C. If it appears on canvass of the results of the election a majority of the votes cast in each of the petitioning areas and within the established community college district was in favor of the addition of the petitioning area, the secretary of higher education shall declare the extension of the boundaries of the community college district to include the petitioning area in which the proposed addition referendum carried by a majority vote. The addition shall take effect on the next succeeding July 1.

D. The territory within each school district added to any existing community college district shall automatically be subject to any special levy on taxable property approved for the community college district for the maintenance of facilities and services and for support of bond issues.

**History:** 1953 Comp., § 73-33-16, enacted by Laws 1963, ch. 17, § 16; 1964 (1st S.S.), ch. 16, § 11; 1980, ch. 53, § 13; 1985, ch. 238, § 21; 1999, ch. 219, § 5; 2019, ch. 212, § 216.

**Cross references.** — For executive director of the commission on higher education, see 21-1-30 NMSA 1978.

**The 2019 amendment**, effective April 3, 2019, revised the procedures for adding a school district to the community college district, and provided that an election on the question of inclusion of an area in a community college district shall be conducted pursuant to the Local Election Act; in Subsection A, after "The", deleted "qualified electors within the territorial limits" and added "school board", after "originally formed, may", added "by resolution", and after "added to the community college district.", deleted "The commission shall examine the petition and, if it finds that the petition is signed by the requisite number of qualified electors as provided in Sections 21-13-4 and 21-13-5 NMSA 1978, the commission shall cause a survey to be made of the petitioning district to determine the desirability of the proposed extension of the area of the community college district." and added the remainder of the subsection; in Subsection B, after "In", deleted "conducting the survey, the commissioners on" and added reviewing the resolution, the", after "college board and", deleted "collect other information as prescribed in Section 21-13-5 NMSA 1978" and added "ensure that the petitioning district is not already within another institution's service

area", after "petitioning district", deleted "will promote an improved education service in the area" and added "is not within another institution's service area and the proposed addition is acceptable to the community college district", after "established community college district", added "shall call an election pursuant to the provisions of the Local Election Act", and after "in the community college district.", deleted "In the election, the procedure prescribed in Sections 21-13-6, 21-13-7 and 21-13-18 NMSA 1978 shall be followed."; and in Subsection C, after "petitioning area, the", deleted "executive director shall notify the boards of education within each school district and the community college board of the results of the election and" and added "secretary of higher education".

**The 1999 amendment**, effective July 1, 1999, substituted references to the commission on higher education for "board of educational finance" throughout; substituted "district" for "area" in the second and third sentences in Subsection B; and substituted "executive director" for "executive secretary" in two places in Subsection C.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools §§ 29 to 43.

Unionization, centralization or consolidation of school districts as affecting indebtedness and property of the individual districts, 121 A.L.R. 826.

78 C.J.S. Schools and School Districts § 18 et seq.

## 21-13-22. Transportation system.

When in the judgment of the community college board of an established community college the educational services of the community college can be extended to a number of students who should be served by the community college by the establishment of a transportation system, the community college board may do so through the use of maintenance funds from the annual tax levy. The community college transportation system shall be limited to nonstop bus routes between outlying population centers within the community college district and the community college. Provided that, other laws to the contrary notwithstanding, local school boards within the community college district shall allow community college students to ride on public school buses over established routes upon payment by the community college for the cost of such services, and provided further that the local school boards within the community college district shall make every effort to schedule their bus routes and times in such manner that they accommodate the community college students. Students who use community college or public school bus facilities may be charged such fees as the community college board deems reasonable. In lieu of providing any college-owned or operated transportation, the community college board may make

agreements with local school boards for the transportation of community college students to and from the community college campus. The community college board shall make payments to the local school fund for any transportation.

**History:** 1953 Comp., § 73-33-17, enacted by Laws 1963, ch. 17, § 17; 1964 (1st S.S.), ch. 16, § 12; 1980, ch. 53, § 14; 1985, ch. 238, § 22.

Transportation of school pupils at expense of public, 63 A.L.R. 413, 118 A.L.R. 806, 146 A.L.R. 625.  
79 C.J.S. Schools and School Districts §§ 475 to 482.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools §§ 240 to 251.

### 21-13-23. Dissolution of community college districts.

Community college districts may be dissolved in the following manner:

A. submission of a plan for the dissolution of the community college district to the executive director [secretary] of the commission on higher education [higher education department] by a petition signed by ten percent of the qualified electors residing within the district. Upon receipt of a proper plan and petition, the executive director [secretary] shall call a special election for the purpose of referring to the qualified electors residing in the district the question of dissolution. Plans for the dissolution of a community college district shall provide for the payment of all district debts and liabilities and for the equitable distribution of all remaining assets to the school districts within the community college district;

B. if the executive director [secretary] of the commission on higher education [higher education department] finds that a majority of the qualified electors voting on the issue at the special election has authorized the dissolution, the community college board shall proceed with the approved plan. Upon completion of the plan, the community college board shall submit a full report to the executive director [secretary] and a copy of the report to each local school district board within the community college district; and

C. upon receipt of the final report of the community college board, the executive director [secretary] of the commission on higher education [higher education department] shall examine the report to determine whether any outstanding obligations still exist and whether the terms of the approved plan have been accomplished. If, upon determination by the executive director [secretary], no obligations are yet outstanding and the provisions of the plan have been fulfilled, he shall formally declare the community college district dissolved.

**History:** 1953 Comp., § 73-33-18, enacted by Laws 1963, ch. 17, § 18; 1964 (1st S.S.), ch. 16, § 13; 1980, ch. 53, § 15; 1985, ch. 238, § 23; 1999, ch. 219, § 6.

**Bracketed material.** — The bracketed material is inserted by the compiler and is not part of the law.

Laws 2005, ch. 289, § 29 provided that all references to the commission on higher education be construed to be references to the higher education department.

**The 1999 amendment**, effective July 1, 1999, substituted "executive director" for "executive secretary" and "commission on higher education" for "board of educational finance" throughout.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools §§ 29 to 43.  
78 C.J.S. Schools and School Districts § 18 et seq.

### 21-13-24. Repealed.

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-13-24 NMSA 1978, as amended by Laws 1985, ch. 238, § 24, relating to refunding bonds, effective June 16, 1995. For

provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com*.

### 21-13-24.1. Establishing procedures for independence; funding; tuition; appropriation; local support level; outstanding indebtedness.

Any institution established in accordance with Chapter 21, Article 14 or 16 NMSA 1978 that desires to become an independent institution pursuant to the Community College Act and to receive



more than three hundred twenty-five dollars (\$325) per full-time-equivalent student is subject to the following:

A. approval of the institutional request for independent status by the commission on higher education [higher education department];

B. tuition rates shall be recommended by the commission on higher education [higher education department] and shall be set by the community college board;

C. the commission on higher education [higher education department] shall recommend an appropriation for the institution based upon expenditure levels determined by commission [department] formulas in relation to its authorized program and its available funds from nongeneral fund sources, and the recommended appropriation shall be an amount not less than three hundred twenty-five dollars (\$325) for each full-time-equivalent student;

D. the minimum level of local support for operational purposes shall be a tax rate of two dollars (\$2.00), or any lower amount required by the operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon an amount of at least two dollars (\$2.00) on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code [Chapter 7, Articles 35 through 38 NMSA 1978]; and

E. the community college board shall provide for the assumption of any outstanding indebtedness of the institution desiring to become independent by the voters of the community college district.

**History:** 1978 Comp., § 21-13-24.1, enacted by Laws 1980, ch. 53, § 17; 1985, ch. 238, § 25; 1986, ch. 32, § 11; 1999, ch. 219, § 7.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2005, ch. 289, § 29 provided that all references to the commission on higher education be construed to be references to the higher education department.

**The 1999 amendment,** effective July 1, 1999, substituted references to the commission on higher education for "board of educational finance" throughout; in the introductory paragraph, updated article references and substituted "pursuant to the Community College Act" for

"under Laws 1980, Chapter 53"; substituted "community college board" for "legislature" in Subsection B; deleted former Subsection E, relating to community colleges operating occupational education programs for secondary school students in cooperation with public school districts located within the community college district; and redesignated former Subsection F as Subsection E.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Colleges and Universities §§ 3, 33.

14A C.J.S. Colleges and Universities §§ 4, 5, 7.

### 21-13-25. Liberal construction.

The Community College Act, being necessary to secure the public health, safety, convenience and welfare, shall be liberally construed to effect its purposes.

**History:** 1953 Comp., § 73-33-20, enacted by Laws 1964 (1st S.S.), ch. 16, § 15; 1985, ch. 238, § 26.

### 21-13-26. Repealed.

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-13-26 NMSA 1978, as enacted by Laws 1992, ch. 97, § 1, relating to revenue bonds, effective June 16, 1995. For provisions

of former section, *see* the 1993 NMSA 1978 on *NMOneSource.com*.

### 21-13-27. Creation of southeast New Mexico college; name change; governing board.

A New Mexico state university Carlsbad shall be made into an independent community college known as "southeast New Mexico college" and shall be organized as provided in Chapter 21, Article 13 NMSA 1978.

B. The governing board of southeast New Mexico college shall be created and function as provided in the Community College Act. The governing board of southeast New Mexico college shall

be created by a regular local election from each of the five districts within the Carlsbad municipal school district and called for by the Carlsbad municipal school board, and the governing board shall function as provided for in the Community College Act.

C. All taxes levied to pay any principal and interest on bonds of New Mexico state university Carlsbad for operating, maintaining and providing facilities shall continue in effect until dissolution pursuant to procedures set forth in Chapter 21, Article 13 NMSA 1978.

**History:** Laws 2021, ch. 104, § 1.

**Effective dates.** — Laws 2021, ch. 104, § 3 made Laws 2021, ch. 104, § 1 effective July 1, 2021.

**Temporary provisions.** — Laws 2021, ch. 104, § 2 provided that on April 10, 2022:

A. all functions, personnel, appropriations, money, records, equipment, supplies, grants, real and other property of the board of regents of New Mexico state university located or held in Carlsbad or used to support operations of New Mexico state university Carlsbad, except those pertaining to the Carlsbad environmental monitoring and research center, shall be transferred to southeast New Mexico college;

B. all contracts of the board of regents of New Mexico state university regarding New Mexico state university

Carlsbad, except those pertaining to the Carlsbad environmental monitoring and research center, shall be binding and effective on the governing board of southeast New Mexico college;

C. all references in law to the board of regents of New Mexico state university regarding New Mexico state university Carlsbad, except those regarding the Carlsbad environmental monitoring and research center, shall be deemed to be references to the governing board of southeast New Mexico college; and

D. all references in law to New Mexico state university Carlsbad shall be construed to be references to southeast New Mexico college.

## ARTICLE 13A

### Workforce Training

Sec. 21-13A-1. Short title.  
21-13A-2. Purposes.  
21-13A-3. Definitions.  
21-13A-4. Distribution of funds.

Sec. 21-13A-5. Eligible funding recipients.  
21-13A-6. Work force skills development fund created; allocations; application review panels.

#### 21-13A-1. Short title.

This act [21-13A-1 through 21-13A-5 NMSA 1978] may be cited as the "Workforce Training Act".

**History:** Laws 2003, ch. 30, § 1.

**Effective dates.** — Laws 2003, ch. 30 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective on June 20, 2003, 90 days after adjournment of the legislature.

#### 21-13A-2. Purposes.

The purposes of the Workforce Training Act are to:

- A. provide funding for non-credit customized training at community colleges;
- B. establish the workforce training program to deliver customized training for members of the workforce who require specialized training to obtain or advance in employment with small and large businesses in New Mexico;
- C. provide a statewide program of customized training that supplements the state's workforce development efforts and offers opportunities for state residents to obtain skills needed to provide a well-trained workforce for employers in New Mexico; and
- D. enable community colleges to better respond to the needs of their communities and to participate in attracting, retaining and recruiting employers that can provide employment for trained workers in the community.

**History:** Laws 2003, ch. 30, § 2.

**Cross references.** — For work force skills development fund, see 21-13A-6 NMSA 1978.

**Effective dates.** — Laws 2003, ch. 30 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.



### 21-13A-3. Definitions.

As used in the Workforce Training Act:

- A. "commission" means the commission on higher education [higher education department];
- B. "community college" means a public post-secondary educational institution located in New Mexico offering technical or vocational training or two-year degrees;
- C. "customized training" means vocational or technical training:
  - (1) offered by a community college;
  - (2) that provides specialized employee training for a particular business or industry;
  - (3) for which a student who successfully completes the training does not receive college credit; and
  - (4) that enhances workforce development in the state;
- D. "tier-2 undergraduate funding level" means tier 2 of the higher education funding formula developed by the commission [department]; and
- E. "workforce training program" means the program created by the Workforce Training Act to provide customized training at community colleges in New Mexico.

**History: Laws 2003, ch. 30, § 3.**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2005, ch. 289, § 29 provided that all references to the commission on higher education be construed to be references to the higher education department.

**Effective dates.** — Laws 2003, ch. 30 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

### 21-13A-4. Distribution of funds.

A. Beginning in the budget cycle following the effective date of the Workforce Training Act, the commission [department] shall include in its annual budget an amount calculated to be necessary to implement a workforce training program in the state.

B. During the first year of funding, a base number of students shall be projected by the commission [department] for each community college offering customized training pursuant to the Workforce Training Act after consultation with each community college. To determine the funding to be distributed to each community college, the total appropriation made by the legislature to implement that act shall be multiplied by a fraction, the numerator of which is the projected number of student credit hours in customized training at the community college receiving the funding and the denominator of which is the total projected number of student credit hours in customized training at all of the community colleges participating in the workforce training program.

C. Following the first year of implementation of the Workforce Training Act, the commission [department] shall determine the number of students enrolled in customized training at each community college in the state according to the most recent year for which data is available.

D. Using a predetermined credit-hour equivalent of courses normally considered under the tier-2 undergraduate funding level, the amount to be budgeted for the program shall be developed and included in the commission [department] budget for each subsequent fiscal year.

E. Beginning in the second year of implementation of the Workforce Training Act, the funding to be distributed to each community college shall be determined by multiplying the total appropriation made by the legislature to implement the Workforce Training Act by a fraction, the numerator of which is the number of student credit hours in customized training at that community college in the prior year and the denominator of which is the total number of student credit hours in customized training in the prior year at all of the community colleges participating in the workforce training program.

F. A community college that previously was not included in the distribution but seeks to participate in the workforce training program for the first time shall negotiate with the commission [department] to establish the base level of funding for the community college based on the projected number of students expected to enroll in customized training and shall be added to the formula to determine the budget expansion to be requested.

**History:** Laws 2003, ch. 30, § 4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2005, ch. 289, § 29 provided that all references to the commission on higher education be construed to be references to the higher education department.

**Cross references.** — For work force skills development fund, see 21-13A-6 NMSA 1978.

**Effective dates.** — Laws 2003, ch. 30 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

The effective date of the Workforce Training Act, referred to in Subsection A, means the effective date of Laws 2003, ch. 30 which was June 20, 2003.

## 21-13A-5. Eligible funding recipients.

A. To be eligible to receive funding pursuant to the Workforce Training Act, a community college shall provide customized training for at least one business each year.

B. To remain eligible to receive funding to participate in the workforce training program following the first year in which customized training is offered, a community college shall:

- (1) increase the number of businesses receiving customized training in each succeeding year by at least one business that did not receive customized training in the prior year; or
- (2) increase the total number of employees enrolled in customized training for each succeeding year.

C. To qualify as a business that may participate in the customized training opportunities offered at a community college:

- (1) a business shall be located in New Mexico;
- (2) may be either a new or an established business;
- (3) shall provide full-time job opportunities for the successful participants of the workforce training program; and
- (4) shall pay more than minimum wage to successful participants of the workforce training program.

**History:** Laws 2003, ch. 30, § 5.

**Cross references.** — For work force skills development fund, see 21-13A-6 NMSA 1978.

**Effective dates.** — Laws 2003, ch. 30 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective on June 20, 2003, 90 days after adjournment of the legislature.

## 21-13A-6. Work force skills development fund created; allocations; application review panels.

A. The "work force skills development fund" is created in the state treasury. The fund shall consist of appropriations, income from investment of the fund, gifts, grants, donations and bequests. Money in the fund shall not revert at the end of any fiscal year. The fund shall be administered by the commission on higher education [higher education department] and money in the fund is appropriated to the commission [department] to provide matching funds to community colleges for the development, expansion and support of broad-based entry-level high-skills training programs. Money from the fund shall be expended on warrants of the secretary of finance and administration upon vouchers signed by the executive director of the commission on higher education [higher education department] or his authorized representative.

B. Individual community colleges or a consortium of community colleges may apply for matching grants from the work force skills development fund in accordance with rules promulgated by the commission on higher education [higher education department]. Allocations from the fund shall be based on a competitive process with applications reviewed by a panel of education, business and labor experts established by the commission [department]. To apply for a grant, a community college or consortium must have equal or greater matching funds for the proposal from sources other than the state.

**History:** Laws 2003, ch. 368, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2005, ch. 289, § 29 provided that all references to the commission on higher education be construed to be references to the higher education department.

**Effective dates.** — Laws 2003, ch. 368 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective on June 20, 2003, 90 days after adjournment of the legislature.



## ARTICLE 14

### Branch Community Colleges

Sec.

21-14-1. Branch community college educational program enrollment defined.

21-14-1.1. Elementary and secondary education curriculum and coursework.

21-14-2. Board duties; relationship with parent institution; elections.

21-14-2.1. Branch community college board; local option.

21-14-2.2. Limitations on branch community colleges.

21-14-2.3. Branch community college board; optional form.

21-14-3. Repealed.

21-14-4. Availability of school facilities; use of other facilities.

21-14-5. Financing of branch community colleges; tuition and fee waivers.

21-14-6. Repealed.

Sec.

21-14-6.1. Repealed.

21-14-7. Repealed.

21-14-7.1. Repealed.

21-14-8. Repealed.

21-14-9. State support; appropriation.

21-14-10. Applicability of other laws.

21-14-11. Repealed.

21-14-12. Repealed.

21-14-13. Repealed.

21-14-14. Title to property acquired from proceeds of bond issue.

21-14-15. Repealed.

21-14-16. Ruidoso branch community college.

21-14-17. Northern New Mexico college; branch community college for technical and vocational courses.

#### 21-14-1. Branch community college educational program enrollment defined.

A. "Branch community college educational program", for the purposes of Chapter 21, Article 14 NMSA 1978, includes either the first two years of college education or organized vocational and technical curricula of not more than two years' duration designed to fit individuals for employment in recognized occupations, or both.

B. The calculation of full-time-equivalent student population for the purposes of Chapter 21, Article 14 NMSA 1978 shall include students enrolled in college-level courses and students enrolled in vocational and technical courses taught by a branch community college that is recognized by the instructional support and vocational education division of the public education department as an area vocational school or in courses that are approved by the secretary of public education. Students enrolled in a course the cost of which is totally reimbursed from federal, state or private sources shall not be included in the calculation of full-time-equivalent student population.

**History:** Laws 1953 Comp., § 73-30-17, enacted by Laws 1957, ch. 143, § 1; 1963, ch. 162, § 1; 1967, ch. 104, § 1; 1969, ch. 94, § 1; 1971, ch. 48, § 1; 1985, ch. 238, § 27; 1990, ch. 25, § 2; 1999, ch. 219, § 8; 2007, ch. 227, § 3.

**Cross references.** — For the College District Tax Act, see 21-2A-1 NMSA 1978 et seq.

**The 2007 amendment**, effective June 15, 2007, eliminated the provision that the public school district transfer to the branch community college the tuition and fees for a student who is counted in the membership of the district and who receives credit for coursework at the college.

**The 1999 amendment**, effective July 1, 1999, in Subsection B, deleted the former second sentence, which read

"Full-time equivalent for students enrolled in vocational and technical courses not of college level shall be calculated according to the method prescribed in Section 21-16-9 NMSA 1978".

#### ANNOTATIONS

**Branch closing not repeal of statutes.** — The statutes governing branch community colleges remain intact, even though the branches may cease operation due to low funding. 1980 Op. Att'y Gen. No. 80-03.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 1.

14A C.J.S. Colleges and Universities §§ 2, 4.

#### 21-14-1.1. Elementary and secondary education curriculum and coursework.

The branch community college board may award an appropriate certificate upon completion of an education curriculum and program leading to alternative certification for degreed individuals pursuant to Section 22-10-3.5 NMSA 1978 [repealed] or certification of educational assistant and coursework in elementary and secondary education professional development. The curriculum and program leading to alternative certification or certification of educational assistant shall be approved by the state board of education.

**History: Laws 2001, ch. 299, § 2.**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2003, ch. 153, § 73 repealed 22-10-3.5 NMSA 1978, effective April 4, 2003. For provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

**Effective dates.** — Laws 2001, ch. 299 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 15, 2001, 90 days after adjournment of the legislature.

## 21-14-2. Board duties; relationship with parent institution; elections.

A. As used in Chapter 21, Article 14 NMSA 1978, "board" means either the local school board or the combined local school boards acting as a single board of the school district or the board of the branch community college elected pursuant to Section 21-14-2.1 NMSA 1978.

B. The duties of the board are to:

(1) enter into written agreements with the board of regents of the parent institution, subject thereafter to biennial review by all parties concerned and to the review and commentary of the higher education department;

(2) act in an advisory capacity to the board of regents of the parent institution in all matters relating to the conduct of the branch community college;

(3) approve an annual budget for the branch community college for recommendation to the board of regents of the parent institution;

(4) certify to the board of county commissioners the tax levy; and

(5) issue the proclamation for the election for tax levies for the branch community college if the tax levies are to be presented to the voters of the district at a special election, or approve the ballot question if the tax levies are to be presented to the voters of the district at either the general or regular local election.

C. Except for the branch community college of northern New Mexico college, the board and the board of regents of the parent institution of the branch community college shall jointly conduct a search for qualified candidates for director. The board of regents of the parent institution, after consultation with the board, shall then select a director for the branch community college.

D. The board and the board of regents of the parent institution shall enter into a written agreement, which shall include provisions for:

(1) the parent institution to have full authority and responsibility in relation to all academic matters;

(2) the parent institution to honor all credits earned by students as though they were earned on the parent campus;

(3) the course of study and program offered;

(4) the cooperative use of physical facilities and teaching staff;

(5) consideration of applications of local qualified people before employing teachers of the local school system; and

(6) the detailed agreement of financing and financial control of the branch community college.

E. The agreement shall be binding upon both the board and the board of regents of the parent institution; however, it may be terminated by mutual consent or it may be terminated by either board upon six months' notice. However, if the branch community college has outstanding general obligation or revenue bonds, neither the board nor the board of regents may terminate the agreement until the outstanding bonds are retired, except as provided by Section 21-13-24.1 NMSA 1978. This provision shall apply to all agreements in existence between the branch community college and the board of regents of the parent institution.

F. All taxes levied to pay for principal and interest on bonds of the branch community college shall be in addition to the taxes levied for operating, maintaining and providing facilities for the branch community college pursuant to the College District Tax Act.

G. For the purpose of relating branch community colleges to existing laws, branch community college districts or branch community colleges shall not:

(1) be considered a part of the uniform system of free public schools pursuant to Article 12, Section 1 and Article 21, Section 4 of the constitution of New Mexico;

(2) benefit from the permanent school fund and from the current school fund under Article 12, Sections 2 and 4 of the constitution of New Mexico;



(3) be subject, except as it relates to technical and vocational education, to the control, management and direction of the public education department;

(4) be considered school districts insofar as the restrictions of Article 9, Section 11 of the constitution of New Mexico are concerned;

(5) for the branch community college of northern New Mexico college, be eligible for separate state appropriations through the higher education funding formula; and

(6) for the branch community college of northern New Mexico college, any courses, students, student credit hours and degrees and certificates awarded shall be reported to the higher education department along with and in the same manner as those for northern New Mexico college. These courses, students, student credit hours and degrees and certificates awarded shall be included in all reports and funding formula calculations by the higher education department for northern New Mexico college.

H. All elections held pursuant to the branch community college laws shall be conducted and canvassed pursuant to the provisions of the Local Election Act.

I. The territory of a branch of community college may be extended to include additional school districts in the same manner as provided for community colleges in Section 21-13-21 NMSA 1978.

J. Any person or corporation may institute in the district court of any county in which the branch community college district affected lies an action or suit to contest the validity of any proceedings held under the branch community college laws, but no such suit or action shall be maintained unless it is instituted within ten days after the issuance by the proper officials of a certificate or notification of the results of the election and the canvassing of the election returns.

K. The tax rolls of the school districts comprising the branch community college district shall be adopted as the tax rolls of the branch community college district.

**History:** 1953 Comp., § 73-30-18, enacted by Laws 1963, ch. 162, § 2; 1971, ch. 182, § 1; 1983, ch. 85, § 1; 1985, ch. 238, § 28; 1997, ch. 167, § 2; 1998, ch. 61, § 6; 2005, ch. 117, § 1; 2019, ch. 77, § 2; 2019, ch. 212, § 217.

**Cross references.** — For provisions relating to legislative findings for branch community colleges, see 21-1-39 NMSA 1978.

For public school fund, see 22-8-14 NMSA 1978.

For current school fund, see 22-8-32 NMSA 1978.

**2019 Multiple Amendments.** — Laws 2019, ch. 77, § 2, effective June 14, 2019, and Laws 2019, ch. 212, § 217, effective April 3, 2019, enacted different amendments to this section that can be reconciled. Laws 2019, ch. 77, § 2, effective June 14, 2019, is set out above and incorporates both amendments. The amendments enacted by Laws 2019, ch. 77, § 2 and Laws 2019, ch. 212, § 217 are described below. To view the session laws in their entirety, see the 2019 session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Laws 2019, ch. 77, § 2, exempted the branch community college of northern New Mexico college from the requirement that the board and board of regents of the parent institution of the branch community college conduct a search for qualified candidates for director, provided that the branch community college of northern New Mexico college is not eligible for separate state appropriations through the higher education funding formula, and required that any courses, students, student credit hours and degrees and certificates awarded by the branch community college of northern New Mexico college be reported to the higher education department and be included in all reports and funding formula calculations by the higher education department for northern New Mexico college, and Laws 2019, ch. 212, § 217, provided the higher education department with the duty of issuing the proclamation for the election for tax levies, provided that all elections held pursuant to the branch community college laws shall be conducted pursuant to the Local Election Act, and provided that the territory of a branch of community college may be extended to include additional school districts in the same manner as provided for community colleges.

**Laws 2019, ch. 77, § 2**, effective June 14, 2019, exempted the branch community college of northern New Mexico college from the requirement that the board and board of regents of the parent institution of the branch community college conduct a search for qualified candidates for director, provided that the branch community college of northern New Mexico college is not eligible for separate state appropriations through the higher education funding formula, and required that any courses, students, student credit hours and degrees and certificates awarded by the branch community college of northern New Mexico college be reported to the higher education department and be included in all reports and funding formula calculations by the higher education department for northern New Mexico college; in Subsection C, added "Except for the branch community college of northern New Mexico college"; in Subsection D, replaced each occurrence of "higher education", with "parent"; and in Subsection G, added Paragraphs G(5) and G(6):

**Laws 2019, ch. 212, § 217**, effective April 3, 2019, provided the higher education department with the duty of issuing the proclamation for the election for tax levies, provided that all elections held pursuant to the branch community college laws shall be conducted pursuant to the Local Election Act, and provided that the territory of a branch of community college may be extended to include additional school districts in the same manner as provided for community colleges; in Subsection B, Paragraph B(5), deleted "conduct" and added "issue the proclamation for", and after "for the branch community college", added "if the tax levies are to be presented to the voters of the district at a special election, or approve the ballot question if the tax levies are to be presented to the voters of the district at either the general or regular local election"; and in Subsection H, after "shall be", deleted former Paragraphs H(1) and H(2) and added "pursuant to the provisions of the Local Election Act"; and added new Subsection I and redesignated former Paragraph H(3) as Subsection J and former Subsection I as Subsection K.

**The 2005 amendment**, effective June 17, 2005, provided in Subsection C that the board of a branch community



college and the board of regents of the parent institution shall jointly conduct a search for qualified candidates for director and that the board of regents, after consultation with the board of the branch community college shall select the director of the branch community college.

**Temporary provisions.** Laws 2005, ch. 117, § 2, provided that the provisions of Laws 2005, ch. 117, § 1, effective June 17, 2005, shall not affect agreements or contracts existing on the effective date of the act between a board of regents and a branch community college, except that a director of a branch community college selected after the effective date of the act shall be selected in accordance with the provisions of Laws 2005, ch. 117, § 1.

**The 1998 amendment,** effective March 9, 1998, rewrote this section to the extent that a detailed comparison is impracticable.

**The 1997 amendment** added "method; parent institution method" to the section heading; added Subsection B and redesignated the remaining subsections accordingly;

inserted "if the board has initiated the establishment of the branch community college" in Paragraph C(2); added Subsection L; substituted "commission on higher education" for "board of educational finance" throughout the section; and made minor stylistic changes throughout the section.

## ANNOTATIONS

**Composition of board.** — Branch community college laws give certain powers to the board of education (local board). When more than one school district makes up a branch community college district, that board is expressly intended to be a composite of the local school board. 1975 Op. Att'y Gen. No. 75-50.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 5, 10, 11; 68 Am. Jur. 2d Schools §§ 37, 38, 52 to 70.

14A C.J.S. Colleges and Universities §§ 15 to 17; 78 C.J.S. Schools and School Districts § 22 et seq.

## 21-14-2.1. Branch community college board; local option.

A. A majority of the local board of education or the combined boards of education acting as a single board may cease to operate as the branch community college board and provide for an elected branch community college board. In that event, the majority of the local board of education or the combined boards of education acting as a single board shall elect five persons as members of the branch community college board. Board members shall be qualified electors and residents of the branch community college district. The members of the board shall continue to serve until the next regular local election, at which time five board members shall be elected by the qualified electors of the branch community college district. The candidates shall file for and be elected to a particular position number. At the first board meeting after the election, the five members shall draw lots for the following terms: two for terms of two years and three for terms of four years. Thereafter, board members shall be elected for terms of four years. All vacancies caused in any other manner than by the expiration of the term of office shall be filled by appointment by the remaining members.

B. Immediately after the election of the five members by the assembled board of education members, the board shall select from its members a chair and secretary who shall serve in these offices until the next regular local election. In January after each regular local election, the members shall proceed to reorganize.

C. The duties of the board shall continue as set out in Chapter 21, Article 14 NMSA 1978.

**History:** 1978 Comp., § 21-14-2.1, enacted by Laws 1985, ch. 238, § 29; 2019, ch. 212, § 218.

**The 2019 amendment,** effective April 3, 2019, revised the procedures for electing branch community college board members; in Subsection A, after the third occurrence of "branch community college board", deleted "The persons elected shall be assigned position numbers one through five.", after "Board members shall be", deleted "over twenty-one years of age", after "regular local election", deleted "to be held on the first Tuesday of February of each odd-numbered year", after "particular position number.", deleted "The candidate receiving the highest number of votes for a particular position shall be elected.", and after "terms of four years", deleted "from March 1 succeeding their election"; and in Subsection B, after "next regular", deleted "branch community college board" and added "local", and after "regular local election.", added "In January".

**Temporary provisions.** — Laws 2019, ch. 212, § 278 provided that:

A. The term of a branch community college district, special hospital district, solid waste authority district, lower Rio Grande public water works authority or watershed district board member that was set to expire on or before June 30, 2020 shall expire on December 31, 2019,

and that member's successor shall be elected in the regular local election held on the first Tuesday after the first Monday of November 2019 for a term beginning on January 1, 2020.

B. The term of a branch community college district, special hospital district, solid waste authority district, lower Rio Grande public water works authority or watershed district board member that was set to expire on or after July 1, 2020 but on or before June 30, 2022 shall expire on December 31, 2021, and that member's successor shall be elected in the local election held on the first Tuesday after the first Monday of November 2021 for a term beginning on January 1, 2022.

C. The term of a special hospital district or watershed district board member that was set to expire on or after July 1, 2022 shall expire on December 31, 2023, and that member's successor shall be elected in the local election held on the first Tuesday after the first Monday of November 2023 for a term beginning on January 1, 2024.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 10, 11.

14A C.J.S. Colleges and Universities §§ 15 to 17.



### 21-14-2.2. Limitations on branch community colleges.

There shall be no new branch community college or off-campus instructional center created after January 1, 1998 unless specifically created by the legislature.

**History:** Laws 1998, ch. 61, § 7.

**Emergency clauses.** — Laws 1998, ch. 61, § 17 contained an emergency clause and was approved March 9, 1998.

### 21-14-2.3. Branch community college board; optional form.

A. The branch community college board of a branch community college may, by adoption of a resolution, establish a board composed of five members elected from single-member districts within the branch community college district for staggered terms. The single-member districts shall be compact and contiguous and composed of populations as equal as practicable. Members shall be required to reside in the districts from which elected. If a member no longer resides in the election district from which that member was elected, the member shall be deemed to have resigned and the vacancy created by the resignation shall be filled in the manner provided by law for the filling of vacancies on the board of a branch community college.

B. The board members shall draw lots to determine which board position will coincide with which election district during the meeting at which the board is resolved to change to a districted board.

C. The board shall redistrict once after each federal decennial census. The board may adopt a resolution to have the board's election districts coincide with the county commission districts if the county commission has five districts and the boundaries of the county and branch community college district are identical.

**History:** Laws 2007, ch. 27, § 1.

**Effective dates.** — Laws 2007, ch. 27, contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

### 21-14-3. Repealed.

**Repeals.** — Laws 1998, ch. 61, § 16, repealed 21-14-3 NMSA 1978, enacted by Laws 1972, ch. 36, § 3, relating to approval required of local school board, effective March 9,

1998. For provisions of former section, see the 1997 NMSA 1978 on *NMOneSource.com*.

### 21-14-4. Availability of school facilities; use of other facilities.

Upon establishment of a branch community college, public school facilities are to be made available to the college if needed, and in such manner as will not interfere with the regular program of instruction. No public school funds shall be expended in the program, and the branch community college shall pay a proper amount for utilities and custodian service. The board may arrange for the use of available facilities other than public school facilities if approved by the board of regents.

**History:** 1953 Comp., § 73-30-19, enacted by Laws 1957, ch. 143, § 3; 1963, ch. 162, § 3.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 78 C.J.S. Schools and School Districts § 359.

### 21-14-5. Financing of branch community colleges; tuition and fee waivers.

A. Financing of branch community colleges shall be by tuition and fees, which shall be set by the board of regents of the parent institution, by gifts and grants and by other funds as may be made available pursuant to the provisions of the College District Tax Act [21-2A-1 through 21-2A-10 NMSA 1978] or Chapter 21, Article 14 NMSA 1978.

B. The board of regents of the respective parent institution of the branch community college may establish and grant gratis scholarships to students of the branch community college who are residents of New Mexico in an amount not to exceed the matriculation fee or tuition and fees, or both. Except as provided in Section 21-1-4.3 NMSA 1978 [repealed], the number of scholarships established and granted shall not exceed three percent of the preceding fall semester enrollment in the branch community college and shall not be established and granted for summer sessions. The president of each institution shall select and recommend to the board of regents of the president's institution, as recipients of scholarships, students who possess good moral character and satisfactory initiative, scholastic standing and personality. Beginning with the fall semester of 2010, a minimum of one-half of the gratis scholarships established and granted by the board of regents for a branch community college each year shall be granted on the basis of financial need, and beginning with the fall semester of 2011, a minimum of two-thirds of the gratis scholarships established and granted by each board of regents each year shall be granted on the basis of financial need.

**History:** 1953 Comp., § 73-30-20, enacted by Laws 1957, ch. 143, § 4; 1963, ch. 162, § 4; 1995, ch. 224, § 20; 1999, ch. 219, § 9; 2009, ch. 47, § 3.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Section 21-1-4.3 NMSA 1978 was repealed by Laws 2014, ch. 80, § 10, effective March 12, 2014. For provisions of former section, see the 2013 NMSA 1978 on *NMOneSource.com*.

**The 2009 amendment,** effective June 19, 2009, in Subsection B, at the beginning of the last sentence, deleted "At least thirty-three and one-third percent" and added "Beginning with the fall semester of 2010, a minimum of one-half"; and at the end of the last sentence, added the language following "financial need".

**The 1999 amendment,** effective July 1, 1999, added the Subsection A designation; updated the statutory reference in Subsection A; and added Subsection B.

**The 1995 amendment,** effective June 16, 1995, inserted "of the parent institution", substituted the language beginning "pursuant to" for "except as otherwise provided in Sections 73-30-17 through 73-30-25 New Mexico Statutes Annotated, 1953 Compilation" at the end of the section, and made a minor stylistic change.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 2, 19, 20, 37.

Validity, interpretation, and application of provisions of will making devise or bequest to or in trust for religious or educational body dependent upon adherence to particular body of principles or dogmas or ecclesiastical connection, 120 A.L.R. 971.

14A C.J.S. Colleges and Universities §§ 4, 5, 31.

## 21-14-6. Repealed.

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-14-6 NMSA 1978, as enacted by Laws 1963, ch. 162, § 5, relating to tax levies authorized, contingent state funding,

effective June 16, 1995. For provisions of former sections, see the 1994 NMSA 1978 on *NMOneSource.com*.

### 21-14-6.1. Repealed.

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-14-6.1 NMSA 1978, as enacted by Laws 1963, ch. 162, § 5, relating to special tax levy election, effective June 16, 1995. For

provisions of former sections, see the 1994 NMSA 1978 on *NMOneSource.com*.

### 21-14-7. Repealed.

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-14-7 NMSA 1978, as enacted by Laws 1972, ch. 36, § 1, relating to additional levies, effective June 16, 1995. For provisions

of former sections, see the 1994 NMSA 1978 on *NMOneSource.com*.

#### 21-14-7.1. Repealed.

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-14-7.1 NMSA 1978, as enacted by Laws 1985, ch. 238, § 32, relating to special area-vocational levy, effective June 16, 1995. For

provisions of former sections, see the 1994 NMSA 1978 on *NMOneSource.com*.

### 21-14-8. Repealed.

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-14-8 NMSA 1978, as enacted by Laws 1963, ch. 162, § 6, relating to election on levy, effective June 16, 1995. For

provisions of former sections, see the 1994 NMSA 1978 on *NMOneSource.com*.



## 21-14-9. State support; appropriation.

A. The higher education department shall recommend an appropriation for each branch community college, except the branch community college of northern New Mexico college, and junior college based upon the college's financial requirements in relation to its authorized program and its available funds from non-general fund sources; provided, the recommended appropriation shall be an amount not less than three hundred twenty-five dollars (\$325) for each full-time-equivalent student.

B. The higher education department shall not recommend an appropriation greater than three hundred twenty-five dollars (\$325) for each full-time-equivalent student for any branch community college that levies a tax at a rate less than one dollar (\$1.00), unless a lower amount is required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon a rate approved by the electors of at least one dollar (\$1.00) on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code [Articles 35 through 38 of Chapter 7 NMSA 1978], or any branch community college that reduces a previously authorized tax levy, except as required by the operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978.

**History:** 1953 Comp., § 73-30-23, enacted by Laws 1973, ch. 371, § 1; 1995, ch. 224, § 22; 2019, ch. 77, § 3.

**Repeals and reenactments.** — Laws 1973, ch. 371, § 1, repealed former 73-30-23, 1953 Comp., relating to state support of community colleges, and enacted a new 73-30-23, 1953 Comp.

**The 2019 amendment,** effective June 14, 2019, provided that the higher education department shall not recommend an appropriation for the branch community college of northern New Mexico college; and in Subsection A, added "except the branch community college of northern New Mexico college".

**The 1995 amendment,** effective June 16, 1995, designated the formerly undesignated provision as Subsection

A; added Subsection B; and, in Subsection A, substituted "commission on higher education" for "board of educational finance" and made minor stylistic changes.

### ANNOTATIONS

**Legislature not bound to appropriate.** — None of the actions taken by a local board of education, the board of educational finance, the voters in a local school district or the regents of the university of New Mexico can bind the legislature to an appropriation. 1980 Op. Att'y Gen. No. 80-03.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 33.  
81A C.J.S. States § 204.

## 21-14-10. Applicability of other laws.

Any law concerning public schools and any law concerning the higher education institution shall, when applicable, govern the operation and conduct of the branch community college.

**History:** 1953 Comp., § 73-30-24, enacted by Laws 1963, ch. 162, § 8.

14A C.J.S. Colleges and Universities §§ 3, 6, 16.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 7, 8, 23, 42.

## 21-14-11. Repealed.

**Repeals.** — Laws 1999, ch. 219 § 21 repealed 21-14-11 NMSA 1978, as enacted by Laws 1963, ch. 162, § 9, designating community colleges as a branches of higher

education institutions, effective July 1, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMOneSource.com*.

## 21-14-12. Repealed.

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-14-12 NMSA 1978, as enacted by Laws 1965, ch. 162, § 1, relating to branch community college bonds, interest, form,

payment, effective June 16, 1995. For provisions of former sections, see the 1994 NMSA 1978 on *NMOneSource.com*.

## 21-14-13. Repealed.

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-14-13 NMSA 1978, as enacted by Laws 1965, ch. 162, § 2, relating to payment of bonds, bond provisions, effective

June 16, 1995. For provisions of former sections, see the 1994 NMSA 1978 on *NMOneSource.com*.

## 21-14-14. Title to property acquired from proceeds of bond issue.

All property acquired from the proceeds of a bond issue shall be taken in the name of the board of education or the board of regents of the parent institution. In the event an independent public college entity evolves from the branch community college, the property so held by the board of education or the board of regents of the parent institution shall be transferred and conveyed to the governing body of the new independent public college entity. No transfer or conveyance shall take place without the express approval of the board of educational finance.

**History:** 1953 Comp., § 73-30-28, enacted by Laws 1965, ch. 162, § 3; 1970, ch. 72, § 3.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 35. 14A C.J.S. Colleges and Universities §§ 14, 17.

## 21-14-15. Repealed.

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-14-15 NMSA 1978, as enacted by Laws 1989, ch. 24, § 1, relating to refunding bonds of branch community college districts,

effective June 16, 1995. For provisions of former section, see the 1994 NMSA 1978 on *NMOneSource.com*.

## 21-14-16. Ruidoso branch community college.

The Ruidoso branch community college may be created as provided in Chapter 21, Article 14 NMSA 1978.

**History:** Laws 2005, ch. 40, § 1.

**Effective dates.** — Laws 2005, ch. 40 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

**Temporary provisions.** — Laws 2005, ch. 40, § 2 provided that the eastern New Mexico university off-campus

instruction program in Ruidoso is terminated when the Ruidoso branch community college is created and that the eastern New Mexico university may transfer funds and property to the university pertaining to the Ruidoso off-campus instruction program to the Ruidoso branch community college.

## 21-14-17. Northern New Mexico college; branch community college for technical and vocational courses.

A. The board of regents of northern New Mexico college may choose to partner with one or more area school districts to be the parent institution of a branch community college established by the school districts to provide technical and vocational education. The branch community college may be co-located on the northern New Mexico college main campus or on its El Rito campus. Notwithstanding the provisions of Chapter 21, Article 14 NMSA 1978, the co-located branch community college shall be under the direction of the president of northern New Mexico college and shall operate under the administrative structure of northern New Mexico college. Otherwise, the board of the branch community college shall have the same powers over financing and financial control as provided for boards of other branch community colleges in Chapter 21, Article 14 NMSA 1978.

B. The board of regents and the area school boards or the elected board of the branch community college may agree to have northern New Mexico college offer its technical and vocational courses through the branch community college. If so offered, those courses shall not be eligible for funding from the northern New Mexico state school land grant permanent fund income fund or be eligible to benefit in any way as a land grant beneficiary.

**History:** Laws 2019, ch. 77, § 1.

**Effective dates.** — Laws 2019, ch. 77 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.



## ARTICLE 14A

### Off-Campus Instruction

Sec.	Sec.
21-14A-1. Short title.	21-14A-5.1. Title to property acquired.
21-14A-2. Definitions.	21-14A-5.2. Property ownership prohibited.
21-14A-3. Establishment authorized; board; determination of need; agreements.	21-14A-6. Financing of off-campus instruction programs.
21-14A-3.1. Elementary and secondary education curriculum and coursework.	21-14A-7. Repealed.
21-14A-4. Approval of local school board required.	21-14A-8. State support; appropriation.
21-14A-5. Availability of school facilities; use of other facilities.	21-14A-9. State support; continuation; restriction.
	21-14A-10. Repealed.

#### 21-14A-1. Short title.

This act [21-14A-1 through 21-14A-10 NMSA 1978] may be cited as the "Off-Campus Instruction Act".

**History:** Laws 1982, ch. 42, § 1.

**Compiler's notes.** — Pursuant to Laws 1978 (S.S.), ch. 3, § 29, because a majority of voters of the technical and vocational institute district disapproved a levy for support of an expanded program, Laws 1978 (S.S.), ch. 3, which

appeared as 21-14A-1 to 21-14A-25 NMSA 1978, concerning independent community colleges, is repealed and the technical and vocational institute will continue under authority of the Technical and Vocational Institute Act without authority to expand into college-level programs.

#### 21-14A-2. Definitions.

As used in the Off-Campus Instruction Act:

A. "off-campus instruction program" means either the first two years of college education or organized vocational and technical curricula of not more than two years' duration designed to fit individuals for employment in recognized occupations, or both; and

B. "full-time-equivalent student" includes students enrolled in college-level courses and students enrolled in vocational and technical courses taught by an off-campus instruction program. Students enrolled in a course the cost of which is totally reimbursed from federal, state or private sources shall not be included in the calculation of full-time-equivalent student population.

**History:** Laws 1982, ch. 42, § 2; 1990, ch. 25, § 3; 1999, ch. 219, § 10; 2007, ch. 227, § 4.

**The 2007 amendment**, effective June 15, 2007, eliminated the provision that the public school district transfer to the parent institution the tuition and fees for a student who is counted in the membership of the district and who receives credit for coursework at the off-campus site.

**The 1999 amendment**, effective July 1, 1999, deleted the former second sentence in Subsection B, which read "Full-time-equivalent for students enrolled in vocational and technical courses not of college level shall be calculated according to the method prescribed in Section 21-16-9 NMSA 1978".

#### 21-14A-3. Establishment authorized; board; determination of need; agreements.

A. An off-campus instruction program may be established in a school district upon the showing of need by the local board of education. An off-campus instruction program may be established to include more than one school district, in which instance the two or more local boards of education shall act as a single board and, if the off-campus instruction program is established, shall continue to act as a single board.

B. As used in the Off-Campus Instruction Act, "off-campus board" means the local board of education, or the combined local boards of education acting as a single board, of the school district.

C. The duties of the off-campus board are to:

- (1) initiate and conduct the survey provided for in Subsection D of this section;

(2) select one or more parent institutions, which shall be one of the state educational institutions as specified in Article 12, Section 11 of the constitution of New Mexico or one of the state educational institutions established pursuant to Chapter 21 NMSA 1978;

(3) request approval of the off-campus instruction program by the higher education department;

(4) enter into written agreements with the board of regents of the selected parent institution, which agreements shall be subject to biennial review of all parties concerned and to the review and commentary of the higher education department;

(5) act in an advisory capacity to the board of regents of the parent institution in all matters relating to the conduct of the off-campus instruction program;

(6) approve an annual budget for the off-campus instruction program for recommendation to the board of regents of the parent institution;

(7) certify to the board of county commissioners the tax levy; and

(8) issue the proclamation for the election for tax levies for the off-campus instruction program if the tax levies are to be presented to the voters of the district at a special election; or approve the ballot question if the tax levies are to be presented to the voters of the district at either the general or regular local election.

D. Upon evidence of a demand for an off-campus instruction program, the off-campus board shall cause a survey to be made. The higher education department shall develop criteria for the establishment of an off-campus instruction program, and no such program shall be established without the written authorization of the department.

E. If need is established, the off-campus board, in accordance with the higher education department criteria for initiating an off-campus instruction program, shall consult with the board of regents of the state educational institution selected to be a parent institution, and, if the off-campus board and the board of regents agree to conduct an off-campus instruction program in the area, they shall transmit a proposal to establish an off-campus instruction program to the department. The department shall evaluate the need and shall notify the off-campus board and the board of regents of approval or disapproval of the proposal.

F. If the proposal is approved, the off-campus board and the board of regents of the parent institution shall enter into a written agreement, which shall include provisions for:

(1) the state educational institution to have full authority and responsibility in relation to all academic matters;

(2) the state educational institution to honor all credits earned by students as though they were earned on the parent campus;

(3) the course of study and program approved by the higher education department and offered to the students;

(4) the cooperative use of physical facilities and teaching staff; and

(5) the detailed agreement of financing and financial control of the off-campus instruction program.

G. The agreement shall be binding upon both the off-campus board and the board of regents of the parent institution; however, it may be terminated by mutual consent or it may be terminated by either board upon six months' notice.

H. For the purpose of relating off-campus instruction programs to existing laws, off-campus instruction program districts or off-campus instruction programs shall not:

(1) be considered a part of the uniform system of free public schools pursuant to Article 12, Section 1 and Article 21, Section 4 of the constitution of New Mexico;

(2) benefit from the permanent school fund and from the current school fund under Article 12, Sections 2 and 4 of the constitution of New Mexico;

(3) be subject, except as it relates to technical and vocational education, to the control, management and direction of the public education department under Article 12, Section 6 of the constitution of New Mexico;

(4) be considered school districts insofar as the restrictions of Article 9, Section 11 of the constitution of New Mexico are concerned; and

(5) include the major attendance center of northern New Mexico college at Espanola.



I. All elections held pursuant to the Off-Campus Instruction Act shall be called, conducted and canvassed pursuant to the Local Election Act.

J. Any person or corporation may institute in the district court of any county in which the off-campus instruction program district affected lies an action or suit to contest the validity of any proceedings held under the Off-Campus Instruction Act, but no such suit or action shall be maintained unless it is instituted within ten days after the issuance by the proper officials of a certificate or notification of the results of the election and the canvassing of the election returns.

K. The tax rolls of the school districts comprising the off-campus instruction program district shall be adopted as the tax rolls of the off-campus instruction program district.

**History:** Laws 1982, ch. 42, § 3; 1993, ch. 17, § 1; 2019, ch. 212, § 219.

**The 2019 amendment**, effective April 3, 2019, revised the duties of an off-campus board, and provided that all elections held pursuant to the Off-Campus Instruction Act be conducted pursuant to the Local Election Act, and made certain technical amendments; in Subsection C, in Paragraph C(8), after the paragraph designation, deleted "conduct" and added "issue the proclamation for", and after "program", added "if the tax levies are to be presented to the voters of the district at a special election; or approve the ballot question if the tax levies are to be presented to the voters of the district at either the general or regular local election"; and in Subsection I, after "shall be", deleted former Paragraphs I(1) and I(2), redesignated former Paragraph I(3) as Subsection J and former Subsection J as Subsection K, and added "pursuant to the Local Election Act".

**The 1993 amendment**, effective June 18, 1993, substituted "commission on higher education" and "commission" for "board of educational finance" throughout this section; inserted "of the parent institution" in Paragraph (6) of Subsection C and in Subsections F and G; in Subsection C, added "provided for in Subsection D of this section" at the end of Paragraph (1), added the language beginning "or one of the state" at the end of Paragraph (2), and inserted "board of" in Paragraph (7); deleted "by either board" following "terminated" in Subsection G; and made minor stylistic changes.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools §§ 298, 299.

78 C.J.S. Schools and School Districts § 63 et seq.; 78A C.J.S. Schools and School Districts § 782 et seq.

### 21-14A-3.1. Elementary and secondary education curriculum and coursework.

The off-campus board may award an appropriate certificate upon completion of an education curriculum and program leading to alternative certification for degreed individuals pursuant to Section 22-10-3.5 NMSA 1978 [repealed] or certification of educational assistant and coursework in elementary and secondary education professional development. The curriculum and program leading to alternative certification or certification of educational assistants shall be approved by the state board of education.

**History:** Laws 2001, ch. 299, § 3.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2003, ch. 153, § 73 repealed 22-10-3.5 NMSA 1978, effective April 4, 2003. For provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

**Effective dates.** — Laws 2001, ch. 299 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2001, 90 days after adjournment of the legislature.

### 21-14A-4. Approval of local school board required.

Before any school district shall become part of an off-campus instruction program district composed of two or more school districts, the local board of education shall indicate its consent and need for such off-campus instruction program by the adoption of a resolution to that effect.

**History:** Laws 1982, ch. 42, § 4.

### 21-14A-5. Availability of school facilities; use of other facilities.

Upon establishment of an off-campus instruction program, public school facilities are to be made available to the off-campus program if needed, and in such manner as will not interfere with the regular program of instruction. No public school funds shall be expended in the program,

and the off-campus instruction program shall pay a proper amount for utilities and custodian service. The off-campus board may arrange for the use of available facilities other than public school facilities if approved by the board of regents.

**History:** Laws 1982, ch. 42, § 5.

### 21-14A-5.1. Title to property acquired.

All property acquired using the proceeds of a bond issue and all property acquired by gift, devolution or bequest shall be taken in the name of the local school board in the district in which the property is situate. All property held by the local school board pursuant to this section shall be used solely for the purpose of carrying out the provisions of the Off-Campus Instruction Act until such time as the off-campus instruction program ceases to exist. At such time, the property so held by the local school board may be used for other purposes within the scope of authority of the local school board. No real property may be acquired pursuant to this section after July 1, 1998.

**History:** Laws 1993, ch. 344, § 1; 1998, ch. 61, § 8.

**The 1998 amendment**, effective March 9, 1998, substituted "used" for "utilized" near the middle of the third sentence and added the last sentence.

### 21-14A-5.2. Property ownership prohibited.

An off-campus board may not own, accept as a gift or purchase land, buildings or other form of real property.

**History:** Laws 1998, ch. 61, § 9.

**Emergency clauses.** — Laws 1998, ch. 61, § 17 contained an emergency clause and was approved March 9, 1998.

### 21-14A-6. Financing of off-campus instruction programs.

Financing of off-campus instruction programs shall be by tuition and fees which shall be set by the board of regents of the parent institution, by gifts and grants and by other funds as may be made available, pursuant to the Off-Campus Instruction Act or College District Tax Act [21-2A-1 through 21-2A-10 NMSA 1978].

**History:** Laws 1982, ch. 42, § 6; 1995, ch. 224, § 21.

**The 1995 amendment**, effective June 16, 1995, inserted "of the parent institution", substituted the

language beginning "pursuant to" for "except as otherwise provided in the Off-Campus Instruction Act" at the end of the section, and made a minor stylistic change.

### 21-14A-7. Repealed.

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-14A-7 NMSA 1978, as amended by Laws 1990, ch. 54, § 1, providing for the authorization of tax levies by off-campus

boards, effective June 16, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com*.

### 21-14A-8. State support; appropriation.

A. The commission on higher education [higher education department] shall recommend an appropriation for each off-campus instruction program based upon its financial requirements in relation to its authorized program and its available funds from non-general fund sources.

B. The commission on higher education [higher education department] shall not recommend an appropriation greater than three hundred twenty-five dollars (\$325) for each full-time-equivalent student for any off-campus instruction program that levies a tax at a rate less than two dollars (\$2.00), unless a lower amount is required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon a rate approved by the electors of at least two dollars (\$2.00) on



each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code [Chapter 7, Articles 35 through 38 NMSA 1978], or any off-campus board that reduces a previously authorized tax levy, except as required by the operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978.

**History:** Laws 1982, ch. 42, § 8; 1995, ch. 224, § 23.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2003, ch. 153, § 73 repealed 22-10-3.5 NMSA 1978, effective April 4, 2003. For provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

**The 1995 amendment**, effective June 16, 1995, designated the formerly undesignated provision as Subsection A; added Subsection B; and, in Subsection A, substituted "commission on higher education" for "board of educational finance".

## 21-14A-9. State support; continuation; restriction.

A. All post-secondary institutions offering off-campus academic or vocational programs of no more than two years' duration, not organized under Chapter 21, Article 13, 14, 16 or 17 NMSA 1978 but which were receiving state support July 1, 1980, may continue to receive state support for those programs through the seventy-first fiscal year.

B. No off-campus program shall be eligible for state support unless it is established according to the provisions of the Off-Campus Instruction Act [21-14A-1 through 21-14A-10 NMSA 1978] or meets the conditions of Subsection A of this section.

**History:** Laws 1982, ch. 42, § 9.

## 21-14A-10. Repealed.

**Repeals.** — Laws 1990, ch. 54, § 2 repealed 21-14A-10 NMSA 1978, as enacted by Laws 1982, ch. 42, § 10, relating to prohibition of property ownership by boards,

effective March 2, 1990. For provisions of former section, see the 1989 NMSA 1978 on *NMOneSource.com*.

# ARTICLE 15

## Community College and Vocational-Technical Center at Walker Air Force Base

Sec.

21-15-1. Repealed.  
21-15-2. Repealed.

Sec.

21-15-3. Repealed.

## 21-15-1. Repealed.

**Repeals.** — Laws 1999, ch. 219 § 21 repealed 21-15-1 NMSA 1978, as enacted by Laws 1967, ch. 66, § 1, relating

to purpose, effective July 1, 1999. For provisions of former sections, see the 1998 NMSA 1978 on *NMOneSource.com*.

## 21-15-2. Repealed.

**Repeals.** — Laws 1999, ch. 219 § 21 repealed 21-15-2 NMSA 1978, as enacted by Laws 1967, ch. 66, § 2, relating to authorization for acquisition, effective July 1, 1999. For

provisions of former sections, see the 1998 NMSA 1978 on *NMOneSource.com*.

## 21-15-3. Repealed.

**Repeals.** — Laws 1999, ch. 219 § 21 repealed 21-15-3 NMSA 1978, as enacted by Laws 1967, ch. 66, § 4, relating to approval of operations, effective July 1, 1999. For

provisions of former sections, see the 1998 NMSA 1978 on *NMOneSource.com*.

## ARTICLE 16

### Technical and Vocational Institute Districts

Sec.

- 21-16-1. Short title.
- 21-16-2. Definitions.
- 21-16-3. Repealed.
- 21-16-3.1. Limitations on technical and vocational institutes.
- 21-16-4. Repealed.
- 21-16-5. Repealed.
- 21-16-5.1. Board members; elected from districts; elections.
- 21-16-6. Board; powers and duties.
- 21-16-6.1. Fiscal agent and depository.
- 21-16-6.2. Elementary and secondary education curriculum and coursework.
- 21-16-7. Standards.
- 21-16-8. Purpose of act.
- 21-16-9. Repealed.
- 21-16-10. Appropriation; distribution.
- 21-16-10.1. Repealed.

Sec.

- 21-16-11. Repealed.
- 21-16-11.1. Repealed.
- 21-16-12. Repealed.
- 21-16-13. Sharing of facilities.
- 21-16-14. Addition of school districts or portions of school districts to existing technical and vocational institute districts.
- 21-16-15. Dissolution of districts.
- 21-16-16. Alternate procedures permitted.
- 21-16-17. Identification of electorate.
- 21-16-18. Repealed.
- 21-16-19. Repealed.
- 21-16-20. Submission at election; notice; certification.
- 21-16-21. Repealed.
- 21-16-22. Repealed.
- 21-16-23. Repealed.
- 21-16-24. Repealed.

**Temporary provisions.** — Laws 1999, ch. 219, § 20, effective July 1, 1999, provided that on July 1, 1999, those post-secondary educational institutions organized pursuant to Chapter 21, Article 17 NMSA 1978 shall be deemed organized pursuant to Chapter 21, Article 16 NMSA 1978; provided that all personnel, money, appropriations, records, equipment and other property acquired by the post-secondary educational institutions organized pursuant to Chapter 21, Article 17 NMSA 1978 prior to July 1, 1999, shall be deemed transferred to the respective technical and vocational institution deemed to be organized pursuant to Chapter 21, Article 16 NMSA 1978 on July 1, 1999, and held by that technical and vocational institute until the institute is dissolved pursuant to the procedures of the Technical and Vocational Institute Act; provided that all taxes levied to pay for any principal and interest on bonds of the area vocational schools in addition to taxes levied for operating, maintaining and providing facilities for area vocational schools shall continue in effect until the levy is disapproved pursuant to the procedures set out in the Technical and Vocational Institute Act; provided for the binding nature of all existing contracts and agreements as to the area vocational schools; and provided that all references in law to area vocational schools organized pursuant to Chapter 21, Article 17 NMSA 1978 existing before July 1, 1999, shall be construed to be references to technical and vocational institutes organized pursuant to Chapter 21, Article 16 NMSA 1978 after July 1, 1999.

#### 21-16-1. Short title.

Chapter 21, Article 16 NMSA 1978 may be cited as the "Technical and Vocational Institute Act".

**History:** 1953 Comp., § 73-34-1, enacted by Laws 1963, ch. 108, § 1; 1994, ch. 83, § 1.

**The 1994 amendment,** effective May 18, 1994, substituted "Chapter 21, Article 16 NMSA 1978" for "This act".

#### 21-16-2. Definitions.

As used in Chapter 21, Article 16 NMSA 1978:

A. "technical and vocational institute" means a public educational institution, including a post-secondary educational institution organized before July 1, 1999 as an area vocational school pursuant to Chapter 21, Article 17 NMSA 1978 [repealed] that provides not to exceed two years of vocational and technical curricula and, in addition, some appropriate courses and programs in the arts and sciences;

B. "board" means the governing board of the district;

C. "full-time equivalent student" means that term as it is defined in Section 21-16-9 NMSA 1978 [repealed];

D. "school district" means that term as it is defined in Subsection J [Subsection R] of Section 22-1-2 NMSA 1978; and

E. "district" means a technical and vocational institute district.

**History:** 1953 Comp., § 73-34-2, enacted by Laws 1963, ch. 108, § 2; 1999, ch. 219, § 11.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.



Laws 1999, ch. 219 § 21 repealed 21-17-1 to 21-17-7, 21-17-9, 21-17-11, 21-17-12, and 21-17-14 to 21-17-17 NMSA 1978, effective July 1, 1999.

Laws 1999, ch. 219, § 21 repealed 21-16-9 NMSA 1978, effective July 1, 1999.

The reference to Subsection J of Section 22-1-2 NMSA, in Subsection D, probably should be to Subsection R of Section 22-1-2 NMSA 1978.

**The 1999 amendment**, effective July 1, 1999, rewrote this section, adding a definition of "district" and deleting a definition of "part-time student-equivalent".

## 21-16-3. Repealed.

**Repeals.** — Laws 1998, ch. 61, § 16, repealed 21-16-3 NMSA 1978, enacted by Laws 1963, ch. 108, § 3, relating to formation, effective March 9, 1998. For provisions

of former sections, see the 1997 NMSA 1978 on *NMOneSource.com*.

## 21-16-3.1. Limitations on technical and vocational institutes.

There shall be no new technical and vocational institute branch campus or off-campus instructional center created after January 1, 1998 unless specifically created by the legislature.

**History:** Laws 1998, ch. 61, § 12.

**Emergency clauses.** — Laws 1998, ch. 61, § 17 contained an emergency clause and was approved March 9, 1998.

## 21-16-4. Repealed.

**Repeals.** — Laws 1998, ch. 61, § 16, repealed 21-16-4 NMSA 1978, enacted by Laws 1963, ch. 108, § 4, relating to election of technical and vocational institute districts,

effective March 9, 1998. For provisions of former section, see the 1997 NMSA 1978 on *NMOneSource.com*.

## 21-16-5. Repealed.

**Repeals.** — Laws 1999, ch. 219 § 21 repealed 21-16-5 NMSA 1978, as amended by Laws 1994, ch. 83, § 2, relating to boards of technical and vocational institute districts,

effective July 1, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, see 21-16-5.1 NMSA 1978.

## 21-16-5.1. Board members; elected from districts; elections.

A. A district board shall be composed of five or seven members elected for four-year terms who shall reside in and be elected from single-member districts as provided in this section. If the board is a seven-member board, board members shall be elected for all seven positions on the board, with the board members elected to positions 1, 3, 5 and 7 to be elected for initial terms of two years and the board members elected to positions 2, 4 and 6 to be elected for initial terms of four years. If the board is a five-member board, board members elected to positions 1, 3 and 5 shall be elected for initial terms of two years and board members elected to positions 2 and 4 shall be elected for initial terms of four years. After the initial election for a district board, each board member shall be elected for a term of four years.

B. All election proceedings for technical and vocational institute district elections shall be conducted pursuant to the provisions of the Local Election Act [Chapter 1, Article 22 NMSA 1978].

C. Once following each federal decennial census, the board shall redistrict the technical and vocational institute district into election districts to ensure that the districts remain as equal in population as is practicable and shall notify the county clerk of the new boundaries upon completion of the redistricting process. The new districts shall go into effect at the first regular board election thereafter. Candidates for the new single-member districts that are scheduled to be voted on at the election shall reside in and be elected from the appropriate new single-member district. Incumbent board members whose districts before redistricting were not scheduled to be voted on at the election need not reside in the new single-member districts corresponding to their position numbers and may serve out their terms. At the second regular board election held after the redistricting, all candidates for the new single-member districts that are scheduled to be voted on shall reside in and be elected from the appropriate single-member district.

D. All election districts covered by this section shall be contiguous, compact and as equal in population as is practicable.

E. A vacancy occurring on the board shall be filled in the same manner as provided for school board vacancies in Section 22-5-9 NMSA 1978; provided, however, that a vacancy that occurs in an election district where a nonresident board member had been serving shall be filled by a resident of that district.

**History:** Laws 1994, ch. 83, § 3; 1999, ch. 219, § 12; 2000, ch. 11, § 1; 2018, ch. 79, § 84.

**The 2018 amendment**, effective July 1, 2018, provided that all election proceedings for technical and vocational institute district elections shall be conducted pursuant to the provisions of the Local Election Act, required the board to notify the county clerk of new boundaries after redistricting following each federal decennial census, and made technical and conforming changes; in Subsection A, deleted "Any board, the members of which have not been elected from single-member districts, shall district and hold a special election to coincide with the school district elections of 2001"; in Subsection B, deleted "Except where specific provision is otherwise provided by law", and after "pursuant to the provisions of the", deleted "School Election Law with the president of the institute serving in the place of the superintendent of schools in every case" and added "Local Election Act"; and in Subsection C, after "as

is practicable", added "and shall notify the county clerk of the new boundaries upon completion of the redistricting process".

**Temporary provisions.** — Laws 2018, ch. 79, § 174 provided that references in law to the Municipal Election Code and to the School Election Law shall be deemed to be references to the Local Election Act.

**The 2000 amendment**, effective May 17, 2000, in the second sentence of Subsection A, deleted "On July 1, 1999" from the beginning and substituted "to coincide with the school district elections of 2001" for "within one year from the effective date of this 1999 act" at the end.

**The 1999 amendment**, effective July 1, 1999, rewrote Subsection A; added present Subsection B and redesignated the subsequent subsections accordingly; deleted specification of seven election districts in the first sentence in Subsection C; and added the language at the beginning of Subsection E preceding the proviso.

## 21-16-6. Board; powers and duties.

### A. The board shall:

(1) determine the financial and educational policies of the technical and vocational institute and provide for the execution of these policies by selecting a competent president for the institute and, upon the president's recommendation, shall employ other administrative personnel, instructional staff or other personnel as may be needed for the operation, maintenance and administration of the institute;

(2) fix fee rates and tuition rates for students;

(3) have authority to issue certificates of proficiency;

(4) have authority to issue associate of arts, associate of science and associate of applied science degrees; provided that associate degree programs shall be approved by the commission on higher education [higher education department];

(5) have authority to accept gifts, receive federal aid or other aid and purchase, hold, sell and rent property and equipment in the name of the technical and vocational institute district;

(6) promote the general welfare of the technical and vocational institute for the best interest of educational service to the people of the technical and vocational institute district; and

(7) adopt a name for or change the name of the technical and vocational institute or the institute's campuses, provided no name is adopted in honor of a living person.

B. Whenever the board changes the name of a technical vocational institute or the institute's campuses:

(1) functions, personnel, appropriations, money, records, equipment and other property of the formerly named institute or campuses shall be transferred to the newly named institute or campuses;

(2) existing contracts and agreements in effect as to the formerly named institute or campuses shall be binding on the newly named institute or campuses; and

(3) references in state or local law to the formerly named institute or campuses shall be deemed to refer to the newly named institute or campuses.

**History:** 1953 Comp., § 73-34-6, enacted by Laws 1963, ch. 108, § 6; 1986, ch. 18, § 1; 2005, ch. 32, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2005, ch. 289, § 29 provided that all references to the commission on higher education be construed to be references to the higher education department.

**The 2005 amendment**, effective June 17, 2005, permitted a technical and vocational institute district board



to adopt or to change the name of the institute or the institute's campuses; prohibited the adoption of a name to honor a living person; and provided for the continuation of the institute under the new name.

### ANNOTATIONS

#### **Positions of legislator and president of a technical and vocational institute are not incompatible.**

The position of president of a technical and vocational institute is not a civil office or a state office and the positions of state legislator and president of a technical vocational institute are not necessarily physically and/or functionally incompatible. Consequently, a legislator may serve as president of a technical and vocational institute without resigning office and without violating N.M. Const. art. 4, § 3 or 28, Section 2-1-3 NMSA 1978, or any other provision of law regarding incompatibility. 2006 Op. Att'y Gen. No. 06-01.

#### **Entertainment, travel, and meal expenditures.**

Officials and employees of a technical-vocational institute may, within limitations, spend public money for certain entertainment, meals, travel, and membership expenses without violating the antidonation clause (N.M. Const., art. 9, § 14) if the expenditures are demonstrably related to the institute's constitutionally or statutorily authorized functions and do not amount to a subsidy of private individuals or businesses. 1997 Op. Att'y Gen. No. 97-02.

#### **Scholarships out of public money permitted.**

Based on its authority to provide and charge tuition for educational services, a technical-vocational institute may, consistently with the antidonation clause (N.M. Const., art. 9, § 14), use public money for scholarships in the

form of tuition waivers or reductions if the criteria used to award them are education-related and applied in a reasonable and even-handed manner. Past opinions suggesting that scholarship awards violate the antidonation clause are overruled to the extent they limit scholarships to those paid from private or federal sources. 1997 Op. Att'y Gen. No. 97-02.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools §§ 65 to 67.

Extent of power of school district to provide for the comfort and convenience of teachers and pupils, 7 A.L.R. 791, 52 A.L.R. 249.

Power of school authorities to employ physicians, nurses, oculists, and dentists, 12 A.L.R. 922.

Gifts for public school as a valid charitable gift, 48 A.L.R. 1126.

Constitutionality, construction, and effect of statutes in relation to admission of nonresident pupils to school privileges, 72 A.L.R. 499, 113 A.L.R. 177.

Tort liability of public schools and institutions of higher learning for accidents associated with chemistry experiments, shopwork and manual or vocational training, 35 A.L.R.3d 758.

Residence for purpose of admission to public school, 56 A.L.R.3d 641.

Student's right to compel school officials to issue degree, diploma, or the like, 11 A.L.R.4th 1182.

Liability of private vocational or trade school for fraud or misrepresentations inducing student to enroll or pay fees, 85 A.L.R.4th 1079.

78 C.J.S. Schools and School Districts § 81 et seq.; 78A C.J.S. Schools and School Districts §§ 503, 805.

## 21-16-6.1. Fiscal agent and depository.

A. The board may designate a bank or savings and loan association doing business in New Mexico and having an unimpaired tier one capital of at least ten million dollars (\$10,000,000), as defined by the federal deposit insurance corporation, as the fiscal agent of the technical and vocational institute. The selection of the fiscal agent shall be made pursuant to the procedures of the Procurement Code [13-1-28 through 13-1-199 NMSA 1978].

B. The bank or savings and loan association so designated shall enter into an agreement with the technical and vocational institute for any or all of the following services:

- (1) the collection for the technical and vocational institute of all checks and other items received by the technical and vocational institute on any account;
- (2) the handling of the checking account of the technical and vocational institute;
- (3) the handling of all transfers of money in connection with the sale or retirement of bonds or obligations of the technical and vocational institute or the purchase by the technical and vocational institute of bonds or other securities;
- (4) the investment of funds of the technical and vocational institute;
- (5) the safekeeping of bonds or other securities belonging to or held by the technical and vocational institute or any official thereof;
- (6) implementation of a cash management system to provide daily sweeps of balances into a revenue generating account;
- (7) processing of credit card transactions involving the technical and vocational institute;
- (8) administration of direct deposit payroll and other payment programs; and
- (9) acting as the agent of the technical and vocational institute in fiscal matters generally.

C. The agreement shall contain the terms and conditions which are necessary, in the judgment of the board, for the proper conduct of the fiscal affairs and the safekeeping of the money of the technical and vocational institute.

#### **History: Laws 1997, ch. 123, § 1.**

**Effective dates.** — Laws 1997, ch. 123 contained no effective date provision, but, pursuant to N.M. Const.,

art. IV, § 23, was effective June 20, 1997, 90 days after adjournment of the legislature.

## 21-16-6.2. Elementary and secondary education curriculum and coursework.

The board may award an appropriate certificate upon completion of an education curriculum and program leading to alternative certification for degreed individuals pursuant to Section 22-10-3.5 NMSA 1978 [repealed] or certification of educational assistant and coursework in elementary and secondary education professional development. The curriculum and program leading to alternative certification or certification of educational assistants shall be approved by the state board of education.

**History:** Laws 2001, ch. 299, § 4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2003, ch. 153, § 73 repealed 22-10-3.5 NMSA 1978, effective April 4, 2003. For provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

**Compiler's notes.** — As enacted by Laws 2001, ch. 299, § 4, this section was designated 21-16-6.1 NMSA 1978 but

was redesignated as 21-16-6.2 NMSA 1978, as another 21-16-6.1 NMSA 1978 had previously been enacted by Laws 1997, ch. 123, § 1.

**Effective dates.** — Laws 2001, ch. 299 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2001, 90 days after adjournment of the legislature.

## 21-16-7. Standards.

The state board of education shall, in conjunction with the board, prescribe the course of study for the technical and vocational institute. The board, in conjunction with the commission on higher education [higher education department], shall define official standards of excellence in all matters relating to the administration, course of study and quality of instruction.

**History:** 1953 Comp., § 73-34-7, enacted by Laws 1968, ch. 108, § 7; 1999, ch. 219, § 13.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2005, ch. 289, § 29 provided that all references to the commission on higher education be construed to be references to the higher education department.

**The 1999 amendment,** effective July 1, 1999, added "The board, in conjunction with the commission on higher education" at the beginning of the second sentence.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools §§ 298 to 302.

Failure of student to attain or maintain prescribed scholastic rating as ground for dropping him from roll of public educational institution, 86 A.L.R. 484.

78 C.J.S. Schools and School Districts § 85 et seq.

## 21-16-8. Purpose of act.

It is the purpose of the Technical and Vocational Institute Act to extend state support to public school vocational and technical education programs of not more than two years' duration designed to fit individuals for employment, provided such individuals are students enrolled in a technical and vocational institute organized pursuant to the Technical and Vocational Institute Act.

**History:** 1953 Comp., § 73-34-7.1, enacted by Laws 1968, ch. 59, § 1; 1974, ch. 51, § 1; 1999, ch. 219, § 14.

**The 1999 amendment,** effective July 1, 1999, deleted the first sentence, which set out the findings in support of the act and substituted "the Technical and Vocational Institute Act" for "this act" near the beginning.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools §§ 92 to 100.

Extent of legislative power with respect to attendance and curriculum, 39 A.L.R. 477, 53 A.L.R. 832.

79 C.J.S. Schools and School Districts §§ 339 to 343.

## 21-16-9. Repealed.

**Repeals.** — Laws 1999, ch. 219 § 21 repealed 21-16-9 NMSA 1978, as amended by Laws 1990, ch. 25, § 4, defining enrollment in technical and vocational institutions,

effective July 1, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMOneSource.com*.



## 21-16-10. Appropriation; distribution.

A. The higher education department shall recommend an appropriation for each technical and vocational institute based upon its financial requirements in relation to its authorized program and its available funds from non-general fund sources; provided, the recommended appropriation shall be an amount not less than three hundred twenty-five dollars (\$325) for each full-time-equivalent student.

B. The higher education department shall by rule provide for the method for calculating the number of full-time-equivalent students in technical and vocational institutes. No student shall be included in any calculation of the number of full-time-equivalent students if the student is enrolled in a course, the cost of which is totally reimbursed from federal, state or private sources.

C. The higher education department shall not recommend an appropriation greater than three hundred twenty-five dollars (\$325) for each full-time-equivalent student for any technical and vocational institute that levies a tax at a rate less than two dollars (\$2.00), unless a lower amount is required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon a rate approved by the electors of at least two dollars (\$2.00) on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code [Chapter 7, Articles 35 through 38 NMSA 1978], or any technical and vocational institute that reduces a previously authorized tax levy, except as required by the operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978.

D. The board may establish and grant gratis scholarships to students who are residents of New Mexico in an amount not to exceed the matriculation fee or tuition and fees, or both. The gratis scholarships are in addition to the lottery tuition scholarships authorized in Section 21-16-10.1 NMSA 1978 [repealed] and shall be granted to the full extent of available funds before lottery tuition scholarships are granted. The number of scholarships established and granted pursuant to this subsection shall not exceed three percent of the preceding fall semester enrollment in the technical and vocational institute and shall not be established and granted for summer sessions. The president of the technical and vocational institute shall select and recommend to the board as recipients of scholarships students who possess good moral character and satisfactory initiative, scholastic standing and personality. Beginning with the fall semester of 2010, a minimum of one-half of the gratis scholarships established and granted by the board each year shall be granted on the basis of financial need, and beginning with the fall semester of 2011, a minimum of two-thirds of the gratis scholarships established and granted by each board of regents each year shall be granted on the basis of financial need.

**History:** 1953 Comp., § 73-34-7.3, enacted by Laws 1968, ch. 59, § 3; 1974, ch. 51, § 2; 1977, ch. 246, § 50; 1988, ch. 64, § 4; 1988, ch. 65, § 1; 1995, ch. 224, § 24; 1999, ch. 219, § 15; 2003, ch. 390, § 3; 2007, ch. 227, § 5; 2009, ch. 47, § 4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Section 21-16-10.1 NMSA 1978 was repealed by Laws 2014, ch. 80, § 10, effective March 12, 2014. For provisions of former section, see the 2013 NMSA 1978 on *NMOneSource.com*.

**The 2009 amendment**, effective June 19, 2009, in Subsection D, at the beginning of the last sentence, deleted "At least thirty-three and one-third percent" and added "Beginning with the fall semester of 2010, a minimum of one-half"; and at the end of the last sentence, added the language following "financial need".

**The 2007 amendment**, effective June 15, 2007, eliminated the provision that the public school district transfer to the technical and vocational institute the tuition and fees for a student who is counted in the membership of the district and who receives credit for coursework at the institute.

**The 2003 amendment**, effective June 20, 2003, in Subsection D, deleted "Except as provided in Section 21-16-10.1 NMSA 1978" from the beginning of the former second sentence, inserted the present second sentence, and inserted "pursuant to this subsection" following "established and granted" in the third sentence.

**The 1999 amendment**, effective July 1, 1999, in Subsection B substituted "rule" for "regulation" in the first sentence and added the last sentence; and added Subsection D.

**The 1995 amendment**, effective June 16, 1995, deleted "or if he is counted in the average daily membership of a public school district for the same period" at the end of Subsection B; added Subsection C; and made minor stylistic changes.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools §§ 92 to 100.

Extent of legislative power with respect to attendance and curriculum, 39 A.L.R. 477, 53 A.L.R. 832.

79 C.J.S. Schools and School Districts §§ 339 to 343.

### 21-16-10.1. Repealed.

**Repeals.** — Laws 2014, ch. 80, § 10 repealed 21-16-10.1 NMSA 1978, as enacted by Laws 1996, ch. 71, § 6, relating to legislative lottery scholarships authorized, effective

March 12, 2014. For provisions of former section, see the 2013 NMSA 1978 on *NMOneSource.com*.

### 21-16-11. Repealed.

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-16-11 NMSA 1978, as amended by Laws 1983, ch. 265, § 46, relating to bonds authorized by the Technical and Vocational

Institute Act, effective June 16, 1995. For provisions of former section, see the 1994 NMSA 1978 on *NMOneSource.com*.

### 21-16-11.1. Repealed.

**Repeals.** — Laws 1999, ch. 219 § 21 repealed 21-16-11.1 NMSA 1978, as enacted by Laws 1993, ch. 28, § 1 and ch. 114, § 1, relating to refunding bonds, effective July 1,

1999. For provisions of former section, see the 1998 NMSA 1978 on *NMOneSource.com*.

### 21-16-12. Repealed.

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-16-12 NMSA 1978, as amended by Laws 1989, ch. 307, § 1, relating to special assessments in technical and vocational

institute districts, effective June 16, 1995. For provisions of former section, see the 1994 NMSA 1978 on *NMOneSource.com*.

### 21-16-13. Sharing of facilities.

Technical and vocational institute districts may arrange for the use or sharing of facilities with any school district or with the board of regents of a higher educational institution. Any agreement entered into for the sharing of facilities shall provide that the technical and vocational institute district shall bear an appropriate and equitable share of the expenses for the maintenance and operation of the facilities used.

**History:** 1953 Comp., § 73-34-10, enacted by Laws 1963, ch. 108, § 10.

### 21-16-14. Addition of school districts or portions of school districts to existing technical and vocational institute districts.

A. A technical and vocational institute district may be expanded by either the procedure in Subsections B, C and D of this section or the procedure in Subsections E and F of this section.

B. The qualified voters of a school district, portion of a school district, group of school districts within a county containing a technical and vocational institute district or in an adjoining county, not included in the technical and vocational institute district as originally formed, may petition the public education department to be added to the technical and vocational institute district. The department shall examine the petition, and if it finds that the petition is signed by a number of qualified voters residing within the pertinent school district or portion of a school district equal to ten percent of the votes cast for governor in such school district or portion of such school district in the last preceding general election, the department shall cause a survey to be made of the petitioning district or districts to determine the desirability of the proposed expansion of the technical and vocational institute district.

C. In conducting the survey, the public education department, in conjunction with the higher education department, shall ascertain the attitude of the technical and vocational institute board and collect other information it deems necessary. If, on the basis of the survey, the public education department finds that the proposed addition of the petitioning area will promote an improved education service in the area, it shall approve the petition. The secretary of public education shall proceed to issue a proclamation and call an election pursuant to the provisions of the Local Election



Act [Chapter 1, Article 22 NMSA 1978] within the petitioning area and in the established technical and vocational institute district on the question of the inclusion of the petitioning area in the institute district.

D. If a majority of the votes cast in the petitioning area and a majority of the votes cast within the established institute district are in favor of the addition of the area, the public education department shall notify the local school board of each affected school district and the technical and vocational institute board of the results of the election and shall declare the extension of the boundaries of the institute district to include the petitioning area in which the proposed addition referendum carried by a majority vote.

E. If a technical and vocational institute district includes less than all of a school district, the institute board, by resolution of a majority of the members of the board, may call an election within the institute district and in the portion of the school district that is not included in the institute district on the question of the addition of the excluded portion of the school district to the established institute district. Such election shall be conducted pursuant to the provisions of the Local Election Act.

F. If a majority of the votes cast in the institute district and the portion of the school district that is outside the institute district are in favor of the addition of the excluded portion of the school district to the institute district, the board of the institute district shall declare the institute district to be expanded to include all of such school district.

G. Each area added to an existing technical and vocational institute district shall automatically be subject to any special levy on taxable property approved for the institute district for the maintenance of facilities and services and for support of bond issues.

**History:** 1953 Comp., § 73-34-11, enacted by Laws 1963, ch. 108, § 11; 1999, ch. 219, § 17; 2005, ch. 47, § 1; 2018, ch. 79, § 85.

**The 2018 amendment**, effective July 1, 2018, provided that an election on the question of adding a school district to an existing technical and vocational institute district shall be called by the secretary of public education, and conducted pursuant to the provisions of the Local Election Act, and made technical and conforming changes; in Subsection C, after "survey, the", added "public education", after "conjunction with the", deleted "commission on", after "higher education", added "department", after "survey, the", added "public education", after "shall proceed to", added "issue a proclamation and", and after "call an election", added "pursuant to the provisions of the Local Election Act"; in Subsection D, after "of the area, the", added "public education"; and in Subsection E, deleted "Except where specific provision is otherwise provided by law", after "conducted pursuant to the provisions of the", deleted "School Election Law with the president of the institute district serving in the place of the superintendent of schools in every case; provided that:" and added "Local Election Act", and deleted former Paragraphs E(1) through E(3).

**Temporary provisions.**— Laws 2018, ch. 79, § 174 provided that references in law to the Municipal Election Code and to the School Election Law shall be deemed to be references to the Local Election Act.

**The 2005 amendment**, effective June 17, 2005, provided two procedures for expanding the boundaries of a technical and vocational institute district by providing that qualified voters may petition for the addition of

a school district, portion of a school district or group of school districts to a technical and vocational institute district and that an election be held in petitioning area and the technical and vocational institute district on the addition of the petitioning area to the technical and vocational institute district and by providing that if a technical and vocational institute district includes less than all of a school district, the institute board may call an election to be held pursuant to the School Election Law in the technical and vocational institute district and in the portion of the school district not included in the technical and vocational institute district on the addition of the area to the technical and vocational institute district.

**The 1999 amendment**, effective July 1, 1999, inserted "of education" following "state board" in four places; made a statutory reference substitution in the second sentence of Subsection A and in the first sentence of Subsection B; in Subsection A, inserted "technical and vocational" in the first sentence; in Subsection B, inserted "in conjunction with the commission on higher education" in the first sentence and inserted "or districts" in two places; and, in Subsection C, substituted "local school board of" for "boards of education within" near the middle.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.**— 68 Am. Jur. 2d Schools §§ 29 to 43.

Unionization, centralization or consolidation of school districts as affecting indebtedness and property of the individual districts, 121 A.L.R. 826.

78 C.J.S. Schools and School Districts § 18 et seq.

## 21-16-15. Dissolution of districts.

Technical and vocational institute districts may be dissolved in the following manner:

A. a plan for the dissolution of the technical and vocational institute district shall be submitted to the state board of education by a petition signed by ten percent of the qualified electors residing in the district. Upon approval of the plan, the state board of education shall call a special election

for the purpose of referring to the voters residing in the district the question of dissolution. Plans for the dissolution of a technical and vocational institute district shall provide for the payment of all district debts and liabilities and for the equitable distribution of all remaining assets to the school districts within the technical and vocational institute district;

B. if a majority of the qualified electors voting at the special election authorizes the dissolution, the board shall proceed with the approved plan. Upon completion of the plan, the board shall submit a full report to the state board of education and the commission on higher education [higher education department]; and

C. upon receipt of the final report of the board, the state board of education, in conjunction with the commission on higher education [higher education department], shall examine the report to determine whether any outstanding obligations exist and whether the terms of the approved plan have been accomplished. If upon determination by the state board of education no obligations are outstanding and the provisions of the plan have been fulfilled, the state board of education shall formally declare the technical and vocational institute district dissolved.

**History:** 1953 Comp., § 73-34-12, enacted by Laws 1963, ch. 108, § 12; 1999, ch. 219, § 18.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2005, ch. 289, § 29 provided that all references to the commission on higher education be construed to be references to the higher education department.

The 1999 amendment, effective July 1, 1999, in Subsection B, deleted "technical and vocational institute

district" preceding "board shall" in the first sentence and added "and the commission on higher education" at the end; and, in Subsection C, inserted "in conjunction with the commission on higher education" near the beginning.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools §§ 29 to 43.

78 C.J.S. Schools and School Districts § 18 et seq.

## 21-16-16. Alternate procedures permitted.

In addition to the election procedures provided in Chapter 21, Article 16 NMSA 1978 for an election for the approval or disapproval of a tax levy of not to exceed five mills for current operations and retirement of bonds of a technical and vocational institute, the election procedures set out in the Technical and Vocational Institute Act may be used for those purposes.

**History:** 1953 Comp., § 73-34-13, enacted by Laws 1964 (1st S.S.), ch. 12, § 1; 1998, ch. 61, § 10.

The 1998 amendment, effective March 9, 1998, substituted "Chapter 21, Article 16 NMSA 1978" for "Laws 1963, Chapter 108" following "provided in"; deleted "for the creation of a technical and vocational institute district and for an election" following "an election"; substituted "the Technical and Vocational Institute" for "this", and made a minor stylistic change.

#### ANNOTATIONS

**Mill levy elections.** — Pursuant to 21-16-16 NMSA 1978, which sets up two alternative election procedures, the board may hold a mill levy election pursuant either to the repealed Sections 22-6-1 through 22-6-34 NMSA 1978 or the new provisions at 1-22-3 through 1-22-6 NMSA 1978. 1988 Op. Att'y Gen. No. 88-14.

## 21-16-17. Identification of electorate.

In any election relating to the approval or disapproval of a tax levy for the current operations and retirement of bonds of a technical and vocational institute, the persons qualified to vote are those qualified electors residing within an affected school district.

**History:** 1953 Comp., § 73-34-14, enacted by Laws 1964 (1st S.S.), ch. 12, § 2; 1998, ch. 61, § 11.

The 1998 amendment, effective March 9, 1998, deleted Subsection A, pertaining to any election held relating to creation of a technical and vocational institute district; deleted the designation "B"; deleted "held under this act" following "any election" and substituted "are those" for "shall be" following "qualified to vote".

#### ANNOTATIONS

**Effect of constitutional amendment.** — The effect of the amendment to N.M. Const., art. VIII, § 2, was

to amend this section and former 21-16-12 NMSA 1978 by adding the additional qualification that those voting in district elections be those qualified electors who paid property taxes therein during the preceding year. 1968 Op. Att'y Gen. No. 68-105.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 25 Am. Jur. 2d Elections §§ 183, 188; 68 Am. Jur. 2d Schools § 10.

Residence or domicile of student or teacher for purpose of voting, 98 A.L.R.2d 488; 44 A.L.R.3d 797.  
29 C.J.S. Elections §§ 14 to 35.



## 21-16-18. Repealed

**Repeals.** — Laws 1999, ch. 219 § 21 repealed 21-16-18 NMSA 1978, as enacted by Laws 1964 (1st S.S.), ch. 12, § 3, defining "board" for 21-16-16 to 21-16-24 NMSA 1978,

effective July 1, 1999. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com*. For present provisions, *see* 21-16-2 NMSA 1978.

## 21-16-19. Repealed

**Repeals.** — Laws 1998, ch. 61, § 16, repealed 21-16-19 NMSA 1978, enacted by Laws 1964 (1st S.S.), ch. 12, § 4, relating to submission of questions, creation of institute,

tax levy and expenses of election, effective March 9, 1998. For provisions of former section, *see* 1997 NMSA 1978 on *NMOneSource.com*.

## 21-16-20. Submission at election; notice; certification.

If a question is submitted pursuant to Section 21-16-16 NMSA 1978 at an election, the submitting board shall notify the county clerk pursuant to the Local Election Act [Chapter 1, Article 22 NMSA 1978]. The submitting board shall furnish to the county clerk of each county in which an affected school district is situate a certificate specifying the question to be submitted.

**History:** 1953 Comp., § 73-34-17, enacted by Laws 1964 (1st S.S.), ch. 12, § 5; 2018, ch. 79, § 86.

The 2018 amendment, effective July 1, 2018, added the section heading, required the governing board of the district to give notice to the county clerk pursuant to the Local Election Act regarding elections called to approve or disapprove a tax levy, and made technical and conforming changes; added the section heading; after "submitted", added "pursuant to Section 21-16-16 NMSA 1978", after "board shall", deleted "publish notice thereof in the manner required for general elections, except that such notice need not include the names of any election officials or the places where such election is to be held in each precinct and voting division and no posting shall be required" and added "notify the county clerk pursuant to the Local Election Act", after "submitting board shall", deleted "not less than thirty days before the election", and after "specifying the question to be submitted", deleted the remainder of

the section, which related to placement of the question on the ballots and voting machines and the certification of the election results.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 26 Am. Jur. 2d Elections § 383 et seq.

Constitutionality of statutes providing for use of voting machines, 66 A.L.R. 855.

Failure to comply with statutory provisions relating to the form or manner in which election returns from voting districts or precincts are to be made, 106 A.L.R. 398.

Statutory provision as to manner and time of notice of special election as mandatory or directory, 119 A.L.R. 661.

What is a "public place" within requirement as to posting of election notices, 90 A.L.R.2d 1210.

29 C.J.S. Elections §§ 71 to 73, 79, 156, 158, 240.

## 21-16-21. Repealed.

**Repeals.** — Laws 2018, ch. 79, § 175 repealed 21-16-21 NMSA 1978, as enacted by Laws 1964 (1st S.S.), ch. 12, § 6, relating to submission at special election, conduct of

election, hours of voting, effective July 1, 2018. For provisions of former section, *see* the 2017 NMSA 1978 on *NMOneSource.com*.

## 21-16-22. Repealed.

**Repeals.** — Laws 2018, ch. 79, § 175 repealed 21-16-22 NMSA 1978, as enacted by Laws 1964 (1st S.S.), ch. 12, § 7, relating to canvass of vote, effective July 1, 2018. For

provisions of former section, *see* the 2017 NMSA 1978 on *NMOneSource.com*.

## 21-16-23. Repealed.

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-16-23 NMSA 1978, as enacted by Laws 1964 (1st S.S.), ch. 12, § 8, relating to tax levies, certificates of election results,

distribution of proceeds, effective June 16, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com*.

## 21-16-24. Repealed.

**Repeals.** — Laws 1995, ch. 224, § 29 repealed 21-16-24 NMSA 1978, as enacted by Laws 1964 (1st S.S.) ch. 12, § 9, relating to maximum tax levies, effective June 16, 1995.

For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com*.

## ARTICLE 16A

### Learning Centers

Sec.

- 21-16A-1. Short title.  
 21-16A-2. Findings; purpose.  
 21-16A-3. Definitions.  
 21-16A-4. Establishment of learning center districts; determination of need; approval; advisory committee.

Sec.

- 21-16A-5. Learning center board; powers and duties.  
 21-16A-6. Learning center tax levy authorized; election.  
 21-16A-7. Availability of school facilities.  
 21-16A-8. Learning centers subject to approval and provisions of Learning Center Act.

#### 21-16A-1. Short title.

Chapter 21, Article 16A NMSA 1978 may be cited as the "Learning Center Act".

**History:** Laws 2000, ch. 105, § 1; 2002, ch. 19, § 1.

**The 2002 amendment**, effective May 15, 2002, substituted "Chapter 21, Article 16A NMSA 1978" for "This act."

#### 21-16A-2. Findings; purpose.

A. The legislature finds that there are significant populations in New Mexico whose post-secondary education and workforce development needs are unserved or underserved and new and more effective means of delivering educational services must be explored.

B. It is the purpose of the Learning Center Act to:

- (1) provide quality educational services to residents of the state based upon need and without regard to place of residence by enabling communities to establish learning centers to make necessary and appropriate educational programs available;
- (2) avoid construction of new campuses and buildings; and
- (3) encourage the use of technology by promoting innovation, collaboration and cooperation among existing institutions, public schools, government agencies, communities and the private sector through sharing of resources for educational purposes.

**History:** Laws 2000, ch. 105, § 2.

**Effective dates.** — Laws 2000, ch. 105 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective on May 17, 2000, 90 days after adjournment of the legislature.

#### 21-16A-3. Definitions.

As used in the Learning Center Act:

- A. "board" means a learning center district board;
- B. "commission" means the commission on higher education [higher education department];
- C. "community college board" means the governing body of a community college district;
- D. "district" means a learning center district;
- E. "extended learning services" means academic and vocational educational programs offered by an institution away from a campus of the institution without the facility of a learning center and as defined by commission [department] rule consistent with the Learning Center Act;
- F. "institution" means a regionally accredited public or private post-secondary educational institution;
- G. "local school board" means the governing body of a school district; and
- H. "taxable value of property" means the sum of the following:
  - (1) the "net taxable value", as that term is defined in the Property Tax Code [Chapter 7, Articles 35 through 38 NMSA 1978], of property subject to taxation under the Property Tax Code;
  - (2) the "assessed value" of "products" as those terms are defined in the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978];



(3) the "assessed value" of "equipment" as those terms are defined in the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978]; and

(4) the "taxable value" of "copper mineral property" as those terms are defined in the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978].

**History:** Laws 2000, ch. 105, § 3.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2005, ch. 289, § 29 provided that all references to the commission on higher education be construed to be references to the higher education department.

**Effective dates.** — Laws 2000, ch. 105 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective on May 17, 2000, 90 days after adjournment of the legislature.

## **21-16A-4. Establishment of learning center districts; determination of need; approval; advisory committee.**

A. A learning center district may be established in a school district or community college district upon adoption of a resolution by the local school board or community college board calling for establishment of a district and a showing of need for such a district. A district may also be established to include more than one school district and, in that case, the two or more local school boards shall jointly adopt a resolution and determine the need for a learning center. A district may also be established by a board of county commissioners upon adoption of a resolution by the board of county commissioners calling for establishment of a district and a showing of need for such a district; provided that each community college board or local school board located wholly or partially within the county shall approve of the establishment prior to the adoption of the resolution. The boundaries of the district shall be coterminous with the boundaries of the school district, community college district, combined school districts or county constituting the district. No district shall be established without the written approval of the commission [department].

B. Upon a determination of need and receipt of written approval from the commission [department], the district shall be established and the local school board, community college board, combined local school boards or board of county commissioners authorizing the district shall serve as the board. The board shall act as a representative of the communities in the district for the purpose of assessing local educational needs and contracting with one or more institutions to offer educational programs or services at one or more learning centers.

C. The board may appoint an advisory committee consisting of business representatives and citizens from the area being served by a learning center to advise and assist the board in determining the most appropriate educational and training programs and services to be offered at the learning center.

D. A learning center shall not be deemed to be an institution, but the students enrolled at the center shall be students of the respective institutions providing educational programs and services.

E. The commission [department] shall develop criteria for determining the need for a district and the process and procedures for establishing and operating a learning center.

**History:** Laws 2000, ch. 105, § 4; 2002, ch. 19, § 2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2005, ch. 289, § 29 provided that all references to the commission on higher education be construed to be references to the higher education department.

**The 2002 amendment,** effective May 15, 2002, in Subsection A added the third sentence beginning "A district may also be established" and in the next to last sentence added "or county"; and in Subsection B, added "or board of county commissioners" in the first sentence.

## **21-16A-5. Learning center board; powers and duties.**

A. To carry out the provisions of the Learning Center Act, the board shall:

(1) manage the operation of one or more learning centers in the district and the contracts with the institutions providing educational programs and services at the learning centers;

(2) select and contract with one or more institutions to:

(a) offer accredited educational programs and services at the learning center that meet local needs or provide degrees and certificates for students completing program requirements at an institution without the requirement that students relocate or commute to existing campuses of the institution;

(b) provide for transfer of credits for course work obtained by students from institutions other than the institution contracting to provide an educational program at the learning center; and

(c) set tuition and fees for educational programs and services provided by the institution at the learning center;

(3) monitor and evaluate how well the educational and training needs of the local communities are being served by the learning center and the participating institutions; and

(4) assess in an ongoing way the educational and training needs of the region to assure delivery and coordination of educational programs and services to the communities located within the district.

B. The board may:

(1) employ staff and enter into contracts and agreements as necessary to carry out its duties pursuant to the Learning Center Act;

(2) authorize the imposition of a property tax levy for the purpose of funding the operations of a learning center and provide for an election to submit the proposal to the voters of the district; and

(3) seek grants, gifts and other sources of funds for the operation of a learning center.

**History:** Laws 2000, ch. 105, § 5.

**Effective dates.** — Laws 2000, ch. 105 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective on May 17, 2000, 90 days after adjournment of the legislature.

## **21-16A-6. Learning center tax levy authorized; election.**

A. A board may adopt a resolution authorizing, for learning center operational purposes, the imposition of a property tax upon the taxable value of property in the district. The total tax imposition that may be authorized under the Learning Center Act shall not exceed a rate of five dollars (\$5.00) on each one thousand dollars (\$1,000) of taxable value of property in each district. The tax authorized pursuant to this section may not be imposed for a period of more than six years.

B. The tax authorized in Subsection A of this section shall not be imposed in a district unless the question of authorizing the imposition of the tax is submitted to the voters of the district at an election held pursuant to the Local Election Act [Chapter 1, Article 22 NMSA 1978].

C. A resolution adopted pursuant to Subsection A of this section shall specify:

(1) the rate of the proposed tax;

(2) the date of the election at which the question of imposition of the tax will be submitted to the voters of the district;

(3) the period of time the tax is authorized to be imposed; and

(4) the proposed use of the revenues from the proposed tax.

D. The election required by this section shall be called, conducted and canvassed as provided in the Local Election Act.

E. If a majority of the voters voting on the question votes for a learning center tax levy pursuant to a resolution adopted under the Learning Center Act, the tax shall be imposed. The tax rate shall be certified by the department of finance and administration and imposed, administered and collected in accordance with the provisions of the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978], the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978], the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978] and the Property Tax Code [Articles 35 through 38 of Chapter 7 NMSA 1978].

F. If a majority of the voters voting on the question votes against a learning center tax levy pursuant to a resolution adopted under the Learning Center Act, the tax shall not be imposed. The board shall not again adopt a resolution authorizing the imposition of a tax levy pursuant to the Learning Center Act for at least two years after the date of the resolution that the voters rejected.



G. The board may discontinue by resolution the imposition of any tax authorized pursuant to the Learning Center Act. The discontinuance resolution shall be mailed to the department of finance and administration no later than June 15 of the year in which a tax rate pursuant to that act is not to be certified.

**History:** Laws 2000, ch. 105, § 6; 2018, ch. 79, § 87.

**The 2018 amendment,** effective July 1, 2018, provided that elections on the question of authorizing the imposition of a property tax for learning center operational purposes shall be called, conducted and canvassed as provided in the Local Election Act, and made technical and conforming changes; in Subsection B, after "voters of the district at", deleted "a regular school district" and added "an", and after "election", deleted "or a special

election called for that purpose" and added "held pursuant to the Local Election Act"; and in Subsection D, after "as provided in the", deleted "School Election Law" and added "Local Election Act".

**Temporary provisions.** — Laws 2018, ch. 79, § 174 provided that references in law to the Municipal Election Code and to the School Election Law shall be deemed to be references to the Local Election Act.

## 21-16A-7. Availability of school facilities.

Public school facilities in a district shall be available to a learning center, if needed, but in a manner that will not interfere with the regular program of instruction and provided no public school funds shall be expended for the learning center. The learning center may arrange for the use of any other available facilities as needed and appropriate.

**History:** Laws 2000, ch. 105, § 7.

**Effective dates.** — Laws 2000, ch. 105 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective on May 17, 2000, 90 days after adjournment of the legislature.

## 21-16A-8. Learning centers subject to approval and provisions of Learning Center Act.

No person, institution or other entity shall undertake to operate a learning center except with the written approval of the commission [department] and in accordance with the provisions of the Learning Center Act; provided that nothing in the Learning Center Act shall prohibit the provision of extended learning services or the provision of educational services by any organization or business for its own members or employees directly or by contracting with a provider of educational programs;

**History:** Laws 2000, ch. 105, § 8.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2005, ch. 289, § 29 provided that all references to the commission on higher education be construed to be references to the higher education department.

**Effective dates.** — Laws 2000, ch. 105 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective on May 17, 2000, 90 days after adjournment of the legislature.

# ARTICLE 17

## Area Vocational Schools

**Temporary provisions.** — Laws 1999, ch. 219, § 20, effective July 1, 1999, provides that on July 1, 1999, those post-secondary educational institutions organized pursuant to Chapter 21, Article 17 NMSA 1978 shall be deemed organized pursuant to Chapter 21, Article 16 NMSA 1978; provides that all personnel, money, appropriations, records, equipment and other property acquired by the post-secondary educational institutions organized pursuant to Chapter 21, Article 17 NMSA 1978 prior to July 1, 1999, shall be deemed transferred to the respective technical and vocational institution deemed to be organized pursuant to Chapter 21, Article 16 NMSA 1978 on July 1, 1999, and held by that technical and vocational institute until the institute is dissolved pursuant to the procedures of the Technical and Vocational Institute Act; provides that all taxes levied to pay for any principal and interest on bonds of the area vocational schools in addition to taxes levied for operating, maintaining and providing facilities for area vocational schools shall continue in effect until the levy is disapproved pursuant to the procedures set out in the Technical and Vocational Institute Act; provides for the binding nature of all existing contracts and agreements as to the area vocational schools; and provides that all references in law to area vocational schools organized pursuant to Chapter 21, Article 17 NMSA 1978 existing before July 1, 1999, shall be construed to be references to technical and vocational institutes organized pursuant to Chapter 21, Article 16 NMSA 1978 after July 1, 1999.

**21-17-1 to 21-17-17. Repealed.**

**Repeals.** — Laws 1999, ch. 219 § 21 repealed 21-17-1 to 21-17-7, 21-17-9, 21-17-11, 21-17-12, and 21-17-14 to 21-17-17 NMSA 1978, relating to area vocational schools, effective July 1, 1999. For provisions of former sections, see the 1998 NMSA 1978 on *NMOneSource.com*.

Laws 1995, ch. 224, § 29 repealed 21-17-8, 21-17-10, and 21-17-13 NMSA 1978, as amended by Laws 1986, ch. 32,

§ 18, Laws 1985, ch. 238, § 42, and Laws 1988, ch. 65, § 5, relating to tax levies for revenue to establish and operate area vocational schools, effective June 16, 1995. For provisions of former sections, see the 1998 NMSA 1978 on *NMOneSource.com*.

**ARTICLE 18****Vocational Capital Improvements****21-18-1 to 21-18-3. Repealed.**

**Repeals.** — Laws 1978, ch. 150, § 1, repealed 73-43-1 to 73-43-3, 1953 Comp. (21-18-1 to 21-18-3 NMSA 1978), relating to the Vocational Capital Improvements Act.

**ARTICLE 19****Development Training**

Sec.

21-19-1 to 21-19-6. Repealed.

21-19-7. Development training.

21-19-7.1. Development training for film and multimedia production companies.

21-19-8. Repealed.

21-19-9. Repealed.

Sec.

21-19-10. Community development assistance.

21-19-11. Funds created.

21-19-12. Temporary provision; appropriation of fund balances.

21-19-13. Distributions of development training funds.

**21-19-1 to 21-19-6. Repealed.**

**Repeals.** — Laws 1983, ch. 299, § 7, repealed 21-19-1 through 21-19-6 NMSA 1978, relating to development

training, effective June 17, 1983. For present provisions, see 21-19-7 through 21-19-11 NMSA 1978.

**21-19-7. Development training.**

A. The economic development department shall establish a development training program that provides quick-response classroom training, in-plant training and skill-enhancement training to furnish qualified workforce resources for new or expanding industries, nonretail service sector businesses and film and multimedia production companies in New Mexico that have business or production procedures that require skills unique to those industries. Training shall be custom designed for, and based on the special requirements of, each company or preemployment training program for the film and multimedia industry. The program shall be operated on a statewide basis and shall be designed to assist any area in becoming more competitive economically.

B. There is created the "industrial training board" composed of:

- (1) the director of the economic development division of the economic development department;
- (2) the director of the instructional support and vocational education division of the public education department;
- (3) the director of the governor's office of workforce training and development;
- (4) the executive director of the commission on higher education;
- (5) an employee of the workforce solutions department;
- (6) one member from organized labor appointed by the governor; and
- (7) one public member from the business community appointed by the governor.



C. The industrial training board shall establish policies and promulgate rules for the administration of appropriated funds and shall provide review and oversight to ensure that funds expended from the development training fund will generate business activity and give measurable growth to the economic base of New Mexico within the legal limits while preserving the ecological state of New Mexico and its people. In expending money from the fund, except that for film and multimedia production companies and preemployment training programs for that industry, the board shall employ a preference for training or instructional services for trainees who meet the criterion in Subparagraph (a) of Paragraph (3) of Subsection F of this section over training or instructional services for trainees who meet the criterion in Subparagraph (b) of that paragraph.

D. Subject to the approval of the industrial training board, the economic development division of the economic development department shall:

- (1) administer all funds allocated or appropriated for industrial development training purposes;
- (2) provide designated training services;
- (3) regulate, control and abandon any training program established under the provisions of this section;
- (4) assist companies requesting training in the development of a training proposal to meet the companies' workforce needs;
- (5) contract for the implementation of all training programs;
- (6) provide for training by educational institutions or by a company through in-plant training, at that company's request; and
- (7) evaluate training efforts on a basis of performance standards set forth by the industrial training board.

E. The instructional support and vocational education division of the public education department shall provide technical assistance to the economic development department concerning the development of agreements, the determination of the most appropriate instructional training to be provided and the review of training program implementation.

F. Except as provided in Section 21-19-7.1 NMSA 1978 for film and multimedia production companies and preemployment training programs for that industry, the state shall contract with a company or an educational institution to provide training or instructional services in accordance with the approved training proposal and within the following limitations:

- (1) payment shall not be made for training in excess of one thousand forty hours of training per trainee for the total duration of training;
- (2) trainees shall be guaranteed full-time employment with the contracted company upon successful completion of the training;
- (3) trainees shall be of legal status for employment and:
  - (a) have resided within the state for at least one year at any time before the start of the training program; or
  - (b) have resided within the state for at least one day at any time before the start of the training program if the salary of the job guaranteed to the trainee upon successful completion of the training is at least: 1) sixty thousand dollars (\$60,000) for a job performed in, based in or within ten miles of the external boundaries of a municipality with a population, according to the most recent federal decennial census, of sixty thousand or more or a job performed in or based in an H class county; or 2) forty thousand dollars (\$40,000) for a job performed in or based in a municipality with a population, according to the most recent federal decennial census, of less than sixty thousand or for a job performed in or based in the unincorporated area, not within ten miles of the external boundaries of a municipality with a population of sixty thousand or more, of a county other than an H class county;
- (4) payment for institutional classroom training shall be made pursuant to any accepted training contract for a qualified training program;
- (5) payment shall not be made pursuant to any accepted training contract for rental of facilities unless facilities are not available on site or at the educational institution;
- (6) trainees shall be eligible under the federal Fair Labor Standards Act of 1938, as amended, and shall not have terminated a public school program within the past three months except by graduation;



(7) persons employed to provide the instructional services shall be exempt from the minimum requirements established in the state plan for other state vocational programs;

(8) payment shall not be made for training programs or production of Indian jewelry or imitation Indian jewelry unless a majority of those involved in the training program or production are of Indian descent; and

(9) if a company hires twenty or more trainees, payment shall not be made for training in a municipality with a population, according to the most recent decennial census, of more than forty thousand or in a class A county, unless the company:

(a) offers its employees and their dependents health insurance coverage that is in compliance with the New Mexico Insurance Code [59A-1-1 NMSA 1978]; and

(b) contributes at least fifty percent of the premium for the health insurance plan for those employees who choose to enroll in it; provided that the fifty percent employer contribution shall not be a requirement for the dependent coverage that is offered.

**History:** Laws 1983, ch. 299, § 1; 1989, ch. 354, § 2; 1991, ch. 21, § 34; 1993, ch. 135, § 1; 1997, ch. 71, § 1; 1999, ch. 155, § 1; 2003, ch. 352, § 1; 2003, ch. 353, § 1; 2003, ch. 360, § 3; 2005, ch. 102, § 1; 2017, ch. 40, § 1; 2021, ch. 96, § 1.

**Cross references.** — For Workforce Training Act, *see* 21-13A-1 NMSA 1978 et seq.

For the federal Fair Labor Standards Act, *see* 29 U.S.C.S. § 201 et seq.

**The 2021 amendment**, effective June 18, 2021, allowed for the reduction of the residency requirement for the workforce development training program of the economic development department when the training provided is for high-wage jobs in certain locations of the state; in Subsection C, after "New Mexico and its people", deleted "For fiscal years 2018 through 2022"; and in Subsection F, Subparagraph F(3)(b), deleted "for fiscal years 2018 through 2022".

**The 2017 amendment**, effective June 16, 2017, temporarily allowed for the reduction of the residency requirement for the workforce development training program of the economic development department when the training provided is for high-wage jobs in certain locations of the state, provided a preference for training or instructional services for trainees who have resided within the state for at least one year in the expenditure of money from the development training fund, and revised the composition of the industrial training board; in Subsection A, after "furnish qualified", deleted "manpower" and added "workforce"; in Subsection B, Paragraph B(2), after "director of the", added "instructional support and", in Paragraph B(5), after "employee of the", added "workforce solutions", and after "department", deleted "of labor"; in Subsection C, after "oversight to", deleted "assure" and added "ensure", after "legal limits", added "while", and added the second sentence; in Subsection D, Paragraph D(4), after "companies", deleted "manpower" and added "workforce"; in Subsection E, after "The", added "instructional support and"; in Subsection F, Paragraph F(2), deleted "training applicants" and added "trainees shall be guaranteed full-time employment with the contracted company upon successful completion of the training", added new paragraph designation "(3)" and redesignated former Paragraphs F(3) through F(5) as Paragraphs F(4) through F(6), respectively, in Paragraph F(3), added "trainees", after "shall", deleted "have resided within the state for a minimum of one year at any time prior to the commencement of the training program and", and after "employment", added "and", and added new Subparagraphs F(3)(a) and F(3)(b), in Paragraph F(6), deleted "all applicants" and added "trainees", deleted former Paragraph F(6), in Paragraph F(9), after "municipality", deleted "having" and added "with", after "population", deleted "of more than forty thousand", after "decennial census", added "of more

than forty thousand", and after "or", added "in", and in Subparagraph F(9)(b), after "contributes", deleted "not less than" and added "at least", after "health insurance", added "plan", and after "choose to enroll", added "in it".

**The 2005 amendment**, effective April 4, 2005, added in Subsection A requirement that the economic development department establish programs for class room training and skill enhancement training to furnish qualified manpower resources for film and multimedia production companies and added the provision that training shall be costumed designed for pre-employment training programs for the film and multimedia industry; modified Subsection B by removing the director of the job training division of the labor department as a member of the board and substituting the director of the governor's office of workforce training and development and adding an employee of the department of labor as a member of the board; provided in Subsection F that except as provided in Section 21-19-7.1 NMSA 1978 for film and multimedia production companies and pre-employment training programs for that industry, the state shall contract for the provision of training and instructional services and that training applicants shall have resided in the state for a minimum of one year at any time prior to commencement of the training program; and deleted the exception in Subsection F(2) for waiver of residency requirement prior to July 1, 2004.

**Compiler's notes.** — Laws 2005, ch. 102 is contingent upon an "appropriation for development training in the General Appropriations Act of 2005". The General Appropriations Act of 2005 does not provide for an appropriation for development training, but rather authorizes use of cash balances in the "development training fund". The actual appropriation of funds from the "development training fund" is provided by 21-19-11 NMSA 1978 and not the General Appropriations Act of 2005. Section 21-19-11 NMSA 1978 provides that "Money appropriated to the fund or accruing to it through gifts, grants, repayments or bequests shall not be transferred to any other fund or be encumbered or disbursed in any manner except as provided in Section 21-19-7 NMSA 1978." Laws 2005, ch. 33, Subsection D of § 4 of the General Appropriations Act of 2005 provides as follows: "Notwithstanding Section 21-19-7 NMSA 1978 and Section 21-9-7.1 NMSA 1978, the economic development department may use up to five percent of the cash balances in the development training fund as of December 31, 2004 for skill-enhancement training and pre-employment training programs for the film and multimedia industry." This is not actually an appropriation by an authorization to use funds appropriated by Section 21-19-11 NMSA 1978. The prohibition against using funds for another purpose is found in 21-19-11 NMSA 1978 and not 21-19-7 or 21-9-7 NMSA 1978.

**The 2003 amendment**, effective January 1, 2004, in Subsection A, deleted "the particular company" and "shall



be" following "designed for" in the second sentence; and added Paragraph F(9).

**The 1999 amendment**, effective June 18, 1999, added the proviso at the end of the introductory language in Paragraph F(2) and added Subparagraphs F(2)(a) through F(2)(d).

**The 1997 amendment**, effective April 8, 1997, made a minor stylistic change in Subsection B; substituted

"economic development division of the economic development department" for "vocational education division of the state department of public education" in Subsection D; added Subsection E and redesignated former Subsection E as F; and substituted "of legal status for employment" for "citizens of the United States" in Paragraph F(1).

## 21-19-7.1. Development training for film and multimedia production companies.

A. After consulting with the New Mexico film division of the economic development department, the industrial training board shall promulgate rules for development funding for film and multimedia production companies. The rules shall provide:

- (1) for preapproval by the New Mexico film division of personnel who:
  - (a) are New Mexico residents;
  - (b) have participated in on-the-job training or attended a training course sponsored in part by an accredited educational institution in New Mexico or by the New Mexico film division; and
  - (c) have been certified as film and multimedia trainees by the New Mexico film division;
- (2) for submission to the New Mexico film division of the economic development department by a film or multimedia production company, after completing production in New Mexico, of employment, salary and related information concerning those personnel who have been:
  - (a) approved by the New Mexico film division pursuant to Subsection A of this section; and
  - (b) employed by the production company in a film or multimedia production in New Mexico;
- (3) after approval by the New Mexico film division, for reimbursement from the development training fund to the production company of fifty percent of the salaries paid to the personnel for whom information is submitted pursuant to Paragraph (2) of this subsection; and
- (4) that the reimbursement shall be made by the New Mexico film division without further action or approval of the industrial training board.

B. The New Mexico film division of the economic development department shall establish a film and multimedia preemployment training program to furnish qualified manpower resources for the film and multimedia industry. The New Mexico film division shall adopt rules implementing the preemployment training program.

**History:** Laws 2003, ch. 353, § 2; 2005, ch. 102, § 2.

**The 2005 amendment**, effective April 4, 2005, provided in Subsection A(1)(b) that the rules shall provide for pre-approval of personnel who have participated in on-the-job training; deleted the labor department as a sponsor of training courses in Subsection A(1)(b); changed "economic development division" to "New Mexico film division" in Subsection A(2), (3) and (4); and added Subsection B which provides for a film and multimedia pre-employment training program.

**Compiler's notes.** — Laws 2005, ch. 102, is contingent upon an "appropriation for development training in the General Appropriations Act of 2005". The General Appropriations Act of 2005 does not provide for an appropriation for development training, but rather authorizes use of cash balances in the "development training fund". The actual appropriation of funds from the "development training fund" is provided by 21-19-11 NMSA 1978 and

not the General Appropriations Act of 2005. Section 21-19-11 NMSA 1978 provides that "Money appropriated to the fund or accruing to it through gifts, grants, repayments or bequests shall not be transferred to any other fund or be encumbered or disbursed in any manner except as provided in Section 21-19-7 NMSA 1978." Laws 2005, ch. 33, Subsection D of § 4 of the General Appropriations Act of 2005 provides as follows: "Notwithstanding Section 21-19-7 NMSA 1978 and Section 21-9-7.1 NMSA 1978, the economic development department may use up to five percent of the cash balances in the development training fund as of December 31, 2004 for skill-enhancement training and pre-employment training programs for the film and multimedia industry." This is not actually an appropriation by an authorization to use funds appropriated by Section 21-19-11 NMSA 1978. The prohibition against using funds for another purpose is found in 21-19-11 NMSA 1978 and not 21-19-7 or 21-9-7 NMSA 1978.

## 21-19-8. Repealed.

**Repeals.** — Laws 1991, ch. 21, § 46 repealed 21-19-8 NMSA 1978, as enacted by Laws 1983, ch. 299, § 2, relating to technical innovation centers, effective March 27,

1991. For provisions of former section, see the 1990 NMSA 1978 on [NMSAOneSource.com](http://NMSAOneSource.com).

## 21-19-9. Repealed.

**Repeals.** — Laws 1991, ch. 21, § 46 repealed 21-19-9 NMSA 1978, as enacted by Laws 1983, ch. 299, § 3, relating to technical excellence centers, effective March 27,

1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

## 21-19-10. Community development assistance.

The economic development department shall provide assistance to political subdivisions of the state so that they can construct or implement projects necessary to provide services that will encourage the location of industry in the political subdivisions. The department shall, for this purpose, make low-interest loans to political subdivisions of the state with the approval of the economic development and tourism commission and after coordination with the local government division of the department of finance and administration pursuant to the New Mexico Community Assistance Act [11-6-1 NMSA 1978].

**History:** Laws 1983, ch. 299, § 4; 1984, ch. 5, § 11; 1991, ch. 21, § 35.

**The 1991 amendment**, effective March 27, 1991, deleted "and tourism" preceding "department" in the first sentence and substituted "commission" for "board" in the second sentence.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 56 Am. Jur. 2d Municipal Corporations §§ 588, 589.  
64 C.J.S. Municipal Corporations § 1842.

## 21-19-11. Funds created.

A. There is created in the state treasury the "development training fund". Money appropriated to the fund or accruing to it through gifts, grants, repayments or bequests shall not be transferred to any other fund or be encumbered or disbursed in any manner except as provided in Section 21-19-7 NMSA 1978. Money in the fund shall not revert at the end of any fiscal year. Money in the fund is appropriated to the economic development department. Money in the fund shall be expended upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of economic development or his authorized representative to carry out the purposes specified in Section 21-19-7 NMSA 1978.

B. There is created in the state treasury the "development fund". Money appropriated to the fund or accruing to it through gifts, grants, repayments or bequests shall not be transferred to any other fund or be encumbered or disbursed in any manner except as provided in this subsection. Money in the fund shall not revert at the end of any fiscal year. Money in the fund shall be administered by the economic development department or its successor for the purpose of making low-interest loans to political subdivisions of the state so that they can construct or implement projects necessary to provide services that will encourage the location of industry in the political subdivisions. The economic development department shall coordinate these loans with the local government division of the department of finance and administration pursuant to the New Mexico Community Assistance Act [11-6-1 NMSA 1978]. Money in the fund shall be expended as provided in Section 21-19-10 NMSA 1978.

**History:** Laws 1983, ch. 299, § 5; 1984, ch. 5, § 12; 1987, ch. 161, § 8; 1989, ch. 324, § 12; 1991, ch. 21, § 36; 1997, ch. 71, § 2.

**The 1997 amendment**, effective April 8, 1997, added the third sentence and rewrote the last sentence in Subsection A.

**The 1991 amendment**, effective March 27, 1991, deleted former Subsections B and C, pertaining to creation, administration and purpose of "technological innovation center fund" and the "technical excellence center fund"; redesignated former Subsection D as present Subsection B; and deleted "and tourism" following "development" in two places in Subsection B.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 7, 8; 56 Am. Jur. 2d Municipal Corporations §§ 588, 589; 63A Am. Jur. 2d Public Funds §§ 46, 64, 68; 64 Am. Jur. 2d Public Works and Contracts § 94; 68 Am. Jur. 2d Schools §§ 92 to 100.  
14A C.J.S. Colleges and Universities §§ 4, 7, 29; 64 C.J.S. Municipal Corporations § 1842; 79 C.J.S. Schools and School Districts § 485; 81A C.J.S. States §§ 203, 207, 208, 223 to 229.



## 21-19-12. Temporary provision; appropriation of fund balances.

The economic development department may expend money in the development training fund in the 1997 and subsequent fiscal years that was appropriated in prior fiscal years to carry out the purposes of Section 21-9-7 [21-19-7] NMSA 1978.

**History:** Laws 1997, ch. 71, § 3.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The reference to Section 21-9-7 NMSA 1978 appears to be a reference to 21-19-7 NMSA 1978, as there is no 21-9-7 NMSA 1978.

**Emergency clauses.** — Laws 1997, ch. 71, § 5 contained an emergency clause and was approved April 8, 1997.

## 21-19-13. Distributions of development training funds.

A. Of appropriations made in any fiscal year for development training, up to two-thirds shall be expended in urban communities in the state. At least one-third of the appropriations made in any fiscal year for development training shall be expended in nonurban communities.

B. Of money available in the development training fund, the economic development department may use in any fiscal year:

(1) up to fifty thousand dollars (\$50,000) to generally administer the development training program; and

(2) in addition to the general administration funding allowed in Paragraph (1) of this subsection, up to fifty thousand dollars (\$50,000) to administer the provisions of Section 21-19-7.1 NMSA 1978.

C. Up to two million dollars (\$2,000,000) of development training funds may be used to reimburse film and multimedia production companies and to provide preemployment training for that industry pursuant to the provisions of Section 21-19-7.1 NMSA 1978.

D. Up to one million dollars (\$1,000,000) disbursed annually from the development training program may be dedicated to development training in green industries.

E. As used in this section:

(1) "green industries" means industries that contribute directly to preserving or enhancing environmental quality by reducing waste and pollution or by producing sustainable products using sustainable processes and materials. Green industries provide opportunities for advancement along a career track of increasing skills and wages. Green industries include:

(a) energy system retrofits to increase energy efficiency and conservation;

(b) production and distribution of biofuels and vehicle retrofits for biofuels;

(c) building design and construction that meet the equivalent of best available technology in energy and environmental design standards;

(d) organic and community food production;

(e) manufacture of products from non-toxic, environmentally certified or recycled materials;

(f) manufacture and production of sustainable technologies, including solar panels, wind turbines and fuel cells;

(g) solar technology installation and maintenance;

(h) recycling, green composting and large-scale reuse of construction and demolition materials and debris; and

(i) water system retrofits to increase water efficiency and conservation;

(2) "nonurban community" means a municipality that is not an urban community or is the unincorporated area of a county; and

(3) "urban community" means a municipality with a population of forty thousand or more according to the most recent federal decennial census.

**History:** Laws 2005, ch. 102, § 3; 2009, ch. 282, § 1.

**The 2009 amendment,** effective June 19, 2009, added Subsection D, and Paragraph (1) of Subsection E.

## ARTICLE 19A

### Apprenticeship Assistance

Sec.

- 21-19A-1. Short title.
- 21-19A-2. Purpose.
- 21-19A-3. Definitions.
- 21-19A-4. Apprenticeship committee; duties.
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Sec.

- 21-19A-8. Duties of advisory committee.
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- 21-19A-10. Distribution of funds.
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- 21-19A-12. Budget; disbursement and appropriation.
- 21-19A-13. Status of recommendations.

#### 21-19A-1. Short title.

Chapter 21, Article 19A NMSA 1978 may be cited as the "Apprenticeship Assistance Act".

**History:** Laws 1992, ch. 93, § 1; 2014, ch. 51, § 1.

**Cross references.** — For Workforce Training Act, *see* 21-13A-1 NMSA 1978 et seq.

For New Mexico Youth Conservation Corps Act, *see* 9-5B-1 NMSA 1978 et seq.

For public works apprenticeship and training, *see* 13-4D-1 NMSA 1978 et seq.

For apprenticeship council, *see* 50-7-3 NMSA 1978.

**The 2014 amendment**, effective July 1, 2014, added the NMSA chapter and article for the Apprenticeship Assistance Act; and at the beginning of the sentence, deleted "This act" and added "Chapter 21, Article 19A NMSA 1978".

**Temporary provisions.** — Laws 2014, ch. 51, § 10 provided that on July 1, 2014:

A. all functions, appropriations, money, files, records and other property for or used in the administration or oversight of provisions of the Apprenticeship Assistance Act are transferred from the instructional support and vocational education division of the public education department to the workforce solutions department; and,

B. all contractual obligations directly related to the administration or oversight of the provisions of the Apprenticeship Assistance Act and entered into by the instructional support and vocational education division of the public education department for that purpose are transferred to the workforce solutions department.

#### 21-19A-2. Purpose.

The purpose of the Apprenticeship Assistance Act is to assist apprenticeship programs that will develop skilled craftsmen in occupations recognized by the office of apprenticeship and the state apprenticeship agency to accommodate the social and economic needs of the adult citizens of New Mexico and to enhance the economic development of the state.

**History:** Laws 1992, ch. 93, § 2; 2014, ch. 51, § 2.

**The 2014 amendment**, effective July 1, 2014, changed the names of federal and state agencies involved in the administration of the Apprenticeship Assistance Act; and

after "recognized by the", deleted "bureau" and added "office of apprenticeship", and after "office of apprenticeship and the", deleted "council" and added "state apprenticeship agency".

#### 21-19A-3. Definitions.

As used in the Apprenticeship Assistance Act:

A. "advisory committee" means the apprenticeship and training advisory committee to the division;

B. "apprentice" means a person at least sixteen years of age who is approved by the council and is covered by a written agreement with an employer or with an association of employers or employees acting as agent for an employer, which written agreement provides for reasonably continuous employment of the person for not less than two thousand hours in the given trade in which that person is apprenticed in an approved schedule of work experience and for at least one hundred forty-four hours per year of related and supplemental instruction;

C. "apprenticeship committee" means the sponsoring committee of each apprenticeable craft that is responsible for that particular apprenticeship program;

D. "apprenticeship-related instruction" means skills taught off the job that are required by the particular apprenticeable craft and that the apprentice needs to complete the apprenticeship as required by the state apprenticeship agency and the office of apprenticeship;



- E. "department" means the workforce solutions department;
- F. "division" means the labor relations division of the department;
- G. "office of apprenticeship" means the office of apprenticeship of the employment and training administration of the United States department of labor;
- H. "related instruction" means organized, off-the-job instruction in theoretical or technical subjects required for the completion of an apprenticeship for a particular apprenticeable trade;
- I. "state apprenticeship agency" means the state apprenticeship agency within the department; and
- J. "supplementary instruction" means new or upgrading skill training for those already employed as journeymen craftsmen.

**History:** Laws 1992, ch. 93, § 3; 2014, ch. 51, § 3.

The 2014 amendment, effective July 1, 2014, added definitions to move the administration of the Apprenticeship Assistance Act to the workforce solutions department; in Subsection B, after "for an employer, which", deleted "apprentice" and added "written", after "continuous employment", added "of the person for", after "two thousand hours", deleted "required for any" and added "in the", after "in the given trade", deleted "for" and added "in which", after "in which that person", deleted "for his participation" and added "is apprenticed", after "schedule of work experience", deleted "through employment",

and after "per year of related", added "and"; in Subsection D, after "required by the", deleted "council" and added "state apprenticeship agency" and after "agency and the", deleted "bureau" and added "office of apprenticeship"; deleted former Subsection E which defined "bureau"; deleted former Subsection F which defined "council"; added Subsection E; in Subsection F, after "means the", deleted "vocational education" and added "labor relations", after "division of the", deleted "state", and after "department", deleted "of public education"; added Subsections G and I; and in Subsection J, after "supplementary", added "instruction".

## 21-19A-4. Apprenticeship committee; duties.

The apprenticeship committee for each apprenticeship training program shall:

- A. establish standards and goals for related instruction for apprentices in the program and supplementary instruction for journeymen;
- B. establish rules governing on-the-job training and other instruction for apprentices in the program;
- C. plan and organize instructional materials designed to provide technical and theoretical knowledge and basic skills required by apprentices in the program;
- D. select qualified instructors for the program;
- E. monitor and evaluate the performance and progress of each apprentice in the program and the program as a whole;
- F. interview applicants and select those who meet the criteria developed by the apprenticeship committee;
- G. provide for the keeping and reporting of apprentice, program and fiscal data as required by the United States department of education; and
- H. perform any other duties that promote the goals of individual apprentices and of the program as a whole.

**History:** Laws 1992, ch. 93, § 4; 2014, ch. 51, § 4.

The 2014 amendment, effective July 1, 2014, corrected the reference to apprentice; and in Subsection G,

after "reporting of", deleted "student" and added "apprentice".

## 21-19A-5. Criteria for apprenticeship programs.

- A. An apprenticeship program shall be registered by the state apprenticeship agency or the office of apprenticeship.
- B. An apprenticeship program shall be under the direction of an apprenticeship committee and structured according to Title 29, Part 29 of the Code of Federal Regulations. Committee members are appointed by one or more employers of apprentices, one or more employee representatives of an apprenticeable trade or a combination of the above. If an apprenticeship committee is composed of representatives of one or more employers and one or more employee representatives, the number of committee members designated by the employers shall be equal to the number of committee members designated by the employee representatives.

C. Each apprentice participating in a program shall have signed a written apprenticeship agreement with the apprenticeship committee stating the standards and conditions of employment and training, which standards shall conform substantially with the standards of apprenticeship as registered by the state apprenticeship agency or the office of apprenticeship.

**History:** Laws 1992, ch. 93, § 5; 2014, ch. 51, § 5.

**The 2014 amendment**, effective July 1, 2014, changed the names of governmental entities to move the administration of the Apprenticeship Assistance Act to the workforce solutions department; in Subsection A, after "registered by the", deleted "council" and added "state apprenticeship agency", and after "agency or the", deleted

"bureau" and added "office of apprenticeship"; in Subsection B, after "according to", deleted "CFR 29.29" and added "Title 29, Part 29 of the Code of Federal Regulations"; and in Subsection C, after "registered by the", deleted "council" and added "state apprenticeship agency" and after "apprenticeship agency or", deleted "bureau" and added "the office of apprenticeship".

## 21-19A-6. Rules and regulations.

The division shall make such rules and regulations as are necessary to carry out the provisions of the Apprenticeship Assistance Act.

**History:** Laws 1992, ch. 93, § 6.

## 21-19A-7. Apprenticeship and training advisory committee.

A. The division shall appoint an apprenticeship and training advisory committee composed of nine voting members who shall be New Mexico residents. The members shall be as follows:

- (1) two persons representing employers of members of apprenticeable trades;
- (2) two persons representing organized labor for members of apprenticeable trades;
- (3) two persons employed as full-time training directors or program administrators of apprenticeship committees;
- (4) two persons employed by New Mexico educational entities who teach or immediately supervise preparatory instruction, supplementary instruction or related instruction courses; and
- (5) the state apprenticeship director of the department, who shall serve as chair.

B. Members of the advisory committee shall serve terms of four years, except that the division shall designate one member from each of the groups referred to in Paragraphs (1) through (4) of Subsection A of this section to serve an initial term of two years. Thereafter, all members shall serve four-year terms.

C. Vacancies shall be filled for the unexpired portion of a term vacated.

D. Nonvoting members of the advisory committee shall include the following:

- (1) two persons designated by and representing the New Mexico college and university system of vocational education;
- (2) one person designated by and representing the office of apprenticeship; and
- (3) one person representing the general public who is familiar with the goals and needs of technical-vocational education in New Mexico and who is not otherwise eligible for service on the advisory committee.

E. The member of the advisory committee representing the general public shall be appointed by the division for a term of four years. All other nonvoting members of the advisory committee shall serve at the pleasure of the agency or institution each respective member represents.

F. The advisory committee shall meet on an annual basis or at the call of the chair.

G. The members of the advisory committee shall be subject to such laws and practices as are applicable to the service and compensation of employees of the state. Members of the advisory committee not otherwise compensated by public funds shall be reimbursed for their official duties in accordance with the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] for attendance at not in excess of twelve meetings per year.

**History:** Laws 1992, ch. 93, § 7; 2014, ch. 51, § 6.

**The 2014 amendment**, effective July 1, 2014, changed the membership of the apprenticeship and training

advisory committee; in Subsection A, in the introductory paragraph, in the first sentence, after "composed of", deleted "ten" and added "nine"; in Subsection A, Paragraph



(5), after "the", added "state apprenticeship", after "director of the", deleted "council" and added "department", and after "shall serve as", deleted "chairman" and added "chair"; in Subsection A, deleted Paragraph (6), which designated the supervisor of trades and industry with the division as a member of the advisory committee; in Subsection D, deleted former Paragraph (1), which designated

one person representing the advisory council for vocational education as a nonvoting member of the advisory committee; in Subsection D, Paragraph (1), at the beginning of the paragraph, deleted "one person" and added "two persons"; and in Subsection D, Paragraph (2), after "representing the", deleted "bureau" and added "office of apprenticeship".

## 21-19A-8. Duties of advisory committee.

The advisory committee shall provide input into the development of a statewide plan for a comprehensive program of apprenticeship training, which shall include but not be limited to the following:

A. formulas and administrative procedures to be used in requesting appropriations of state funds for apprenticeship training;

B. forms, formulas and administrative procedures to be used in distributing available funds to apprenticeship training programs, with the formulas based on data contained in the update to the apprenticeship-related instruction cost study required by Section 21-19A-10 NMSA 1978, and the formulas shall be uniform in application to all program sponsors; and

C. the content and method of the public notice required by the Apprenticeship Assistance Act.

**History:** Laws 1992, ch. 93, § 8; 2014, ch. 51, § 7.

The 2014 amendment, effective July 1, 2014, changed a statutory reference to the Apprenticeship Assistance

Act; and in Subsection B, after "Section", deleted "10 of the Apprenticeship Assistance Act" and added "21-19A-10 NMSA 1978".

## 21-19A-9. Notice of available funds.

In order to ensure that all citizens of New Mexico have an equal opportunity to benefit from apprenticeship training programs, the division shall provide for statewide publication, in a manner recommended by the advisory committee and intended to give actual notice to all potential program sponsors, of the amount of funds that will be available to support apprenticeship training programs during the current and following fiscal years, the qualifications required of program sponsors and apprenticeship committees and the procedures to be followed in applying for state funds. The notice may also include other information recommended by the advisory committee and approved by the division; provided that the division shall publish any information concerning available funds given to a particular program sponsor in a manner recommended by the advisory committee and intended to give actual notice to all potential program sponsors statewide.

**History:** Laws 1992, ch. 93, § 9.

## 21-19A-10. Distribution of funds.

A. Upon recommendation of the advisory committee, the division shall adopt formulas and administrative procedures to be used in requesting appropriations of state funds as a budgetary line item for the apprenticeship system of adult vocational education.

B. The advisory committee shall prepare an update to the apprenticeship related instruction cost study adopted by the division prior to each session of the legislature.

C. Upon recommendation of the advisory committee, the division shall adopt forms, formulas and administrative procedures for the distribution of available funds to apprenticeship training programs. Distribution formulas shall be uniform in application to all local program sponsors.

D. Upon recommendation of the advisory committee, the division shall reserve until March 1 of each year a percentage of the funds appropriated under the line item described in this section to be used solely for apprenticeship related instruction programs. This percentage shall be established by the formulas required by this section. Reserved funds that are not obligated on March 1 may be used for preparatory and supplementary instruction programs as well as related instruction programs.

E. No funds shall be distributed to an apprenticeship committee until the apprenticeship committee has filed all reports required by the Apprenticeship Assistance Act and by the division. Funds shall not be distributed to programs not in compliance with their approved standards. Programs determined to be in noncompliance with their standards will be required to refund all funds to the division for the current fiscal year.

**History:** Laws 1992, ch. 93, § 10.

### **21-19A-11. Audit procedures.**

A. All projects funded shall maintain a clear audit trail of all money appropriated for the apprenticeship system of adult vocational education. For each course that is funded, the audit trail in the division shall include the following records:

- (1) the name of the sponsoring apprenticeship committee;
- (2) the name of the instructor;
- (3) the number of students enrolled;
- (4) the place and schedule of class meetings;
- (5) fiscal accountability as per division requests; and
- (6) certification by the apprenticeship council or the bureau for preparatory and related

instruction courses that the students enrolled are registered apprentices.

B. Funds appropriated for the apprenticeship system of adult vocational education shall not be commingled with funds appropriated for other purposes.

C. All records, receipts, working papers and other components of the audit trail shall be public records.

**History:** Laws 1992, ch. 93, § 11.

### **21-19A-12. Budget; disbursement and appropriation.**

A. For the first two years after the effective date of the Apprenticeship Assistance Act, the division shall disburse funds for each apprenticeship committee, taking into account the number of total monthly contact hours and based on one dollar fifty cents (\$1.50) per participant contact hour of related instruction, not to exceed two hundred twenty hours per participant per year. Thereafter, funds shall be distributed in accordance with Section 21-19A-10 NMSA 1978.

B. The division shall require from the apprenticeship committees such reports as it deems necessary for the purpose of determining the number of total monthly contact hours.

C. Funds appropriated under the Apprenticeship Assistance Act shall be disbursed by the division, and the division shall have sole control over the disbursement of those funds; provided, however, that the division shall not fund any apprenticeship committee not certified by the state apprenticeship agency or the office of apprenticeship.

**History:** Laws 1992, ch. 93, § 12; 2014, ch. 51, § 8.

**The 2014 amendment**, effective July 1, 2014, changed the names of governmental entities to move the administration of the Apprenticeship Assistance Act to the workforce solutions department; in Subsection A, in the second sentence, after "Section", deleted "10 of the Apprenticeship

Assistance Act" and added "21-19A-10 NMSA 1978"; and in Subsection C, after "certified by the", deleted "council" and added "state apprenticeship agency", and after "agency or the", deleted "bureau" and added "office of apprenticeship".

### **21-19A-13. Status of recommendations.**

A. Recommendations of the advisory committee submitted to the division shall be acted on and either accepted or rejected.

B. A recommendation that is rejected shall be returned immediately to the advisory committee accompanied by written notice of the reasons for rejecting the recommendation. Upon such notice, the division and the advisory committee shall meet within fifteen days to resolve the issue, but if



no resolution of the recommendation is made, then the secretary of workforce solutions shall decide the matter. The secretary's decision shall be final.

**History:** Laws 1992, ch. 93, § 13; 2014, ch. 51, § 9.

The 2014 amendment, effective July 1, 2014, changed the names of governmental entities to move the administration of the Apprenticeship Assistance Act to the

workforce solutions department; in Subsection B, in the second sentence, after "made, then the", deleted "superintendent of public instruction" and added "secretary of workforce solutions".

## ARTICLE 20

### Travel Service Training

Sec.

21-20-1. Short title.

21-20-2. Purpose of act.

Sec.

21-20-3. Cooperation.

21-20-4. Duties.

#### 21-20-1. Short title.

This act [21-20-1 through 21-20-4 NMSA 1978] may be cited as the "Travel Service Training Act".

**History:** 1953 Comp., § 73-45-1, enacted by Laws 1973, ch. 339, § 1.

#### 21-20-2. Purpose of act.

It is the purpose of the Travel Service Training Act to assist in providing education, both academic and vocational, for persons employed or seeking employment in the tourist service industries in New Mexico, in order to ensure that the visiting public will receive the most efficient and courteous service possible.

**History:** 1953 Comp., § 73-45-2, enacted by Laws 1973, ch. 339, § 2.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 81A C.J.S. States § 207.

#### 21-20-3. Cooperation.

Under the coordination of the commerce and industry department the educational institutions of the state, at all levels, shall cooperate in order to provide courses and programs designed to fulfill the purposes of the Travel Service Training Act.

**History:** 1953 Comp., § 73-45-3, enacted by Laws 1973, ch. 339, § 3; 1977, ch. 245, § 231.

**Compiler's notes.** — The provisions relating to the commerce and industry department (former 9-2-1 to 9-2-13 NMSA 1978) were repealed by Laws 1983, ch. 297,

§ 33. For present provisions, see 9-15-1 NMSA 1978 et seq. and 9-16-1 NMSA 1978 et seq., relating to new departments which have assumed many of the functions of the commerce and industry department.

#### 21-20-4. Duties.

The commerce and industry department shall:

A. provide additional training at the local level for persons currently employed in restaurants, hotels, motels, motor vehicle service facilities and other retail establishments oriented toward tourism;

B. upgrade, through university-level programs, management capabilities of persons currently operating establishments oriented toward tourism; and

C. continue an existing training program for persons working in establishments oriented toward tourism.

**History:** 1953 Comp., § 73-45-4, enacted by Laws 1973, ch. 339, § 4; 1977, ch. 245, § 232.

**Compiler's notes.** — The provisions relating to the commerce and industry department (former 9-2-1 to 9-2-13 NMSA 1978) were repealed by Laws 1983, ch. 297, § 33. For present provisions, see 9-15-1 NMSA 1978 et seq. and 9-16-1, NMSA 1978 et seq., relating to new departments

which have assumed many of the functions of the commerce and industry department.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 81A C.J.S. States § 207.

## ARTICLE 21

### Student Loans

Sec.  
21-21-1. Short title.  
21-21-2. Definitions.  
21-21-3. Student loan fund; loan authority.  
21-21-4. Conditions of loan.  
21-21-5. Duties of the fiscal agent.  
21-21-6. Reimbursement of the fiscal agent.  
21-21-7. Certification of the board of educational finance [commission on higher education].  
21-21-8. Issuance of revenue bonds.  
21-21-9. Refunding bonds.  
21-21-10. Legal investments; tax exemptions.  
21-21-11. Proceeds from bond sale.  
21-21-12. Repayment of bonds.  
21-21-13. Investment of funds.  
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Sec.  
21-21-15. Purpose.  
21-21-16. Definitions.  
21-21-17. Loan guarantees; powers and duties of board.  
21-21-18. Fund created; method of payment.  
21-21-19. Repealed.  
21-21-20. Conditions of loan.  
21-21-21. Duties of fiscal agent.  
21-21-22. Reimbursement of the fiscal agent.  
21-21-23. Certification of the board of educational finance.  
21-21-24. Reports.  
21-21-25. Collection of student loans; contracts authorized.  
21-21-26. Relationship to Student Loan Act.

#### 21-21-1. Short title.

This act [21-21-1 through 21-21-13 NMSA 1978] may be cited as the "Student Loan Act".

**History:** 1953 Comp., § 73-38-1, enacted by Laws 1970, ch. 82, § 1.

**Cross references.** — For Medical Student Loan for Service Act, see 21-22-1 NMSA 1978 et seq.

For Teacher Loan for Service Act, see 21-22E-1 NMSA 1978 et seq.

#### 21-21-2. Definitions.

As used in the Student Loan Act:

A. "participating institution" means any post-high school educational institution within the state, public or private, including junior colleges and vocational schools, which qualifies as an eligible institution for the federal guaranteed-loan program under the Higher Education Act of 1965, as amended, and participating in student loan programs under the Student Loan Act, or any educational institution not within the state attended by a qualified student for the purpose of participating in the student exchange programs administered by the western interstate commission for higher education as provided for by the Western Regional Education Compact [11-10-1 NMSA 1978];

B. "qualified student" means a resident of New Mexico who has been accepted for enrollment or who is enrolled in a participating institution and who is otherwise eligible for a student loan guaranteed by the United States. A standard of academic performance higher than the minimum required for continuing enrollment in the participating institution shall not be required, and the student must be meeting the minimum academic requirements of the participating institution at the time any loan is made; and

C. "fiscal agent" means the chief financial officer of one of the state higher educational institutions designated by the board of educational finance [commission on higher education [higher education department]].

**History:** 1953 Comp., § 73-38-2, enacted by Laws 1970, ch. 82, § 2; 1973, ch. 174, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.



For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Cross references.** — For the federal Higher Education Act of 1965, see 20 U.S.C. § 1001 et seq.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 17; 63A Am. Jur. 2d Public Officers and Employees § 351.  
14A C.J.S. Colleges and Universities § 29; 81A States § 134.

### 21-21-3. Student loan fund; loan authority.

There is created in the state treasury the "student loan fund". The state treasurer may use the student loan fund to:

A. purchase, from the fiscal agent, loans guaranteed by the United States made to qualified students at participating institutions; and

B. purchase from lending agencies located in New Mexico student loan notes guaranteed by the United States made to qualified students who at the time of the loan were attending participating institutions and who are currently attending participating institutions and who are also borrowers from the student loan fund. The fiscal agent and the state board of educational finance [commission on higher education [higher education department]] shall approve the purchase of student loan notes. The purchased student loan notes shall be delivered to the state treasurer as collateral for the student loan fund.

**History:** 1953 Comp., § 73-38-3, enacted by Laws 1970, ch. 82, § 3; 1972, ch. 49, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63A Am. Jur. 2d Public Funds § 3.  
81A C.J.S. States § 135.

### 21-21-4. Conditions of loan.

The amount of any loan to a qualified student shall be determined according to regulations promulgated by the state board of educational finance [commission on higher education [higher education department]]. No payment shall be made to any qualified student until he has executed a note, guaranteed by the United States and payable to the student loan sinking fund, for the full amount of the loan and applicable interest. For the purpose of the Student Loan Act, a qualified student has the capacity to contract and is bound by any contract executed by him; the defense that he was a minor at the time he executed a note is not available to him in any action arising on his note. Payments to qualified students executing notes may be made annually, semiannually, quarterly, monthly or for each semester as determined by the participating institution, depending upon the demonstrated capacity of the student to manage his financial affairs. The rate of interest charged the student shall be the maximum authorized by federal regulations. Disbursements may be made to a participating institution pursuant to a contract between the fiscal agent and the participating institution executed under the Student Loan Act.

**History:** 1953 Comp., § 73-38-4, enacted by Laws 1970, ch. 82, § 4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Constitutionality of statute authorizing state to loan money

or engage in business of a private nature, 14 A.L.R. 1151, 115 A.L.R. 1456.

Validity, construction, and application of statutes, regulations, or policies allowing denial of student loans, student loan guarantees, or educational services to debtors who have had student loans scheduled in bankruptcy, 107 A.L.R. Fed. 192.

Applicability to obligations of nonstudent co-obligors of exception to discharge in bankruptcy for educational loans under 11 USCS § 523(a)(8), 120 A.L.R. Fed. 609.

81A C.J.S. States §§ 155, 208, 225.

### 21-21-5. Duties of the fiscal agent.

A. The fiscal agent shall accumulate individual loan applications from the several participating institutions and shall submit these applications to the appropriate federal office for approval and guarantee. The fiscal agent may fix deadlines for the receipts of applications relative to each academic term. Upon receipt of an accumulation of guaranteed notes, the fiscal agent shall report their sum total to the state board of educational finance [commission on higher education [higher education department]] which shall then verify the need for funding and certify the need to the state board of finance as provided in the Student Loan Act. Upon request, the fiscal agent shall deposit the guaranteed notes with the state treasurer as collateral for the student loan fund.

B. Upon receipt of funds from the state treasurer, the fiscal agent shall disburse, to each of the participating institutions, funds sufficient only to enable payments to those participating students whose loans have been approved and guaranteed or to the lending agency from which student loan notes were purchased. Any funds not so disbursed shall be returned to the fiscal agent by the participating institution.

C. The fiscal agent shall collect interest payments and interest subsidies paid on behalf of the qualified student by the United States and shall also collect all interest and principal payments made by the student under the terms of his obligation to the student loan fund. When any person who has received a loan fails to make payments due in accordance with an executed note, the fiscal agent may declare the full amount of remaining principal and interest due and payable immediately. In the event of default of payment, the fiscal agent shall undertake collection, and in the event of failure to collect after such reasonable efforts as are prescribed by federal regulations, shall file a claim for payment under the terms of the federal guarantee. All payments received by the fiscal agent shall be remitted to the state treasurer for the credit of the student loan fund.

D. Accounts of the fiscal agent shall be audited annually by the state auditor.

**History:** 1953 Comp., § 73-38-5, enacted by Laws 1970, ch. 82, § 5; 1972, ch. 49, § 2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63A Am. Jur. 2d Public Officers and Employees § 14.  
81A C.J.S. States §§ 134, 135.

### 21-21-6. Reimbursement of the fiscal agent.

The fiscal agent shall be reimbursed by the board of educational finance [commission on higher education [higher education department]] for the expense connected with his duties under the terms of an agreement negotiated annually by the board of educational finance with the approval of the board of finance. Reimbursement shall include a reasonable overhead in addition to direct costs. An annual appropriation to the board of educational finance for the cost of administering the student loan program shall be made from the general fund. Any part of this appropriation not needed for the reimbursement of the fiscal agent shall revert to the general fund at the end of each fiscal year.

**History:** 1953 Comp., § 73-38-6, enacted by Laws 1970, ch. 82, § 6.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63A Am. Jur. 2d Public Officers and Employees §§ 460 to 464.  
67 C.J.S. Officers and Public Employees § 225.

### 21-21-7. Certification of the board of educational finance [commission on higher education].

Upon report by the fiscal agent of the accumulated total of guaranteed loans requiring funding under the Student Loan Act, the board of educational finance [commission on higher education



[higher education department]] shall certify to the state treasurer the demonstrated need for disbursement from the student loan fund. The state treasurer shall then disburse the needed funds to the fiscal agent. If the need for disbursement exceeds the balance in the student loan fund, the board of finance shall determine the requirements of the fund for income from the sale of revenue bonds.

**History:** 1953 Comp., § 73-38-7, enacted by Laws 1970, ch. 82, § 7.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63 Am. Jur. 2d Public Funds § 63.

81A C.J.S. States § 225.

## 21-21-8. Issuance of revenue bonds.

Upon receipt of a certification from the board of educational finance [commission on higher education [higher education department]] that a need exists under the Student Loan Act, the state board of finance shall, by resolution, provide for the issuance of negotiable revenue bonds called the "New Mexico college student loan bonds" or the issuance of notes called the "New Mexico college student loan notes," or both. All bonds shall be on a parity and may be issued in one or several installments. The bonds of each issue shall be dated and bear interest, payable annually or semi-annually, as prescribed by the state board of finance. The bonds shall mature serially or otherwise not later than forty years from their date and may be redeemable before maturity, at the option of the state treasurer, at prices and under terms and conditions fixed by the state board of finance in its resolution providing for issuance of the bonds. The resolution shall also determine the form of the bonds, including the form of any interest coupon to be attached thereto, and shall fix the denominations of the bonds and the place of the payment of the principal and interest thereon. The bonds shall be executed on behalf of the state as special obligations of the state payable only from the funds specified in the Student Loan Act, and shall not be payable from funds received or to be received from taxation. The bonds shall be signed by the governor and the state treasurer in accordance with the Uniform Facsimile Signature of Public Officials Act [6-9-1 through 6-9-6 NMSA 1978] and shall bear the facsimile seal of the state. Interest coupons shall bear the facsimile signature of the state treasurer. If any officer whose manual or facsimile signature appears on any bond or coupon ceases to be an officer before delivery of the bonds, the signature is valid as if he had remained in office until the delivery had been made. The resolution may provide for registration of the bonds as to ownership and for successive conversion and reconversion from registered to bearer bonds and vice versa. Before any bonds are delivered to the purchasers, the record pertaining thereto shall be examined by the attorney general, and the record and bonds shall be approved by him. After approval, the bonds shall be registered in the office of the state treasurer. After the approval and registration and delivery to the purchasers, the bonds are incontestable and constitute special obligations of the state, and are negotiable instruments under the laws of the state. The bonds may be sold at public or private sale by the state board of finance at prices and in accordance with procedures and terms it determines to be advantageous and reasonably obtainable. The state board of finance may provide for replacement of any bond which may be mutilated or destroyed.

**History:** 1953 Comp., § 73-38-8, enacted by Laws 1970, ch. 82, § 8.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 33, 35; 64 Am.

Jur. 2d Public Securities and Obligations §§ 120, 195 to 199, 202, 205, 266, 399 to 403.

Power and discretion of officer or board authorized to issue bonds of governmental units as regards terms or conditions to be included therein, 119 A.L.R. 190.

11 C.J.S. Bonds § 59 et seq.; 14A C.J.S. Colleges and Universities §§ 4, 10, 14, 17.

### 21-21-9. Refunding bonds.

Upon recommendation of the state treasurer, the state board of finance may, by [by] resolution, provide for the issuance of refunding bonds to refund any outstanding bonds issued under the Student Loan Act, together with accrued interest thereon. Provisions governing the issuance and sale of bonds under the Student Loan Act govern the issuance and sale of refunding bonds insofar as applicable. Refunding bonds may be exchanged for the outstanding bonds or may be sold and the proceeds used to retire the outstanding bonds.

**History:** 1953 Comp., § 73-38-9, enacted by Laws 1970, ch. 82, § 9.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Right to call governmental bonds in advance of their maturity, 109 A.L.R. 988.

Governmental unit's power to issue bonds as implying power to refund them, 1 A.L.R.2d 134.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations §§ 261 to 269, 445.

### 21-21-10. Legal investments; tax exemptions.

All bonds issued under the Student Loan Act are legal and authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, fiduciaries, trustees and guardians, and for the sinking funds of political subdivisions, departments, institutions and agencies of the state. When accompanied by all unmatured coupons appurtenant thereto, the bonds are sufficient security for all deposits of state funds and of all funds of any board in control at the par value of the bonds. The bonds and the income therefrom, including profits made on the sale thereof, are free from taxation within this state.

**History:** 1953 Comp., § 73-38-10, enacted by Laws 1970, ch. 82, § 10.

Constitutional enumeration of subjects of tax exemption as affecting power of legislature to free government securities or property from taxation, 9 A.L.R. 436.

84 C.J.S. Taxation § 260.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 495, 526.

### 21-21-11. Proceeds from bond sale.

All proceeds from the sale of bonds under the Student Loan Act, except amounts set aside as reserves and the expenses of selling the bonds, which may also be paid from the proceeds, shall be deposited with the state treasurer for credit to the student loan fund.

**History:** 1953 Comp., § 73-38-11, enacted by Laws 1970, ch. 82, § 11.

### 21-21-12. Repayment of bonds.

All money received by the state treasurer as repayment of student loans granted under the Student Loan Act and interest on the loans shall be credited to the "student loan sinking fund" in the state treasury, except that an amount determined as described in Section 6 [21-21-6 NMSA 1978] of the Student Loan Act shall be credited to the general fund to reimburse the state for operating expenses of the fiscal agent under the Student Loan Act. The resolution authorizing the issuance of the bonds may provide for deposit from bond proceeds of not to exceed twenty-four months' interest, and may provide for use of bond proceeds as a reserve for the payment of principal and interest on the bonds. The state treasurer shall pay or cause to be paid from the student loan sinking fund the principal and interest on the bonds as they mature and come due.



**History:** 1953 Comp., § 73-38-12, enacted by Laws 1970, ch. 82, § 12.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations §§ 197, 198.  
11 C.J.S. Bonds § 59 et seq.

### 21-21-13. Investment of funds.

A. Money in the student loan sinking fund and money in the student loan fund in excess of the amount necessary for student loans may be invested by the state treasurer in:

- (1) direct obligations of, or obligations whose principal and interest are guaranteed by, the United States;
- (2) direct obligations of, or participation certificates guaranteed by, the federal intermediate credit bank, federal land banks, federal national mortgage association, federal home loan banks or banks for cooperatives;
- (3) certificates of deposit of any bank or trust company whose deposits are fully secured by a pledge of securities of any kind specified in this subsection; and
- (4) bonds of the state or its political subdivisions.

B. Money in the student loan sinking fund may be invested only in obligations which are scheduled to mature prior to the date the money must be available for its intended purpose.

C. All investments under this section may be sold at the prevailing market price. Income from these investments shall be credited to the student loan sinking fund.

**History:** 1953 Comp., § 73-38-13, enacted by Laws 1970, ch. 82, § 13.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations § 119.  
81A C.J.S. States § 225.

### 21-21-14. Short title.

Sections 1 through 11 [21-21-14 through 21-21-24 NMSA 1978] of this act may be cited as the "Student Loan Guarantee Act".

**History:** 1978 Comp., § 21-21-14, enacted by Laws 1978, ch. 110, § 1.

### 21-21-15. Purpose.

The purpose of the Student Loan Guarantee Act [21-21-14 through 21-21-24 NMSA 1978] is to establish a student loan guarantee program for post-high school students in accordance with such conditions as the board of educational finance may from time to time prescribe and consistent with Title IV, Part B, of the federal Higher Education Act of 1965, as amended; Title 45, Part 177, of the Code of Federal Regulations; and agreements with the United States commissioner of education pertaining thereto.

**History:** 1978 Comp., § 21-21-15, enacted by Laws 1978, ch. 110, § 2.

**Cross references.** — For Title IV, Part B, of the federal Higher Education Act of 1965, see 20 U.S.C. § 1071 et seq.

### 21-21-16. Definitions.

As used in the Student Loan Guarantee Act [21-21-14 through 21-21-24 NMSA 1978]:

A. "board" ["commission" ["department"]] means the board of educational finance [commission on higher education [higher education department]];

B. "eligible student" means a resident of New Mexico who has been accepted for enrollment or who is enrolled in a participating institution and who is otherwise eligible for a student loan guaranteed under the Student Loan Guarantee Act. A standard of academic performance higher

than the minimum required for continuing enrollment in the participating institution shall not be required, and [but] the student must be meeting the minimum academic requirements of the participating institution at the time any loan is made;

C. "fiscal agent" means the chief financial officer of one of the state higher educational institutions designated by the board;

D. "loans" means loans made by the fiscal agent to residents of this state under Title IV, Part B, of the federal Higher Education Act of 1965, as amended;

E. "participating institution" means any post-high school educational institution within or without the state, public or private including junior colleges and vocational schools, which qualifies as an eligible institution for the federal guaranteed-loan program under the federal Higher Education Act of 1965, as amended, and which is approved by the board for the purposes of the Student Loan Guarantee Act; and

F. "resident" means a person who has established legal residency in New Mexico as defined by the board.

**History:** 1978 Comp., § 21-21-16, enacted by Laws 1978, ch. 110, § 3.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Cross references.** — For the federal Higher Education Act of 1965, see 20 U.S.C. § 1001 et seq.

## 21-21-17. Loan guarantees; powers and duties of board.

The board [commission [department]] shall be the guarantor under the Student Loan Guarantee Act [21-21-14 through 21-21-24 NMSA 1978] and shall have the following powers in furtherance of the guarantee loan [guaranteed-loan] program:

A. to guarantee the loan of money, upon such terms and conditions as the board may prescribe, to residents of this state who are attending or have been accepted for enrollment at an institution of higher education in this state or elsewhere, for the purpose of meeting expenses of higher education; provided, that such guarantees shall not be payable from funds received or to be received from state taxation. Loans may be guaranteed in amounts not to exceed the yearly or aggregate totals authorized by the federal Higher Education Act of 1965, as amended;

B. to sue and be sued in the name of the board;

C. to adopt rules and regulations governing the guarantee of loans and any other matters relating to the activities of the board in connection with the Student Loan Guarantee Act;

D. to perform such other acts as may be necessary or appropriate in connection with the guarantee of loans;

E. to require that any loan guaranteed under the Student Loan Guarantee Act shall be repaid in such manner and at such time as the board prescribes;

F. to enter into such participation contracts, contracts for administrative services and guarantee agreements with the fiscal agent, with any other governmental agency of this state and any agency of the United States, including agreements for federal reinsurance of losses resulting from the bankruptcy, death, default or total and permanent disability of student borrowers, as are necessary or incidental to the performance of its duties and to carry out its functions under the Student Loan Guarantee Act;

G. to receive and accept from any agency of the United States or from any individual, association or corporation, gifts, grants or donations of money for the purposes of the guaranteed-loan program;

H. to participate in any federal governmental program for guaranteed loans or subsidies to students and to receive, hold and disburse funds made available by any agency of the United States for the purpose or purposes for which they are made available;

I. to pay the federal government a portion of those funds obtained by the board from collection and recoupment of losses on defaulted loans in such amounts and in such manner as provided by any federal reinsurance agreement; and

J. to contract with private business concerns in any attempt to make recovery on defaulted loans.



**History:** 1978 Comp., § 21-21-17, enacted by Laws 1978, ch. 110, § 4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

**Cross references.** — For the federal Higher Education Act of 1965, *see* 20 U.S.C. § 1001 et seq.

## 21-21-18. Fund created; method of payment.

A. The state treasurer shall create a suspense account in the state treasury to be known as the "student loan guarantee fund" for the purpose of insuring student loans held by the fiscal agent. The student loan guarantee fund shall be held in trust and invested by the state treasurer in accordance with law.

B. There may be deposited in the student loan guarantee fund:

(1) receipts from the federal government under the federal Higher Education Act of 1965, as amended;

(2) receipts under the Student Loan Guarantee Act [21-21-14 through 21-21-24 NMSA 1978] from any other source, except interest earned from investment of the student loan guarantee fund which shall be credited to the general fund, when the receipts may be lawfully used for the purpose of insuring student loans held by the fiscal agent; and

(3) insurance fees charged by the commission on higher education [higher education department].

C. Disbursements from the student loan guarantee fund shall be made upon vouchers signed by the executive director of the commission on higher education [higher education department].

**History:** 1978 Comp., § 21-21-18, enacted by Laws 1978, ch. 110, § 5; 1989, ch. 324, § 13.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63A Am. Jur. 2d Public Funds § 3.

81A C.J.S. States §§ 155, 203, 208.

## 21-21-19. Repealed.

**Repeals.** — Laws 1981, ch. 319, § 24, repealed 21-21-19 NMSA 1978, as amended by Laws 1980, ch. 77, § 1, relating to investment of severance tax permanent fund

in student loans, effective July 1, 1981. For present provisions, *see* 21-21A-18 NMSA 1978.

## 21-21-20. Conditions of loan.

The amount and conditions of any loan to an eligible student shall be determined according to regulations promulgated by the board [commission [department]]. No payment shall be made to any qualified student until he has executed a note, guaranteed under the Student Loan Guarantee Act [21-21-14 through 21-21-24 NMSA 1978] and payable to the severance tax permanent fund, for the full amount of the loan and applicable interest. For the purpose of the Student Loan Guarantee Act, an eligible student has the capacity to contract and is bound by any contract executed by him; the defense that he was a minor at the time he executed a note is not available to him in any action arising on his note. Payments to eligible students executing notes may be made annually, semiannually, quarterly, monthly or for each semester as determined by the participating institution, depending upon the demonstrated capacity of the student to manage his financial affairs. The rate of interest charged the student shall be the maximum authorized by federal regulations. Disbursements may be made to a participating institution pursuant to a contract between the fiscal agent and the participating institution executed under the Student Loan Guarantee Act.

**History:** 1978 Comp., § 21-21-20, enacted by Laws 1978, ch. 110, § 7.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

**21-21-21. Duties of fiscal agent.**

A. The fiscal agent shall accumulate individual loan applications from participating institutions and shall submit these applications to the board [commission [department]] for approval and guarantee. The fiscal agent may fix deadlines for the receipts of applications relative to each academic term. Upon receipt of an accumulation of guaranteed notes, the fiscal agent shall report their sum total to the board [commission [department]] which shall then verify the need for funding and certify the need to the state treasurer as provided in the Student Loan Guarantee Act [21-21-14 through 21-21-24 NMSA 1978]. Upon request, the fiscal agent shall deposit the guaranteed notes with the state treasurer as collateral for the severance tax permanent fund.

B. Upon receipt of funds from the state treasurer, the fiscal agent shall disburse, to each of the participating institutions, funds sufficient only to enable payments to those participating students whose loans have been approved and guaranteed. Any funds not so disbursed shall be returned to the fiscal agent by the participating institution.

C. The fiscal agent shall collect interest payments and interest subsidies paid on behalf of the eligible student by the United States and shall also collect all interest and principal payments made by the student under the terms of his obligation to the severance tax permanent fund. When any person who has received a loan fails to make payments due in accordance with an executed note, the fiscal agent may declare the full amount of remaining principal and interest due and payable immediately. In the event of default of payment, the fiscal agent shall undertake collection and, in the event of failure to collect after such reasonable efforts as are prescribed by the board [commission [department]] and by federal regulations, shall file a claim for payment under the terms of the guarantee. All payments received by the fiscal agent shall be remitted to the state treasurer for proper credit to the severance tax permanent fund or severance tax income fund.

D. Accounts of the fiscal agent shall be audited annually by the state auditor.

**History:** 1978 Comp., § 21-21-21, enacted by Laws 1978, ch. 110, § 8.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**21-21-22. Reimbursement of the fiscal agent.**

The fiscal agent shall be reimbursed by the board [commission [department]] for the expenses connected with his duties under the terms of an agreement negotiated annually by the board [commission [department]] with the approval of the state board of finance. Reimbursement shall include a reasonable overhead in addition to direct costs. An annual appropriation to the board for the cost of administering the student loan guarantee program shall be made from the severance tax income fund. Any part of this appropriation not needed for the reimbursement of the fiscal agent shall revert to the severance tax income fund at the end of each fiscal year.

**History:** 1978 Comp., § 21-21-22, enacted by Laws 1978, ch. 110, § 9.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**21-21-23. Certification of the board of educational finance.**

Upon report by the fiscal agent of the accumulated total of guaranteed loans requiring funding under the Student Loan Guarantee Act [21-21-14 through 21-21-24 NMSA 1978], the board shall certify to the state treasurer the demonstrated need for disbursement from the severance tax permanent fund. The state treasurer shall then disburse the needed funds to the fiscal agent.

**History:** 1978 Comp., § 21-21-23, enacted by Laws 1978, ch. 110, § 10.



## 21-21-24. Reports.

The board [commission [department]] shall make annual reports to the governor and to the legislature, prior to each regular session, of its activities, together with the amount of claims that the fiscal agent has submitted to the board in connection with loan guarantees, and a list of the participating institutions, together with the loan default rates of the respective participating institutions.

**History:** 1978 Comp., § 21-21-24, enacted by Laws 1978, ch. 110, § 11.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

## 21-21-25. Collection of student loans; contracts authorized.

The board of educational finance [commission on higher education [higher education department]] may contract with one or more attorneys or law firms or with any other private business concern to assist the board [commission [department]] in collecting any defaulted loan made pursuant to the Student Loan Act [21-21-1 through 21-21-13 NMSA 1978] or the Student Loan Guarantee Act [21-21-14 through 21-21-24 NMSA 1978]. No contract shall be entered into pursuant to this section unless proposals have been sought from two or more qualified firms.

**History:** 1978 Comp., § 21-21-25, enacted by Laws 1978, ch. 110, § 12.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

## 21-21-26. Relationship to Student Loan Act.

No student loans shall be made under the provisions of the Student Loan Act [21-21-1 through 21-21-13 NMSA 1978] subsequent to the effective date of the Student Loan Guarantee Act. It is the intent of the legislature that the Student Loan Act be continued solely for the purpose of administering student loans made under the provisions of the Student Loan Act and for retirement of bonds issued under the Student Loan Act until all such loans are completely paid and all such outstanding bonds are retired.

**History:** 1978 Comp., § 21-21-26, enacted by Laws 1978, ch. 110, § 14.

**Compiler's notes.** — The phrase "effective date of the Student Loan Guarantee Act" means July 1, 1978, the effective date of Laws 1978, Chapter 110.

# ARTICLE 21A

## Educational Assistance

Sec.		Sec.	
21-21A-1.	Short title.	21-21A-15.	Legal investments; tax exemption.
21-21A-2.	Repealed.	21-21A-16.	Annual report and audit.
21-21A-3.	Definitions.	21-21A-17.	Repealed.
21-21A-4.	Repealed.	21-21A-18.	Repealed.
21-21A-5.	Nonprofit foundation authorized; purpose.	21-21A-19.	Gifts by persons, corporations, institutions and associations.
21-21A-6.	Foundation; board of directors; members; terms; meetings; bylaws.	21-21A-20.	Repealed.
21-21A-7.	Foundation powers.	21-21A-21.	Dissolution of foundation.
21-21A-8.	Issuance of revenue bonds.	21-21A-22.	Agreement with the state.
21-21A-9.	Status of bonds.	21-21A-23.	Repealed.
21-21A-10.	Refunding bonds.	21-21A-24.	Educational assistance; foundation activities not affected by repeal.
21-21A-11.	Trust agreements authorized.	21-21A-25.	Educational assistance; nonprofit corporation status not affected by repeal.
21-21A-12.	Pledge of assets or revenues of foundation.		
21-21A-13.	All money received deemed trust funds.		
21-21A-14.	Rights of holders of bonds.		

## 21-21A-1. Short title.

Chapter 21, Article 21A NMSA 1978 may be cited as the "Educational Assistance Act".

**History:** Laws 1981, ch. 319, § 1; 2005, ch. 201, § 1.

**Cross references.** — For Teacher Loan for Service Act, see 21-22E-1 NMSA 1978 et seq.

**The 2005 amendment**, effective June 17, 2005, added the statutory reference to the act.

## 21-21A-2. Repealed.

**Repeals.** — Laws 2011, ch. 168, § 10 repealed 21-21A-2 NMSA 1978, as enacted by Laws 1981, ch. 319, § 2, relating to purpose, effective June 17, 2011. For provisions

of former section, see the 2010 NMSA 1978 on *NMOneSource.com*.

## 21-21A-3. Definitions.

As used in the Educational Assistance Act:

- A. "bond" means any bond, note or other evidence of indebtedness;
- B. "educational loan" means a loan for educational purposes made to or for the benefit of qualified persons;
- C. "foundation" means a corporation formed pursuant to the provisions of the Educational Assistance Act to provide financial assistance for post-secondary education; and
- D. "institution of higher education" means the state institutions of higher education enumerated in Article 12, Section 11 of the constitution of New Mexico or other institution of higher education approved by the foundation.

**History:** Laws 1981, ch. 319, § 3; 1989, ch. 19, § 1; 2005, ch. 201, § 3; 2011, ch. 168, § 1.

**The 2011 amendment**, effective June 17, 2011, deleted the definition of "corporation", which referred to the loan guarantee corporation organized under repealed Section 21-21A-4 NMSA 1978.

**The 2005 amendment**, effective June 17, 2005, deleted in Subsection E the qualification that another institution of higher education must be a state institution recognized by the commission on higher education.

## 21-21A-4. Repealed.

**Repeals.** — Laws 2011, ch. 168, § 10 repealed 21-21A-4 NMSA 1978, as enacted by Laws 1981, ch. 319, § 4, relating to authorization, members, terms, meetings and

bylaws of nonprofit guarantee corporations, effective June 17, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMOneSource.com*.

## 21-21A-5. Nonprofit foundation authorized; purpose.

A majority of the four-year institutions of higher education may form, pursuant to the provisions of the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978], a nonprofit foundation, separate and apart from the state. The purpose of the foundation is to improve the educational opportunities of residents of New Mexico by providing financial assistance to qualified persons, including a program of making, financing, purchasing, holding and selling educational loans, and by servicing educational loan, scholarship, grant, work study and other educational assistance programs.

**History:** Laws 1981, ch. 319, § 5; 1989, ch. 19, § 3; 2005, ch. 201, § 4.

**The 2005 amendment**, effective June 17, 2005, deleted the requirement that loans be insured.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15 Am. Jur. 2d Charities §§ 45, 46, 180 to 182, 184.  
14 C.J.S. Charities §§ 9, 60 to 64.

## 21-21A-6. Foundation; board of directors; members; terms; meetings; bylaws.

A. The foundation shall be governed by and all of its functions, powers and duties shall be exercised by a board of directors. After the effective date of this 2011 act, the board sitting prior to the



effective date of this 2011 act shall appoint the next successor board and shall establish staggered four-year terms for the members. The board shall consist of the following members:

- (1) the state treasurer or the state treasurer's designee;
- (2) two members representing post-secondary education;
- (3) two members representing lending institutions; and
- (4) other members as provided by the foundation bylaws.

B. A vacancy shall be filled by appointment by the board for the unexpired term.

C. The board shall elect a chair and such other officers as it deems necessary.

D. Members of the board shall receive no compensation for their service, but may be reimbursed on a per diem and mileage basis for their actual and necessary expenses reasonably incurred in the performance of their duties as board members, in an amount not exceeding the amount authorized by law for nonsalaried public officers of governmental entities of this state.

E. Board meetings shall be open to the public. The board shall adopt bylaws governing board meetings consistent with the provisions of the Open Meetings Act [Chapter 10, Article 15 NMSA 1978].

F. The foundation shall adopt bylaws, in accordance with the provisions of the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978], governing the conduct of the foundation in the performance of its duties under the Educational Assistance Act and the federal Higher Education Act of 1965, as amended.

**History:** Laws 1981, ch. 319, § 6; 1989, ch. 19, § 4; 1995, ch. 201, § 1; 2011, ch. 168, § 3.

**Cross references.** — For the federal Higher Education Act of 1965, see 20 U.S.C. § 1001 et seq.

**The 2011 amendment**, effective June 17, 2011, directed the board of directors sitting prior to June 17, 2011 to appoint the next successor board for staggered terms of four years; restructured the membership of the board of directors by reducing the number of members representing post-secondary education from seven to two members, by eliminating the requirement that members representing post-secondary education be regents and

administrators, and by permitting the board to provide for other board members in the foundation's bylaws; and eliminated references to the loan guarantee corporation organized under repealed Section 21-21A-4 NMSA 1978.

**The 1995 amendment**, effective June 16, 1995, in Subsection A, substituted "eleven" for "ten", made minor stylistic changes in Paragraphs (2) and (3) and added Paragraph (4), and in Subsection B, inserted "and governing board member" and "or governing board member" in the first sentence and inserted "or by the two-year college representative body making the original appointment" in the second sentence.

## 21-21A-7. Foundation powers.

The foundation may from time to time issue negotiable bonds in conformity with the applicable provisions of the Uniform Commercial Code [Chapter 55 NMSA 1978]. The foundation shall have all the powers necessary and convenient to carry out its purposes under the Educational Assistance Act or other purpose identified by the foundation, including the following powers:

A. to make or participate in the making of educational loans, to purchase or participate in the purchase of educational loans and to contract in advance for any such purchase or to purchase and retain rights to make any such purchase and to pay any amounts payable in respect of such rights;

B. to sell or participate in the sale of educational loans to the student loan marketing association or to other purchasers, in conformity with the federal Higher Education Act of 1965, as amended, any such sale to be public or private and on such terms as the foundation may authorize, and to contract in advance for any such sale or to purchase and retain rights to make any such sale and to pay commitment fees or any other amounts payable in respect of such rights;

C. to collect and pay reasonable fees and charges in connection with the making, purchasing, selling and servicing or the causing to be made, purchased, sold or serviced of educational loans held by the foundation;

D. to enter into an agreement with insurance carriers to insure against any loss in connection with its operations, including without limitation the repayment of any educational loan, in such amounts and from such insurers as it deems necessary or desirable and pay the premiums for that insurance;

E. to consent, when it deems appropriate, to the modification of the rate of interest, the time of payment of any installment of principal or interest or any other terms of any educational loan held by the foundation; provided that no such consent shall be made or given if the effect would be to lessen or invalidate any insurance coverage or reinsurance in respect of any such educational loan;

- F. to employ an executive director and such other officers and employees as it deems necessary and set their compensation and prescribe their duties;
- G. to make, execute and effectuate any and all agreements or other documents with any federal or state agency or other person, corporation, association, partnership, organization or entity necessary to accomplish its purposes under the Educational Assistance Act;
- H. to authorize a retirement program for salaried officers and employees of the foundation;
- I. to authorize reimbursement of expenses of salaried officers and employees of the foundation;
- J. to purchase liability insurance for officers and directors and such other insurance as may be reasonable and necessary;
- K. to accept loans, public or private grants, devises, gifts, bequests and any other aid from any source whatsoever and to agree to and comply with conditions incident thereto;
- L. to sue and be sued in its own name and to plead and interplead;
- M. to adopt an official seal and alter it at pleasure;
- N. to adopt bylaws and policies for the regulation of its affairs and the conduct of its business;
- O. to employ fiscal consultants, attorneys, counselors and such other consultants and employees as may be required in its judgment and to fix and pay their compensation;
- P. to invest any funds held in reserves, held in sinking fund accounts or not required for immediate disbursement;
- Q. to fix, revise from time to time, charge and collect fees and other charges for services rendered by the foundation in connection with educational loan, scholarship, grant, work study and other educational assistance programs; and
- R. to do any and all things necessary or convenient to carry out its purpose and powers under the Educational Assistance Act or other purpose identified by the foundation.

**History:** Laws 1981, ch. 319, § 7; 1989, ch. 19, § 5; 2005, ch. 201, § 5; 2011, ch. 168, § 2.

**Cross references.** — For the federal Higher Education Act of 1965, see 20 U.S.C. § 1001 et seq.

**The 2011 amendment**, effective June 17, 2011, broadened the power of the foundation by eliminating the limitations on the compensation and reimbursement of expenses paid to officers and employees in Subsections F and I, and by authorizing the foundation to carry out purposes identified by the foundation in addition to the purposes of the Educational Assistance Act in Subsection R; and eliminated the foundation's authority to adopt rules

respecting the foundation's educational loan program and its functions and duties.

**The 2005 amendment**, effective June 17, 2005, deleted the requirement that loans be insured in Subsections A through E and G and deleted in Subsection G reference to regulations

#### ANNOTATIONS

**Loans to nonresidents.** — This article does not prohibit the foundation from making insured student loans to otherwise eligible nonresidents enrolled in eligible New Mexico educational institution. 1988 Op. Att'y Gen. No. 88-60.

### 21-21A-8. Issuance of revenue bonds.

The foundation may from time to time issue negotiable revenue bonds. The proceeds of the sale of the bonds issued pursuant to the Educational Assistance Act may be used to fund reserves for the bonds, to pay interest on the bonds and to pay the necessary expenses of issuing the bonds, including bond counsel and fiscal advisory fees and other legal, consulting and printing fees and costs. All bonds may be issued in one or more series. The bonds of each issue shall be dated and bear interest payable as prescribed by the foundation. The bonds shall mature serially or otherwise not later than thirty years from their date and may be redeemable before maturity, at the option of the foundation, at prices and under terms and conditions fixed by the foundation in its resolution or trust agreement providing for issuance of the bonds. The resolution or trust agreement shall also determine the form of the bonds, including the form of any interest coupons to be attached to the bonds, and shall fix the denominations of the bonds and the place of the payment of the principal and interest of the bonds. The bonds shall be executed on behalf of the foundation as special obligations of the foundation payable only from the funds specified in the Educational Assistance Act and shall not be a debt of the state, any eligible post-secondary institution or any municipality, and neither the state nor any eligible post-secondary institution or municipality shall be liable for the bonds. The resolution or trust agreement may provide for registration of the bonds as to ownership and for successive conversion and reconversion from registered to bearer bonds and vice versa. The bonds may be registered in the office of the foundation. After the registration



and delivery to the purchasers, the bonds are incontestable and constitute special obligations of the foundation, and the bonds and coupons are negotiable instruments under the laws of the state. The bonds may be sold at public or private sale by the foundation at prices and in accordance with procedures and terms it determines to be advantageous and reasonably obtainable. The foundation may provide for replacement of any bond that is mutilated or destroyed.

**History:** Laws 1981, ch. 319, § 8; 1989, ch. 19, § 6; 1996, ch. 76, § 1; 2005, ch. 201, § 6.

The 2005 amendment, effective June 17, 2005, deleted the provision that no bond proceeds may be expended for the making or purchase of any educational loan, unless the loan is an insured educational loan.

The 1996 amendment, effective March 5, 1996, deleted "its" preceding "bond counsel" in the second sentence

and substituted "thirty years" for "fifteen years" in the fifth sentence.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations §§ 13, 120, 186 to 205, 228, 298, 299, 416, 420 to 424.  
81A C.J.S. States §§ 252 to 262.

## 21-21A-9. Status of bonds.

A. Bonds and other obligations issued under the provisions of the Educational Assistance Act shall not be deemed to constitute a debt, liability or obligation of or a pledge of the faith and credit of the state or any political subdivision thereof, but shall be payable solely from the revenues or assets of the foundation pledged for such payment. Each obligation issued on behalf of the foundation under that act shall contain on its face a statement to the effect that neither the state nor the foundation shall be obligated to pay the obligation or the interest on the obligation except from the revenues or assets pledged for payment and that neither the faith and credit nor the taxing power of the state or any political subdivision thereof is pledged to the payment of the principal of or the interest on such obligation.

B. Expenses incurred by the foundation in carrying out the provisions of the Educational Assistance Act may be made payable from the revenues and funds provided pursuant to that act, and no liability shall be incurred by the foundation under that act beyond the extent to which such money has been provided.

**History:** Laws 1981, ch. 319, § 9; 2011, ch. 168, § 4.

The 2011 amendment, effective June 17, 2011, eliminated references to the loan guarantee corporation organized under repealed Section 21-21A-4 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations §§ 13, 416, 420 to 424.  
81A States § 261.

## 21-21A-10. Refunding bonds.

The board of directors of the foundation may by resolution provide for the issuance of refunding bonds to refund any outstanding bonds issued under the Educational Assistance Act, together with redemption premiums, if any, and interest accrued or to accrue thereon. Provisions governing the issuance and sale of bonds under that act govern the issuance and sale of refunding bonds insofar as applicable. Refunding bonds may be exchanged for the outstanding bonds or may be sold and the proceeds used to retire the outstanding bonds. Pending the application of the proceeds of any such refunding bonds, with any other available funds, to the payment of the principal, interest and any redemption premiums on the bonds being refunded, and if so provided or permitted in the resolution of the foundation authorizing the issuance of such refunding bonds, to the payment of any interest on such refunding bonds and any expenses incurred in connection with such refunding, such proceeds may be placed in escrow and invested in securities which are unconditionally guaranteed by the United States and which shall mature or which shall be subject to redemption by the holders thereof, at the option of the holders, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended.

**History:** Laws 1981, ch. 319, § 10.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations §§ 261 to 269.  
81A C.J.S. States § 259.

**21-21A-11. Trust agreements authorized.**

In the discretion of the foundation, any bonds issued under the provisions of the Educational Assistance Act may be secured by a trust agreement by and between the foundation and a corporate trustee, which may be a bank or trust company having trust powers within or without the state. The trust agreement or the resolution providing for the issuance of the bonds may pledge or assign all or any part of the revenues or assets of the foundation, including without limitation educational loan receipts, educational loans, federal interest subsidies, special allowance payments and educational loan commitments; temporary loans, contracts, agreements and other security or investment obligations; the fees or charges made or received by the foundation; the money received in payment of educational loans and interest on that money, including the proceeds of insurance thereon; and any other money received or due to be received by the foundation. The trust agreement or resolution may contain such provisions for protecting and enforcing the rights and remedies of the holders of bonds as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the foundation in relation to the purposes to which bond proceeds may be applied, the disposition or pledging of the revenues or assets of the foundation and the custody, safeguarding and application of all money. It shall be lawful for any bank or trust company incorporated under the laws of the state that may act as depository of the proceeds of bond revenues or other money pursuant to the Educational Assistance Act to furnish such indemnifying bonds or to pledge such securities as may be required by the foundation. The trust agreement or resolution may set forth the rights and remedies of the holders of any bonds and of the trustee and may restrict the individual right of action by any bondholders. The trust agreement or resolution may contain such other provisions as the foundation deems reasonable and proper for the security of the holders of any bonds. All expenses incurred in carrying out the provisions of the trust agreement or resolution may be paid from the revenues or assets pledged or assigned to the payment of the principal of and the interest on bonds or from any other funds available to the foundation.

**History:** Laws 1981, ch. 319, § 11; 2005, ch. 201, § 7.

The 2005 amendment, effective June 17, 2005, changed "insured student loan" to "educational loan".

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations § 199.

**21-21A-12. Pledge of assets or revenues of foundation.**

The pledge of any assets or revenues of the foundation to the payment of the principal of or the interest on any bonds shall be valid and binding from the time when the pledge is made, and any such assets or revenues shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the foundation, irrespective of whether such parties have notice thereof. Nothing herein shall be construed to prohibit the foundation from selling any assets subject to any such pledge except to the extent that any such sale may be restricted by the trust agreement or resolution providing for the issuance of such bonds.

**History:** Laws 1981, ch. 319, § 12.

**21-21A-13. All money received deemed trust funds.**

Notwithstanding any other provisions of law, all money received by the foundation under the provisions of the Educational Assistance Act shall be deemed to be trust funds to be held and applied solely as provided in that act. The resolution authorizing any obligations or the trust agreement securing the obligations may provide that any of the money may be temporarily invested pending disbursement and shall provide that any officer with whom or any bank or trust company with which the money is deposited shall act as trustee of the money and shall hold and apply the money for the purposes of the Educational Assistance Act pursuant to the resolution or trust agreement.



**History:** Laws 1981, ch. 319, § 13; 2011, ch. 168, § 5. The 2011 amendment, effective June 17, 2011, eliminated the requirement that money of the foundation

be invested as provided in the Educational Assistance Act.

## 21-21A-14. Rights of holders of bonds.

Any holder of bonds issued under the provisions of the Educational Assistance Act or any coupons appertaining thereto, and the trustee under any trust agreement or resolution authorizing the issuance of such bonds, except as the rights given pursuant to that act may be restricted by such trust agreement or resolution, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the state or granted by that act or under such trust agreement or resolution or under any other contract executed by the foundation pursuant to that act, and may enforce and compel the performance of all duties required by that act or by such trust agreement or resolution to be performed by the foundation or by any officer thereof.

**History:** Laws 1981, ch. 319, § 14.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations §§ 276, 277, 298, 299.  
81A C.J.S. States § 262.

## 21-21A-15. Legal investments; tax exemption.

All bonds issued by the foundation under the Educational Assistance Act are legal and authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, fiduciaries, trustees and guardians and for the sinking funds of political subdivisions, departments, institutions and agencies of the state. When accompanied by all unmatured coupons appurtenant to them, the bonds are sufficient security for all deposits of state funds and of all funds of any board in control of public money at the par value of the bonds. The bonds and the income from the bonds are free from taxation within this state except inheritance and gift taxes. The foundation, in its discretion and by such means as it deems appropriate, may waive the exemption from federal income taxation of interest on the bonds. The bonds subject to federal income taxation issued by the foundation shall be payable as to principal and interest with such frequency as may be required by the foundation.

**History:** Laws 1981, ch. 319, § 15; 1988, ch. 124, § 1.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 346, 495, 496.  
84 C.J.S. Taxation § 260; 85 C.J.S. Taxation § 1098.

## 21-21A-16. Annual report and audit.

A. The foundation shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the governor, the secretary of state, the state auditor and the legislative finance committee. Each report shall set forth a complete operating and financial statement of the foundation during the year. The board of directors of the foundation shall annually contract with an independent certified public accountant, licensed by the state, to perform an examination and audit of the accounts and books of the foundation, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other records and papers relating to its financial standing, and shall make a determination as to whether the foundation has complied with the provisions of the Educational Assistance Act. The person performing the audit shall furnish copies of the audit report to the governor, the secretary of state, the state auditor and the legislative finance committee, where they shall be placed on file and made available for inspection by the general public.

B. Subject to the provisions of any contract with bondholders or noteholders, the foundation shall prescribe a system of accounts.

C. The costs of audits and examinations performed pursuant to this section shall be paid by the foundation.

**History:** Laws 1981, ch. 319, § 16; 2011, ch. 168, § 6; 2013, ch. 75, § 11.

The 2013 amendment, effective July 1, 2013, assigned the functions of the corporations bureau to the secretary of state; in Subsection A, in the first sentence, after "the governor, the", deleted "corporations bureau of the public regulation commission" and added "secretary of state" and in fourth sentence, after "the governor, the", deleted "corporations bureau" and added "secretary of state".

The 2011 amendment, effective June 17, 2011, eliminated references to the loan guarantee corporation

organized under repealed Section 21-21A-4 NMSA 1978; in Subsection A, eliminated the authority of the director of the financial institutions division of the commerce and industry department to appoint an auditor if the board of directors cannot agree upon an auditor; and eliminated the requirement that the director of the financial institutions division examine the foundation at least once each year to determine if the foundation has complied with the Educational Assistance Act.

## 21-21A-17. Repealed.

**Repeals.** — Laws 2011, ch. 168, § 10 repealed 21-21A-17 NMSA 1978, as enacted by Laws 1981, ch. 319, § 17, relating to investment of funds, effective June 17, 2011.

For provisions of former section, see the 2010 NMSA 1978 on *NMOneSource.com*.

## 21-21A-18. Repealed.

**Repeals.** — Laws 2011, ch. 168, § 10 repealed 21-21A-18 NMSA 1978, as enacted by Laws 1981, ch. 319, § 18, relating to investment of severance tax permanent fund in

bonds and educational loan notes, effective June 17, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMOneSource.com*.

## 21-21A-19. Gifts by persons, corporations, institutions and associations.

A. Any person or domestic corporation or association organized for the purpose of carrying on a business in New Mexico may, regardless of the provisions of any certificate of incorporation, charter or other articles of organization, make contributions or gifts, grants, bequests, devises or loans to the foundation.

B. Any institution of higher education or nonprofit corporation having funds available for student scholarships or student loans, regardless of the provisions of its charter, certificate of incorporation or other articles of organization including bylaws, may loan these restricted funds to the foundation under such terms and conditions as may be mutually agreed upon for the purpose of making educational loans.

**History:** Laws 1981, ch. 319, § 19; 1983, ch. 213, § 24; 2005, ch. 201, § 9.

The 2005 amendment, effective June 17, 2005, changed "insured educational loans" to "educational loans" in Subsection B.

## 21-21A-20. Repealed.

**Repeals.** — Laws 2011, ch. 168, § 10 repealed 21-21A-20 NMSA 1978, as enacted by Laws 1981, ch. 319, § 20, relating to conflicts of interest, effective June 17, 2011. For

provisions of former section, see the 2010 NMSA 1978 on *NMOneSource.com*.

## 21-21A-21. Dissolution of foundation.

Upon termination or dissolution, all rights and properties of the foundation shall pass to and be vested in the state, subject to the rights of any bondholders, lienholders and other creditors.

**History:** Laws 1981, ch. 319, § 21; 2011, ch. 168, § 7.

The 2011 amendment, effective June 17, 2011, eliminated references to the loan guarantee corporation organized under repealed Section 21-21A-4 NMSA 1978.



## 21-21A-22. Agreement with the state.

The state does hereby pledge to and agree with the holders of any bonds or notes issued under the Educational Assistance Act that the state will not limit or alter the rights hereby vested in the foundation or the corporation by that act to fulfill the terms of any agreement made with the holders thereof or in any way impair the rights and remedies of such holders until such bonds or notes together with the interest thereon, with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceedings by or on behalf of such holders are fully met and discharged. The foundation is authorized to include this pledge and agreement of the state in any agreement with the holders of such bonds or notes.

**History:** Laws 1981, ch. 319, § 22.

## 21-21A-23. Repealed.

**Repeals.** — Laws 2011, ch. 168, § 10 repealed 21-21A-23 NMSA 1978, as enacted by Laws 1981, ch. 319, § 23, relating to administration of Student Loan Act and

Student Loan Guarantee Act, effective June 17, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com*.

## 21-21A-24. Educational assistance; foundation activities not affected by repeal.

The repeal of sections or parts of sections of the Educational Assistance Act does not affect the existence of the educational assistance foundation created pursuant to that act or its activities in relation to bonds issued and outstanding or the servicing of student loans outstanding, including any special status of the foundation or dispensation granted to the foundation prior to the effective date of this 2011 act in other provisions of law.

**History:** Laws 2011, ch. 168, § 8.

**Effective dates.** — Laws 2011, ch. 168 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

## 21-21A-25. Educational assistance; nonprofit corporation status not affected by repeal.

The repeal of sections or parts of sections of the Educational Assistance Act does not affect the existence of the educational assistance nonprofit corporation created pursuant to that act or its designation as the single nonprofit corporation authorized to provide a statewide educational loan program for the purposes of the federal Higher Education Act of 1965.

**History:** Laws 2011, ch. 168, § 9.

**Effective dates.** — Laws 2011, ch. 168 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

**Cross references.** — For the federal Higher Education Act of 1965, *see* 20 U.S.C. § 1001 et seq.

# ARTICLE 21B

## Work-Study

Sec.

21-21B-1. Short title.

21-21B-2. Definitions.

21-21B-3. Fund; creation.

21-21B-4. Fund; allocation.

21-21B-5. Disbursement of funds.

Sec.

21-21B-6. Program; description.

21-21B-7. Students; eligibility.

21-21B-8. Compensation.

21-21B-9. Prohibitions.

**21-21B-1. Short title.**

Chapter 21, Article 21B NMSA 1978 may be cited as the "Work-Study Act".

**History:** Laws 1982, ch. 88, § 1; 2005, ch. 289, § 27.

**The 2005 amendment**, effective April 7, 2005, added the statutory reference to the act.

**21-21B-2. Definitions.**

As used in the Work-Study Act:

- A. "board" or "commission" or "department" means the higher education department; and
- B. "institution" means any state post-secondary educational institution and any private non-profit post-secondary educational institution within New Mexico.

**History:** Laws 1982, ch. 88, § 2; 2005, ch. 289, § 28.

**The 2005 amendment**, effective April 7, 2005, defined "commission" and "department" in Subsection A to mean

the higher education department and deleted the reference to the board of educational finance in the definition in Subsection A.

**21-21B-3. Fund; creation.**

A "work-study fund" is created in the state treasury. The commission is instructed to create and maintain a state work-study program in accordance with the Work-Study Act. The commission is authorized to promulgate rules and regulations necessary to administer the Work-Study Act. A financial aid officer may exercise professional judgment when special circumstances exist to adjust cost of attendance or expected family contribution or to modify other factors that make the program responsive to a student's special financial circumstances and for which documentation exists in the student's file within the parameters authorized for this program.

**History:** Laws 1982, ch. 88, § 3; 1991, ch. 262, § 1.

**The 1991 amendment**, effective June 14, 1991, substituted "commission" for "board" in two places and added the final sentence.

**21-21B-4. Fund; allocation.**

Funds appropriated to the work-study fund shall be allocated by the board to eligible institutions for their use in employing eligible students.

**History:** Laws 1982, ch. 88, § 4.

14A C.J.S. Colleges and Universities §§ 7, 31, 33; 81A States §§ 205, 211.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 15A Am. Jur. 2d Colleges and Universities §§ 19, 32 to 34; 63A Am. Jur. 2d Public Funds §§ 56 to 58.

**21-21B-5. Disbursement of funds.**

The board shall assure that expenditures from the work-study fund are apportioned equitably among eligible institutions.

**History:** Laws 1982, ch. 88, § 5.

**21-21B-6. Program; description.**

Any student who is eligible under Section 7 [21-21B-7 NMSA 1978] of the Work-Study Act may apply for work-study employment, but the board must expend at least one-third of the money from the work-study fund in any one academic year for applicants chosen on the basis of monetary need



criteria set by the board. The institution which the student attends shall arrange employment. Employment is limited to post-secondary nonprofit institutions, state political subdivisions, state agencies and nonprofit organizations which are approved by the board. The employer must pay at least twenty percent of the salary and benefits of the student.

**History:** Laws 1982, ch. 88, § 6.

### 21-21B-7. Students; eligibility.

A student is eligible for employment in the state work-study program if he is enrolled at least a one-half-time student, is in compliance with the institution's satisfactory academic progress requirements, is a resident of New Mexico and has legally entered the United States. The commission on higher education shall establish criteria to apply in determining whether the enrollment and residency requirements are met by the applicant.

**History:** Laws 1982, ch. 88, § 7; 1991, ch. 262, § 2.

The 1991 amendment, effective June 14, 1991, rewrote the first sentence which read "A student is eligible for employment in the state work-study program if he is enrolled as a full-time student, maintains a grade point

average of 2.0 on a 4.0 scale during an academic term and is a resident of New Mexico and a citizen of the United States" and substituted "commission on higher education" for "board" in the second sentence.

### 21-21B-8. Compensation.

Students shall not be paid less than the rate set forth in Section 50-4-22 NMSA 1978. Students are not eligible for benefits under the Unemployment Compensation Law [Chapter 51 NMSA 1978] because of participation in the work-study program.

**History:** Laws 1982, ch. 88, § 8.

### 21-21B-9. Prohibitions.

Students cannot work in the following jobs and remain eligible for the state work-study program:

- A. jobs that advance a religious purpose;
- B. jobs that have an objective that is primarily religious;
- C. jobs that involve excessive entanglements with a religious organization; and
- D. jobs that involve partisan political activity.

**History:** Laws 1982, ch. 88, § 9.

## ARTICLE 21C

### Student Choice Grants

Sec. 21-21C-1. Short title.  
21-21C-2. Purpose.  
21-21C-3. Definitions.  
21-21C-4. Fund created.  
21-21C-5. Grants; procedures.

Sec. 21-21C-6. Eligibility.  
21-21C-7. No funds for sectarian purposes.  
21-21C-8. Promulgation and distribution of regulations.  
21-21C-9. Penalty.

#### 21-21C-1. Short title.

This act [21-21C-1 through 21-21C-9 NMSA 1978] may be cited as the "Student Choice Act".

**History:** Laws 1983, ch. 240, § 1.

## 21-21C-2. Purpose.

The legislature finds that independent institutions of higher education provide a valuable service for New Mexico residents by allowing educational choice. The legislature declares that the purpose of the Student Choice Act is to broaden student choice and to make maximum possible utilization of existing postsecondary educational resources and facilities, both public and independent, and thus to benefit the residents of the state. The legislature further finds that the broadening of educational choice will reduce the financial demands on the taxpayers of New Mexico.

**History:** Laws 1983, ch. 240, § 2.

## 21-21C-3. Definitions.

As used in the Student Choice Act:

A. "board" ["commission" ["department"]] means the board of educational finance [commission on higher education [higher education department]];

B. "institution" means any independent nonprofit nonsectarian four-year college or university whose New Mexico campus is accredited by the North Central Accrediting Association;

C. "independent" as used with respect to an institution means any institution which is not a state institution; and

D. "student choice grant" means a grant awarded to a student by the board [commission [department]] pursuant to the provisions of the Student Choice Act.

**History:** Laws 1983, ch. 240, § 3.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

## 21-21C-4. Fund created.

There is created in the state treasury the "student choice fund" which shall be administered by the board [commission [department]] in accordance with the provisions of the Student Choice Act.

**History:** Laws 1983, ch. 240, § 4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 19, 32 to 34; 63A Am. Jur. 2d Public Funds §§ 56 to 58.

14A C.J.S. Colleges and Universities §§ 7, 31, 33; 81A States §§ 205, 211.

## 21-21C-5. Grants; procedures.

Student choice grants shall be awarded in the following manner, subject to rules and regulations promulgated under Section 21-21C-8 NMSA 1978:

A. the student desiring a student choice grant shall be entitled to a student choice grant upon a determination by the commission on higher education [higher education department] that:

(1) the student is enrolled or shall be enrolled, at the time the student choice grant is awarded and disbursed, at an institution for at least six semester credit hours in a program leading to a degree;

(2) the student is in satisfactory academic standing in the institution or is making his first application to the institution;

(3) the student is a New Mexico resident, as that term is defined for the purpose of determining whether resident or nonresident fees are to be paid to a state institution of higher education; and

(4) considering the other resources reasonably available to the student, the grant, in its proposed amount, is probably necessary for the student to begin or continue his education;

B. on or before the date the student choice grant is awarded, the student shall provide to the commission on higher education [higher education department] written authorization, approved



by the institution in which the student is enrolled, granting to the commission [department] authority to inspect any of the academic or financial records of the student which are held by that institution and which are necessary to the proper administration of the provisions of the Student Choice Act, and further agreeing that any refund of tuition due to a student who withdraws shall be paid directly to the commission [department];

C. upon receipt of a student application for a student choice grant and the enrollment report from the institution certifying that the student is or will be, on the date of the student choice grant, duly enrolled as set forth in Subsection A of this section, the commission on higher education [higher education department] shall certify the maximum amount of the student choice grant, which shall be an amount equal to the number of semester credit hours for which the student is enrolled in an institution, up to a maximum of eighteen semester credit hours, multiplied by the hourly rate. The hourly rate shall be calculated by taking the general fund appropriations for instruction and general purposes for the university of New Mexico, New Mexico state university, New Mexico highlands university, eastern New Mexico university and western New Mexico university for the fiscal year in which the student choice grant is to be made, subtracting from that sum the portion deemed by the commission [department] to be attributable to other than undergraduate education and dividing by the aggregate number of undergraduate credit hours which were used in the calculation by the board of the general fund appropriations. If the hourly rate calculated under this subsection exceeds the tuition rate at any institution, then the hourly rate for purposes of calculating a student choice grant at that institution shall be the institution's hourly tuition rate;

D. a student choice grant to a part-time student shall be proportional to the student choice grant paid to a full-time student, based on the ratio of part-time credit hours to full-time credit hours;

E. if the money in the student choice fund is less than the amount needed to make the student choice grants in the amounts determined by the commission on higher education [higher education department], each grant to each student shall be reduced proportionally so as to utilize the full amount in the student choice fund; and

F. if a student withdraws or drops below full-time student status and is entitled to a refund for any tuition as determined by each institution's refund policy, the student shall pay to the commission on higher education [higher education department], as a refund of the student choice grant, the amount of any refund to which he is entitled from the institution, not to exceed the amount of the student choice grant awarded to that student.

**History:** Laws 1983, ch. 240, § 5; 1990, ch. 102, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

## 21-21C-6. Eligibility.

Eligibility of students under the provisions of the Student Choice Act shall be as follows:

A. for the first year of implementation, eligibility shall be restricted to freshmen;

B. for the second year of implementation, eligibility shall be restricted to freshmen and sophomores;

C. for the third year of implementation, eligibility shall be restricted to freshmen, sophomores and juniors; and

D. for the fourth year of implementation and every year thereafter, freshmen, sophomores, juniors and seniors shall be eligible.

**History:** Laws 1983, ch. 240, § 6.

## 21-21C-7. No funds for sectarian purposes.

No funds appropriated pursuant to the provisions of the Student Choice Act shall be used for sectarian purposes.

**History:** Laws 1983, ch. 240, § 7.

## 21-21C-8. Promulgation and distribution of regulations.

The commission [department] may make reasonable regulations, consistent with the purposes and policies of the Student Choice Act, to carry out the purposes of and to efficiently administer the Student Choice Act. Those rules and regulations shall be promulgated in accordance with the provisions of the State Rules Act [Chapter 14, Article 4 NMSA 1978]. A financial aid officer may exercise professional judgment when special circumstances exist to adjust cost of attendance or expected family contribution or to modify other factors that make the program responsive to a student's special financial circumstances and for which documentation exists in the student's file within the parameters authorized for this program.

**History:** Laws 1983, ch. 240, § 8; 1991, ch. 262, § 3.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

**The 1991 amendment**, effective June 14, 1991, substituted "commission" for "board" in the first sentence and added the final sentence.

## 21-21C-9. Penalty.

Any person knowingly submitting false information to the board [commission [department]] or its agents, which information the board [commission [department]] has requested in order to administer the provisions of the Student Choice Act, is guilty of a misdemeanor and may be punished by a fine of not more than ten thousand dollars (\$10,000).

**History:** Laws 1983, ch. 240, § 9.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

# ARTICLE 21D

## Reduced Tuition for Senior Citizens

Sec.

21-21D-1. Short title.  
21-21D-2. Purpose of act.  
21-21D-3. Definitions.

Sec.

21-21D-4. Conditions of eligibility.  
21-21D-5. Rules.

### 21-21D-1. Short title.

This act [21-21D-1 through 21-21D-5 NMSA 1978] may be cited as the "Senior Citizens Reduced Tuition Act".

**History:** Laws 1984, ch. 96, § 1.

### 21-21D-2. Purpose of act.

The purpose of the Senior Citizens Reduced Tuition Act is to provide educational opportunities for senior citizens at reduced tuition rates at New Mexico post-secondary degree-granting educational institutions. Senior citizens on fixed incomes often cannot afford the tuition to attend classes, but, by attending classes at reduced rates, older persons may be assisted in achieving lives of independence, dignity and purpose.

**History:** Laws 1984, ch. 96, § 2.



**Cross references.** — For establishment of state educational institutions, see N.M. Const., art. XII, § 11.

14A C.J.S. Colleges and Universities §§ 7, 31, 33; 81A States §§ 205, 211.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 19, 32 to 34; 63A Am. Jur. 2d Public Funds §§ 56 to 58, 68.

### 21-21D-3. Definitions.

As used in the Senior Citizens Reduced Tuition Act:

- A. "department" means the higher education department;
- B. "eligible institution" means any New Mexico post-secondary degree-granting educational institution;
- C. "reduced tuition" means that tuition charged senior citizens at the rate of five dollars (\$5.00) per credit hour, up to ten hours per semester; and
- D. "senior citizen" means a person age sixty-five or older.

**History:** Laws 1984, ch. 96, § 3; 2019, ch. 124, § 1.

**Cross references.** — For establishment of state educational institutions, see N.M. Const., art. XII, § 11.

**The 2019 amendment,** effective June 14, 2019, replaced "board" with "department" as a defined term, and revised the definition of "reduced tuition", as used in the

Senior Citizens Reduced Tuition Act; in Subsection A, after the subsection designation, deleted "board" and added "department", and after "means the", deleted "board of educational finance" and added "higher education department"; and in Subsection C, after "up to", deleted "six" and added "ten".

### 21-21D-4. Conditions of eligibility.

- A. Reduced tuition shall be allowed for any individual who:
  - (1) is a resident of New Mexico as determined by the definition of residency for tuition purposes as established by the department;
  - (2) is a senior citizen;
  - (3) pays any course-specific fees charged for a course;
  - (4) enrolls at an eligible institution for credit or noncredit courses; and
  - (5) has completed all course prerequisites.
- B. The department shall not restrict, as a condition of eligibility for reduced tuition, the number of credit hours per semester for which an individual may enroll. Regardless of the amount of credits for which an individual enrolls during a semester, the department shall provide reduced tuition to any individual who meets the requirements of Subsection A of this section by allowing that individual to receive a maximum of ten credits at the reduced tuition rate of five dollars (\$5.00) for each of those ten credits.

**History:** Laws 1984, ch. 96, § 4; 2019, ch. 124, § 2.

**The 2019 amendment,** effective June 14, 2019, provided that the higher education department shall not restrict, as a condition of eligibility to receive reduced tuition, the number of credit hours per semester for which a senior citizen may enroll; added subsection designation

"A.", deleted former subsection designation "A.", added new Paragraph A(1), and redesignated former Subsections B through E as Paragraphs A(2) through A(5); in Subsection A, after "Reduced tuition", deleted "may" and added "shall"; and added new Subsection B.

### 21-21D-5. Rules.

The department may adopt rules and procedures as necessary or appropriate to implement the provisions of the Senior Citizens Reduced Tuition Act; provided that senior citizens enrolled at reduced tuition shall be allowed to enroll in classes only on a space-available basis and that no full-time equivalent credit shall be given to the eligible institutions for the attendance of senior citizens in classes under the provisions of the Senior Citizens Reduced Tuition Act. A financial aid officer may exercise professional judgment when special circumstances exist to adjust cost of attendance or expected family contribution or to modify other factors that make the program responsive to a student's special financial circumstances and for which documentation exists in the student's file within the parameters authorized for this program.

**History:** Laws 1984, ch. 96, § 5; 1991, ch. 262, § 4; 2019, ch. 124, § 3.

The 2019 amendment, effective June 14, 2019, deleted "regulations" after each occurrence of "rules".

The 1991 amendment, effective June 14, 1991, substituted "commission" for "board" in the first sentence and added the second sentence.

## ARTICLE 21E

### Vietnam Veterans' Scholarship Fund

Sec.

21-21E-1. Fund created; administration; purpose.

21-21E-2. Disbursements from fund.

Sec.

21-21E-3. Military war veteran scholarship fund; purpose; administration; disbursements.

#### 21-21E-1. Fund created; administration; purpose.

A. There is created in the state treasury the "Vietnam veterans' scholarship fund". The fund shall consist of all money appropriated to the fund and any grants, gifts and bequests made to the fund. Any money in the fund that was the result of grants, gifts or bequests shall not revert to the general fund at the end of any fiscal year.

B. The commission [department] shall administer the fund and shall make disbursements from the fund to reimburse educational institutions under the exclusive control of the state for any tuition payments, required student fees and book allowances and to non-state colleges in New Mexico an amount equal to the highest tuition, required student fees and book allowances at a state institution for Vietnam veterans who are residents of New Mexico and are undergraduate post-secondary students, including students who have already received a baccalaureate degree or post-secondary students enrolled in a program of study leading to a master's degree attending educational institutions pursuant to Article 9, Section 14 of the constitution of New Mexico and are in compliance with the institution's satisfactory academic progress requirements. The commission [department] may adopt rules, regulations and procedures as necessary or appropriate to implement the provisions of the act. A financial aid officer may exercise professional judgment when special circumstances exist to adjust cost of attendance or expected family contribution or to modify other factors that make the program responsive to a student's special financial circumstances and for which documentation exists in the student's file within the parameters authorized for this program.

**History:** Laws 1985, ch. 171, § 1; 1989, ch. 187, § 1; 1991, ch. 262, § 5.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

**Cross references.** — For the general fund, *see* 6-4-2 NMSA 1978.

The 1991 amendment, effective June 14, 1991, rewrote the first sentence and added the final two sentences in Subsection B and made a minor stylistic change in Subsection A.

#### ANNOTATIONS

**Eligibility.** — An individual who was a minor temporarily living outside the state at the time of entry into the armed forces in California was not eligible for a Vietnam veterans' scholarship. 1987 Op. Att'y Gen. No. 87-76.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 19, 32 to 34; 63A Am. Jur. 2d Public Funds §§ 56 to 58, 67.

14A C.J.S. Colleges and Universities §§ 7, 31, 33; 81A States §§ 205, 211.

#### 21-21E-2. Disbursements from fund.

A. A Vietnam veteran may apply to the veterans' services department for a scholarship. The department shall determine the eligibility of an applicant and certify approved applicants to the commission on higher education [higher education department].

B. The commission on higher education [higher education department] shall pay by voucher to the appropriate educational institution an amount not exceeding the amount of the scholarship for an approved Vietnam veteran.

C. Money in the fund shall be allocated in the order that applications are received and approved.



**History:** Laws 1985, ch. 171, § 2; 2004, ch. 19, § 24.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

The 2004 amendment, effective May 19, 2004, amended this section to change "veterans' service commission" to "veterans' services department".

### **21-21E-3. Military war veteran scholarship fund; purpose; administration; disbursements.**

A. There is created in the state treasury the "military war veteran scholarship fund". The fund shall consist of money appropriated to the fund, any grants, gifts and bequests made to the fund and income from investment of the fund. Any money in the fund from grants, gifts, bequests or investment income shall not revert to the general fund at the end of any fiscal year. Money in the fund shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the secretary of higher education.

B. The higher education department shall administer the fund and shall make disbursements from the fund to reimburse post-secondary educational institutions under the exclusive control of the state for tuition payments, required student fees and book allowances for military war veteran students, including students who have received a baccalaureate degree and are enrolled in a program of study leading to a master's or doctoral degree, who are attending post-secondary educational institutions pursuant to Article 9, Section 14 of the constitution of New Mexico and who are in compliance with the educational institution's satisfactory academic progress requirements. A financial aid officer may exercise professional judgment when special circumstances exist to adjust the cost of attendance or expected family contribution or to modify other factors to make the program responsive to a student's special financial circumstances; provided that documentation exists in the student's file within the parameters authorized for this program.

C. A military war veteran may apply to the veterans' services department for a scholarship. The veterans' services department shall determine the eligibility of an applicant and certify approved applicants to the higher education department. The higher education department shall pay by voucher to the appropriate post-secondary educational institution an amount not exceeding the amount of the scholarship for an approved military war veteran. Money in the fund shall be allocated in the order that applications are received and approved.

D. The higher education department and the veterans' services department may adopt rules and procedures as necessary or appropriate to implement the provisions of this section.

E. As used in this section, "military war veteran" means a person who has been honorably discharged from the armed forces of the United States; who was a resident of New Mexico at the original time of entry into the armed forces or who has lived in New Mexico for ten years or more; and who has been awarded a southwest Asia service medal, global war on terror service medal, Iraq campaign medal, Afghanistan campaign medal or any other medal issued for service in the armed forces of the United States in support of any United States military campaign or armed conflict as defined by congress or presidential executive order or any other campaign medal issued for service after August 1, 1990 in the armed forces of the United States during periods of armed conflict as defined by congress or by executive order.

**History:** Laws 2013, ch. 34, § 1.

**Effective dates.** — Laws 2013, ch. 34, § 2 made Laws 2013, ch. 34, § 1 effective July 1, 2013.

## **ARTICLE 21F**

### **Fire Fighter and Peace Officer Survivors Scholarships**

Sec.

21-21F-1. Short title.

21-21F-2. Legislative intent.

21-21F-3. Definitions.

Sec.

21-21F-4. Eligibility.

21-21F-5. Rules and regulations.

### 21-21F-1. Short title.

This act [21-21F-1 through 21-21F-5 NMSA 1978] may be cited as the "Fire Fighter and Peace Officer Survivors Scholarship Act".

**History:** Laws 1986, ch. 50, § 1.

### 21-21F-2. Legislative intent.

The legislature recognizes the importance of the duties performed by our fire fighters and peace officers and the debt we owe to the fire fighters and peace officers who have lost their lives in the line of duty. The intent of this act [21-21F-1 through 21-21F-5 NMSA 1978] is to make a small payment on that debt by providing their survivors with an opportunity for a college education.

**History:** Laws 1986, ch. 50, § 2.

### 21-21F-3. Definitions.

As used in the Fire Fighter and Peace Officer Survivors Scholarship Act:

- A. "board" or "department" means the higher education department;
- B. "cost of attendance" means the price of attendance, the publication of which is required by federal law, and includes tuition and fees, books and supplies, room and board, transportation and any additional costs for a program in which a student is enrolled;
- C. "eligible institution" means any public institution of higher education in any state in the United States;
- D. "fire fighter" means any member of a fire department that is part of or administered by the state or any political subdivision of the state;
- E. "peace officer" means any member of a police or sheriff's department that is part of or administered by the state or any political subdivision of the state and officers in the corrections department;
- F. "research institution" means the university of New Mexico, New Mexico state university or New Mexico institute of mining and technology; and
- G. "survivor" means the spouse of the fire fighter or peace officer killed in the line of duty and any adopted or natural children twenty-one years of age or under at the time of the fire fighter's or peace officer's death.

**History:** Laws 1986, ch. 50, § 3; 2018, ch. 76, § 1.

The 2018 amendment, effective July 1, 2018, provided that "board" or "department" means the "higher education department", and defined "cost of attendance" and "research institution" as used in the Fire Fighter and Peace Officer Survivors Scholarship Act; in Subsection A, after "board", added "or department", and after "means the", deleted "board of educational finance" and added "higher

education department"; added a new Subsection B and redesignated former Subsections B through D as Subsections C through E, respectively; in Subsection C, after "means any", deleted "state" and added "public", and after "education in", deleted "New Mexico" and added "any state in the United States"; and added a new Subsection F and redesignated former Subsection E as Subsection G.

### 21-21F-4. Eligibility.

A. A survivor meeting entrance requirements shall be entitled to a scholarship to the eligible institution of the survivor's choice.

B. If the eligible institution is in New Mexico, the amount of the scholarship shall be equal to the amount of tuition, room and board charged by the institution attended. If the eligible institution is not in New Mexico, the amount of the scholarship shall not exceed the average cost of attendance at New Mexico research institutions.

C. The scholarship shall continue for such time as the recipient remains a student in good standing at the institution, but in no event shall any survivor receive a scholarship for more than six years.



**History:** Laws 1986, ch. 50, § 4; 2018, ch. 76, § 2.

The 2018 amendment, effective July 1, 2018, provided guidelines for determining the amount of the scholarship for an eligible survivor, and increased the maximum number of years a scholarship recipient may receive the scholarship; added new subsection designations "A.", "B.", and "C"; in Subsection B, added "If the eligible institution is in New Mexico", after "tuition", added "room and board", and

added the last sentence; and in Subsection C, after "more than", deleted "five" and added "six".

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 19, 32 to 34; 63A Am. Jur. 2d Public Funds §§ 56 to 58, 72 to 75.

14A C.J.S. Colleges and Universities §§ 7, 31, 33; 81A C.J.S. States §§ 205, 211.

### 21-21F-5. Rules and regulations.

The commission [department] may adopt rules and regulations necessary to implement the provisions of the Fire Fighter and Peace Officer Survivors Scholarship Act. A financial aid officer may exercise professional judgment when special circumstances exist to adjust the cost of attendance or the expected family contribution or to modify other factors that make the program responsive to a student's special financial circumstances and for which documentation exists in the student's file within the parameters authorized for this program.

**History:** Laws 1986, ch. 50, § 5; 1991, ch. 262, § 6.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

The 1991 amendment, effective June 14, 1991, substituted "commission" for "board" in the first sentence and added the second sentence.

## ARTICLE 21G

### Graduate Fellowship

Sec.

21-21G-1. Short title.

21-21G-2. Purpose of act.

21-21G-3. Definitions.

21-21G-4. Creation of scholarship.

21-21G-5. Conditions for first-year eligibility.

21-21G-6. Conditions for continuing eligibility.

Sec.

21-21G-7. Amount of scholarships.

21-21G-8. Duration of scholarship.

21-21G-9. Distribution of scholarship funds.

21-21G-10. Termination of scholarships.

21-21G-11. Rules and regulations.

### 21-21G-1. Short title.

Chapter 21, Article 21G NMSA 1978 may be cited as the "Graduate Scholarship Act".

**History:** Laws 1988, ch. 111, § 1; 1991, ch. 262, § 7.

The 1991 amendment, effective June 14, 1991, re-wrote this section which read "Sections 1 through 11 of this act may be cited as the 'Graduate Fellowship Act'."

### 21-21G-2. Purpose of act.

It is the purpose of the Graduate Scholarship Act to increase graduate enrollment in the state's public universities of students from groups underrepresented in graduate education. By encouraging groups underrepresented in graduate education to pursue advanced degrees in accredited graduate programs, particularly in academic fields of high regional and national priority and fields where their underrepresentation is most severe, the state will benefit by increasing the number of professionals for industry, business, research and development, economic development and public service. The establishment of a graduate scholarship program for students from groups underrepresented in graduate education will efficiently and effectively fulfill the purpose of the Graduate Scholarship Act.

**History:** Laws 1988, ch. 111, § 2; 1991, ch. 262, § 8.

The 1991 amendment, effective June 14, 1991, substituted "Graduate Scholarship Act" for "Graduate

Fellowship Act" in two places and substituted "scholarship program" for "fellowship program" in the final sentence.

### 21-21G-3. Definitions.

As used in the Graduate Scholarship Act:

- A. "academic year" means any consecutive period of two semesters, three quarters or other comparable units commencing with the fall term each year;
- B. "award recipient" means a student awarded a graduate scholarship;
- C. "department" means the higher education department;
- D. "eligible institution" means any graduate-degree-granting state university accredited by the north central association of colleges and secondary schools;
- E. "graduate and professional field" means any program of study intended to result in a master's or doctoral degree, excluding the degree in medicine; and
- F. "groups underrepresented in graduate education" means women, minorities, persons with a visual impairment or other physical disability and other groups who have traditionally been underrepresented in the specific area of graduate study or profession for which the scholarship is awarded.

**History:** Laws 1988, ch. 111, § 3; 1991, ch. 262, § 9; 2007, ch. 46, § 10.

The 2007 amendment, effective June 15, 2007, amended the section to make non-substantive language changes.

The 1991 amendment, effective June 14, 1991, substituted "Graduate Scholarship Act" for "Graduate Fellowship Act" in the introductory paragraph and substituted "scholarship" for "fellowship" in Subsections B and F.

### 21-21G-4. Creation of scholarship.

There are created "state graduate scholarships" which the commission [department] shall administer pursuant to the Graduate Scholarship Act.

**History:** Laws 1988, ch. 111, § 4; 1991, ch. 262, § 10.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

The 1991 amendment, effective June 14, 1991, substituted "scholarship" for "fellowship" in the catchline and, in the text of the section, substituted "scholarships" for "fellowships" and "Graduate Scholarship Act" for "Graduate Fellowship Act".

### 21-21G-5. Conditions for first-year eligibility.

Priority will be given to New Mexico students from those groups with the most severe underrepresentation and students with the greatest financial need. A scholarship may be awarded to an individual who:

- A. is a citizen of the United States or who has a permanent resident visa;
- B. has met the admission requirements and is accepted for enrollment as a full-time student in an underrepresented graduate or professional field of study, as determined by the institution;
- C. has complied with all the rules and regulations adopted by the commission [department] for award of the scholarship and the provisions regarding the administration of state graduate scholarships adopted pursuant to the Graduate Scholarship Act; and
- D. agrees to serve in an unpaid internship or assistantship at the eligible institution, a government agency or private industry approved by his major department for ten hours per week during the academic year.

**History:** Laws 1988, ch. 111, § 5; 1991, ch. 262, § 11.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

The 1991 amendment, effective June 14, 1991, substituted "scholarship" and "scholarships" for "fellowship" and "fellowships" and, in Subsection C, substituted "Graduate Scholarship Act" for "Graduate Fellowship Act".



## 21-21G-6. Conditions for continuing eligibility.

A scholarship may be reawarded to a student who:

- A. has been an award recipient of a New Mexico graduate scholarship the previous year;
- B. remains in good academic standing as determined by the institution;
- C. is enrolled as a full-time graduate student as determined by the institution;
- D. is pursuing the second year of a master's degree or the second or third year of a doctoral degree; and
- E. agrees to serve in an unpaid internship or assistantship at the eligible institution, a government agency or private industry approved by his major department for ten hours per week during the academic year.

**History:** Laws 1988, ch. 111, § 6; 1991, ch. 262, § 12.

**The 1991 amendment**, effective June 14, 1991, substituted "scholarship" for "fellowship" in the introductory paragraph and in Subsection A.

## 21-21G-7. Amount of scholarships.

Scholarship awards shall be for seven thousand two hundred dollars (\$7,200) per year to be disbursed in equal installments over the period of an academic year.

**History:** Laws 1988, ch. 111, § 7; 1991, ch. 262, § 13.

**The 1991 amendment**, effective June 14, 1991, substituted "scholarships" for "fellowships" in the catchline; substituted "Scholarship" for "Fellowship" at the

beginning of the section; and substituted "equal installments over the period of an academic year" for "a six hundred dollar (\$600) per month stipend for a period up to twelve months".

## 21-21G-8. Duration of scholarship.

Each scholarship is for a period of one academic year.

**History:** Laws 1988, ch. 111, § 8; 1991, ch. 262, § 14.

**The 1991 amendment**, effective June 14, 1991, substituted "scholarship" for "fellowship" in the catchline and in the text and inserted "academic".

## 21-21G-9. Distribution of scholarship funds.

The commission [department] shall adopt rules, regulations and procedures for the distribution of scholarship funds to the eligible institutions.

**History:** Laws 1988, ch. 111, § 9; 1991, ch. 262, § 15.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

**The 1991 amendment**, effective June 14, 1991, substituted "scholarship" for "fellowship" in the catchline and in the text of the section.

## 21-21G-10. Termination of scholarships.

A scholarship is terminated upon the occurrence of:

- A. withdrawal from the institution by the award recipient, failure to reenroll for consecutive academic years or failure to be a full-time graduate student; or
- B. substantial noncompliance by the award recipient with the Graduate Scholarship Act or the rules, regulations or procedures promulgated by the commission [department].

**History:** Laws 1988, ch. 111, § 10; 1991, ch. 262, § 16.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

**The 1991 amendment**, effective June 14, 1991, substituted "scholarships" for "fellowships" in the catchline; substituted "scholarship" for "fellowship" in the introductory

paragraph; and substituted "Graduate Scholarship Act" for "Graduate Fellowship Act" in Subsection B.

## 21-21G-11. Rules and regulations.

The commission [department] may adopt rules, regulations and procedures as necessary or appropriate to implement the provisions of the Graduate Scholarship Act. A financial aid officer may exercise professional judgment when special circumstances exist to adjust the cost of attendance or the expected family contribution or to modify other factors that make the program responsive to a student's special financial circumstances and for which documentation exists in the student's file within the parameters authorized for this program.

**History:** Laws 1988, ch. 111, § 11; 1991, ch. 262, § 17.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**The 1991 amendment**, effective June 14, 1991, substituted "Graduate Scholarship Act" for "Graduate Fellowship Act" in the first sentence; added the second sentence; and made a minor stylistic change.

# ARTICLE 21H

## New Mexico Scholars

Sec.

- 21-21H-1. Short title.
- 21-21H-2. Purpose of act.
- 21-21H-3. Definitions.
- 21-21H-4. Creation of scholarship.
- 21-21H-5. Conditions for first year eligibility.

Sec. 21-21H-6. Duration of scholarship.

- 21-21H-7. Amount of scholarships.
- 21-21H-8. Termination of scholarships.
- 21-21H-9. Rules.

### 21-21H-1. Short title.

Chapter 21, Article 21H NMSA 1978 may be cited as the "New Mexico Scholars Act".

**History:** Laws 1989, ch. 212, § 1; 2013, ch. 171, § 1.

**The 2013 amendment**, effective July 1, 2013, added the NMSA chapter and article for the New Mexico

Scholars Act; and at the beginning of the sentence, deleted "This act" and added "Chapter 21, Article 21H NMSA 1978".

### 21-21H-2. Purpose of act.

It is the purpose of the New Mexico Scholars Act to encourage New Mexico students to attend college in New Mexico thereby making it possible for them to pursue their studies and develop their talents at both public school and higher education levels to the greater benefit of the state.

**History:** Laws 1989, ch. 212, § 2.

### 21-21H-3. Definitions.

As used in the New Mexico Scholars Act:

- A. "academic year" means any consecutive period of two semesters, three quarters or other comparable units commencing with the fall term each year;
- B. "award recipient" means a student awarded a New Mexico Scholars Act scholarship;
- C. "department" means the higher education department;
- D. "eligible institution" means any degree-granting educational institution in New Mexico accredited by the north central association of colleges and secondary schools;



E. "satisfactory academic progress" means completion of at least twenty-four credit hours per year and maintenance of a cumulative grade point average of a minimum of 3.0 or higher on a scale of 4.0; and

F. "scholarship" means a scholarship awarded pursuant to the New Mexico Scholars Act.

**History:** Laws 1989, ch. 212, § 3; 2013, ch. 171, § 2.

The 2013 amendment, effective July 1, 2013, assigned the administration of the act to the higher education department; and in Subsection C, at the beginning of the

sentence, deletes "commission" and added "department"; after "means the", deleted "commission on"; and after "education", added "department".

## 21-21H-4. Creation of scholarship.

There are established "New Mexico Scholars Act scholarships" administered by the department.

**History:** Laws 1989, ch. 212, § 4; 2013, ch. 171, § 3.

The 2013 amendment, effective July 1, 2013, assigned the administration of the act to the higher education

department; and after "by the", deleted "commission" and added "department".

## 21-21H-5. Conditions for first year eligibility.

A scholarship may be awarded to a New Mexico high school graduate who:

A. is a resident of New Mexico as determined by the definition of residency for tuition purposes as established by the department;

B. will graduate or has graduated from a New Mexico high school and who enrolls in an eligible institution by the end of the graduate's twenty-first birthday;

C. has met the admission requirements and is accepted for enrollment as a full-time undergraduate student at an eligible institution;

D. has maintained a level of performance in high school reflected by an overall score of at least twenty-five on the American college test or SAT equivalent or a high school class rank in the top five percent of the student's high school graduating class in either the student's junior or senior year;

E. has a total combined family income of no more than sixty thousand dollars (\$60,000) per year adjusted annually on January 1 to reflect any change from the previous year's then-current consumer price index for all urban consumers published by the bureau of labor statistics of the United States department of labor in either of the calendar years ending within the student's junior or senior years in high school or in the case of a student whose immediate family has more than one family member enrolled full time in an eligible institution of post-secondary education, a total combined family income of no more than an amount as determined by the department to be equivalent to a sixty-thousand dollar (\$60,000) total combined family income;

F. has complied with all the rules adopted by the department for award of the scholarship and the provisions regarding the administration of scholarships adopted pursuant to the New Mexico Scholars Act; and

G. is a citizen of the United States or has a permanent resident visa.

**History:** Laws 1989, ch. 212, § 5; 1991, ch. 262, § 18; 2013, ch. 171, § 4.

The 2013 amendment, effective July 1, 2013, increased the family income for eligibility for the Scholars Act scholarships; in Subsection A, after "by the", deleted "commission" and added "department"; in Subsection E, after "income of no more than", deleted "thirty thousand dollars (\$30,000)" and added "sixty thousand dollars (\$60,000)"; after "per year", added "adjusted annually on January 1 to reflect any change from the previous year's then-current consumer price index for all urban consumers published by the bureau of labor statistics of the

United States department of labor"; after "by the", deleted "commission" and added "department"; and after "equivalent to a", deleted "thirty thousand dollars (\$30,000)" and added "sixty thousand dollars (\$60,000)"; and in Subsection F, after "rules", deleted "and regulations" and after "by the", deleted "commission" and added "department".

The 1991 amendment, effective June 14, 1991, rewrote Subsection B which read "will graduate from a New Mexico high school the year in which the scholarship is awarded"; added "in either the student's junior or senior year" at the end of Subsection D; and added the language beginning "in either of the calendar years" at the end of Subsection E.

### 21-21H-6. Duration of scholarship.

Each scholarship is for a period of one academic year. The scholarship may be renewed annually until the award recipient has received four annual scholarship awards or until the student graduates from a four-year institution, whichever is earlier. An award recipient may use the award at a two-year institution until the award recipient receives two annual scholarship awards. In no case shall a student receive more than four annual awards.

**History:** Laws 1989, ch. 212, § 6; 1991, ch. 262, § 19.

The 1991 amendment, effective June 14, 1991, deleted the subsection designation "A" at the beginning of the section; deleted "and then may transfer the award to a four-year institution" at the end of the third sentence; and deleted former Subsection B which read "Once use of a

scholarship is begun, it must be used for four consecutive academic years at the eligible institution or the scholarship will be terminated. This requirement may be waived at the discretion of the commission for award recipients entering cooperative programs or other special activities".

### 21-21H-7. Amount of scholarships.

Scholarship awards shall be in an amount sufficient to pay for tuition, required student fees and books for an academic year. Students choosing to attend a nonstate college in New Mexico shall receive a scholarship amount equal to the highest tuition at a state institution, plus required fees and books.

**History:** Laws 1989, ch. 212, § 7.

### 21-21H-8. Termination of scholarships.

A scholarship is terminated upon the substantial noncompliance by the award recipient with the New Mexico Scholars Act or the rules promulgated by the department pursuant to that act.

**History:** Laws 1989, ch. 212, § 8; 1991, ch. 262, § 20; 2013, ch. 171, § 5.

The 2013 amendment, effective July 1, 2013, eliminated the authority to issue regulations; in the first sentence, after after "rules", deleted "regulations and procedures" and deleted "commission" and added "department".

The 1991 amendment, effective June 14, 1991, deleted "occurrence of one or more of the following" at the end of

the introductory paragraph; deleted former Subsection A which read "withdrawal by the award recipient from the institution, failure to remain a full-time student or failure to re-enroll for consecutive academic years"; deleted former Subsection B which read "failure to achieve satisfactory academic progress by the award recipient"; and deleted the subsection designation "C".

### 21-21H-9. Rules.

The department may adopt such rules as necessary or appropriate to implement the provisions of the New Mexico Scholars Act. A financial aid officer may exercise professional judgment when special circumstances exist to adjust the cost of attendance or the expected family contribution or to modify other factors that make the program responsive to a student's special financial circumstances and for which documentation exists in the student's file within the parameters authorized for this program.

**History:** Laws 1989, ch. 212, § 9; 1991, ch. 262, § 21; 2013, ch. 171, § 6.

The 2013 amendment, effective July 1, 2013, eliminated the authority to issue regulations; in the title, deleted "and regulations", and in the first sentence, changed

"commission" to "department", and after "such rules", deleted "regulations and procedures".

The 1991 amendment, effective June 14, 1991, added the second sentence.



## ARTICLE 21I

### Minority Doctoral Loan Repayment Assistance

Sec. 21I-1

21-21I-1. Short title.

21-21I-2. Purpose.

21-21I-3. Definitions.

21-21I-4. Conditions for eligibility.

21-21I-5. Minority doctoral loan repayment contracts and terms.

Sec. 21I-6

21-21I-6. Repealed.

21-21I-7. Rulemaking.

21-21I-8. Cancellation.

#### 21-21I-1. Short title.

Chapter 21, Article 21I NMSA 1978 may be cited as the "Minority Doctoral Loan Repayment Assistance Act".

**History:** Laws 1990 (1st S.S.), ch. 8, § 1; 1991, ch. 262, § 22; 1994, ch. 79, § 1; 2017, ch. 83, § 1.

The 2017 amendment, effective June 16, 2017, changed the Minority Doctoral Assistance Loan for Service Program Act to the Minority Doctoral Loan Repayment Assistance Act; after "Minority Doctoral", added "Loan Repayment", and after "Assistance", deleted "Loan for Service Program".

The 1994 amendment, effective May 18, 1994, substituted "Article 21I" for "Article 21I-1" and inserted "Act" following "Program".

The 1991 amendment, effective June 14, 1991, re-wrote this section which read "This act may be cited as the 'Minority Doctoral Assistance Act'".

#### 21-21I-2. Purpose.

The purpose of the Minority Doctoral Loan Repayment Assistance Act is to increase the number of ethnic minorities and women available to teach engineering, physical or life sciences, mathematics and other academic disciplines in which ethnic minorities or women are demonstrably underrepresented in New Mexico colleges and universities. Additionally, the purpose of the Minority Doctoral Loan Repayment Assistance Act is to create a partnership between the state, higher education institutions and students that will lead to greater participation of ethnic minorities and women in the ranks of college and university faculties, enhancing educational opportunities and quality for all New Mexico residents.

**History:** Laws 1990 (1st S.S.), ch. 8, § 2; 1991, ch. 262, § 23; 2017, ch. 83, § 2.

The 2017 amendment, effective June 16, 2017, after each occurrence of "Minority Doctoral", added "Loan Repayment", after each occurrence of "Assistance", deleted

"Loan for Service Program" and added "Act"; and after "New Mexico", deleted "citizens" and added "residents".

The 1991 amendment, effective June 14, 1991, substituted "Loan for Service Program" for "Act" in the first sentence and "the Minority Doctoral Assistance Loan for Service Program" for "this act" in the second sentence.

#### 21-21I-3. Definitions.

As used in the Minority Doctoral Loan Repayment Assistance Act:

- A. "department" means the higher education department;
- B. "eligible institution" means an accredited institution of higher education that offers a doctoral degree-granting program in the fields of engineering, physical or life sciences, mathematics or other academic disciplines in which ethnic minorities or women are demonstrably underrepresented;
- C. "loan" means a grant of money pursuant to a contract between a recipient and a lender requiring repayment of principal with interest. A lender may include the federal government, a bank or the state; and
- D. "recipient" means an individual who is a member of an ethnic minority or is a woman and who has successfully completed a doctoral degree-granting program at an eligible institution in the field of engineering, physical or life sciences or mathematics or another academic discipline in which ethnic minorities or women are underrepresented.

**History:** Laws 1990 (1st S.S.), ch. 8, § 3; 1991, ch. 262, § 24; 1994, ch. 79, § 2; 2017, ch. 83, § 3.

The 2017 amendment, effective June 16, 2017, defined "loan" and "recipient", removed and revised the definitions of certain terms as used in the Minority Doctoral Loan Repayment Assistance Act; in the introductory clause, after "Minority Doctoral", added "Loan Repayment", and after "Assistance", deleted "Loan for Service Program" and added "Act"; deleted former Subsection A and redesignated former Subsections B and C as Subsections A and B, respectively; in Subsection A, deleted "commission" and added "department"; after "means the", deleted "commission on", and after "higher education", added "department"; in Subsection B, after "means",

deleted "a commission approved" and added "an accredited"; and after "ethnic minorities", deleted "and" and added "or"; deleted former Subsections D and E, which defined "sponsoring institution" and "student"; and added new Subsections C and D.

The 1994 amendment, effective May 18, 1994, inserted "Act" following "Program" in the introductory language, deleted "located outside the state of New Mexico" following "higher education" in Subsection C, and made stylistic changes in Subsections D and E.

The 1991 amendment, effective June 14, 1991, substituted "Loan for Service Program" for "Act" in the introductory paragraph.

## 21-21I-4. Conditions for eligibility.

A. The department may award a minority doctoral loan repayment assistance grant to a recipient who:

- (1) has been hired by a public post-secondary educational institution in New Mexico for a full-time, tenure-track faculty position;
- (2) has complied with all of the rules adopted by the department pursuant to the Minority Doctoral Loan Repayment Assistance Act; and
- (3) is a citizen of the United States.

B. The department shall give preference to a recipient who has completed a post-secondary degree at an institution designated in Article 12, Section 11 of the constitution of New Mexico.

**History:** Laws 1990 (1st S.S.), ch. 8, § 4; 1991, ch. 262, § 25; 2017, ch. 83, § 4.

The 2017 amendment, effective June 16, 2017, revised the conditions for eligibility for repayment of loans through the minority doctoral loan repayment assistance program, including removing the requirements that eligible participants must graduate with a baccalaureate degree from a New Mexico four-year, public postsecondary educational institution and be accepted for enrollment as a full-time doctoral student at an eligible institution, requiring eligible participants to be hired at a public post-secondary educational institution for a full-time, tenure-track faculty position, and giving preference to recipients who have completed a postsecondary degree at an institution designated in Article XII, Section 11 of the Constitution of New Mexico; designated the previously undesignated introductory clause as Subsection A and deleted former Subsections A and B; in Subsection A, added "The

department may award", after "minority doctoral", added "loan repayment", after "assistance grant", deleted "may be awarded to a student" and added "to a recipient"; designated former Subsections C through E as Paragraphs A(1) through A(3), respectively; in Paragraph A(1), after "has been", deleted "interviewed and approved by an academic committee from the sponsoring" and added "hired by a public post-secondary educational", after "institution", added "in New Mexico for a full-time, tenure-track faculty position"; in Paragraph A(2), after "complied with all", added "of", after "rules", deleted "and regulations", after "adopted by the", deleted "commission" and added "department", after "Minority Doctoral", added "Loan Repayment", and after "Assistance", deleted "Loan for Service Program" and added "Act"; and added Subsection B.

The 1991 amendment, effective June 14, 1991, substituted "Loan for Service Program" for "Act" at the end of Subsection D.

## 21-21I-5. Minority doctoral loan repayment contracts and terms.

A. A minority doctoral loan repayment assistance grant shall be evidenced by a contract between the recipient and the department and shall be signed by the recipient and an authorized representative of the department.

B. The contract shall provide that, in consideration for the department's payment of up to twenty-five thousand dollars (\$25,000) per year for up to four years to a lender on behalf of the recipient, the recipient shall teach in a full-time faculty position at a public post-secondary educational institution in New Mexico for a minimum of one year for each year a minority doctoral loan repayment assistance grant is awarded.

C. Grant funds received by a recipient who fails to complete the contract terms shall be converted to a loan with an applied annual interest rate equal to the treasury note rate in existence at the time the contract is entered into plus two percent. The loan shall become due to the department on behalf of the state immediately upon the recipient's termination or breach of the contract.



D. The department is vested with full and complete authority and power to sue in its own name for any balance due it and the state from a recipient violating the terms of a contract under the Minority Doctoral Loan Repayment Assistance Act.

E. The following debts incurred by a recipient are not eligible for payment by the department under the Minority Doctoral Loan Repayment Assistance Act:

(1) amounts incurred as a result of participation in state loan-for-service programs or other state programs whose purpose states that service is to be provided in exchange for financial assistance;

(2) scholarships that have a service component or obligation;

(3) personal loans from individuals;

(4) loans that exceed individual standard school expense levels; and

(5) loans that are eligible for another state or federal loan repayment program.

**History:** Laws 1990 (1st S.S.), ch. 8, § 5; 2017, ch. 83, § 5.

**The 2017 amendment**, effective June 16, 2017, revised the required terms of a contract between a recipient of a minority doctoral loan repayment assistance grant and the higher education department; in the catchline, deleted "assistance" and added "loan repayment"; in Subsection A, after "minority doctoral", added "loan repayment", after "between the", deleted "student" and added "recipient", and after "and the", deleted "sponsoring institution" and added "department and shall be signed by the recipient and an authorized representative of the department"; in Subsection B, deleted Paragraphs B(1), B(2), the paragraph designation "(3)", and deleted "require the student to agree to begin to" from former Paragraph B(3) and added "provide that, in consideration for the department's payment of up to twenty-five thousand dollars (\$25,000) per year for up to four years to a lender on behalf of the recipient, the recipient shall", after "teach in a", added "full-time", after "faculty position at", deleted "the sponsoring" and added "a public post-secondary educational", and after "institution", deleted "within five years of completion of the doctoral degree and", deleted the paragraph designation "(4)" and deleted "require the student to teach in a faculty position at the sponsoring institution" the language from former Paragraph B(4) and

added "in New Mexico", after "minority doctoral", added "loan repayment", and after "assistance grant", deleted "was" and added "is"; in Subsection C, deleted "Grants to students" and added "Grant funds received by a recipient", after "who", deleted "fail" and added "fails", after "complete the", added "contract", after "terms", deleted "of their contract", after "shall be", deleted "considered loans" and added "converted to a loan", after "shall become due", deleted "in equal parts", after "to the", deleted "state and the sponsoring institution" and added "department on behalf of the state", after "immediately upon the", deleted "student's" and added "recipient's", after "termination", added "or breach", and after "of the", deleted "contractual agreement" and added "contract"; in Subsection D, deleted "The general form of the contract shall be approved by the attorney general and signed by the student and an authorized representative of the sponsoring institution.", after "The", deleted "sponsoring institution" and added "department", after "the state from", deleted "any student" and added "a recipient", after "violating the terms of", deleted "any such" and added "a", and after "contract", added "under the Minority Doctoral Loan Repayment Assistance Act"; and in Subsection E, deleted "The commission shall approve all minority doctoral assistance contracts entered into between students and sponsoring institutions" and added the remainder of the subsection.

## 21-211-6. Repealed.

**Repeals.** — Laws 2017, ch. 83, § 7 repealed 21-211-6 NMSA 1978, as enacted by Laws 1990 (1st S.S.), ch. 8, § 6, relating to delegation of contract rights, effective June 16,

2017. For provisions of former section, see the 2016 NMSA 1978 on *NMOneSource.com*.

## 21-211-7. Rulemaking.

The department shall adopt rules to implement the provisions of the Minority Doctoral Loan Repayment Assistance Act. The rules:

A. shall provide procedures for awarding minority doctoral loan repayment assistance grants;

B. shall provide procedures for determining the amount of each minority doctoral loan repayment assistance grant; and

C. may provide for the disbursement of funds to a lender on behalf of a recipient in annual or other periodic installments.

**History:** Laws 1990 (1st S.S.), ch. 8, § 7; 1991, ch. 262, § 26; repealed and reenacted by Laws 2017, ch. 83, § 6.

**Repeals and reenactments.** — Laws 2017, ch. 83, § 6 repealed former 21-211-7 NMSA 1978 and enacted a new section, effective June 16, 2017.

**The 1991 amendment**, effective June 14, 1991, substituted "Loan for Service Program" for "Act" at the end of the first sentence and added the second sentence.

## 21-21I-8. Cancellation.

The contract entered into between the student and the sponsoring institution may be cancelled upon approval of the commission [department] for any reasonable cause deemed sufficient by the commission [department] in accordance with its rules and regulations.

**History:** Laws 1990 (1st S.S.), ch. 8, § 8.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

## ARTICLE 21J

### Legislative Endowment Scholarship (Repealed.)

**Sec.** 21-21J-1. Repealed.  
21-21J-2. Repealed.  
21-21J-3. Repealed.  
21-21J-4. Repealed.

**Sec.**  
21-21J-5. Repealed.  
21-21J-6. Repealed.  
21-21J-7. Repealed.  
21-21J-8. Repealed.

#### 21-21J-1. Repealed.

**Repeals.** — Laws 2022, ch. 42, § 10 repealed 21-21J-1 NMSA 1978, as enacted by Laws 1995, ch. 35, § 1, relating to short title, effective July 1, 2022. For provisions of

former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

#### 21-21J-2. Repealed.

**Repeals.** — Laws 2022, ch. 42, § 10 repealed 21-21J-2 NMSA 1978, as enacted by Laws 1995, ch. 35, § 2, relating

to purpose, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

#### 21-21J-3. Repealed.

**Repeals.** — Laws 2022, ch. 42, § 10 repealed 21-21J-3 NMSA 1978, as enacted by Laws 1995, ch. 35, § 3, relating to definitions, effective July 1, 2022. For provisions

of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

#### 21-21J-4. Repealed.

**Repeals.** — Laws 2022, ch. 42, § 10 repealed 21-21J-4 NMSA 1978, as enacted by Laws 1995, ch. 35, § 4, relating to conditions for eligibility, effective July 1, 2022. For

provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

#### 21-21J-5. Repealed.

**Repeals.** — Laws 2022, ch. 42, § 10 repealed 21-21J-5 NMSA 1978, as enacted by Laws 1995, ch. 35, § 5, relating to scholarship authorized, administration, preference in

scholarship awards, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

#### 21-21J-6. Repealed.

**Repeals.** — Laws 2022, ch. 42, § 10 repealed 21-21J-6 NMSA 1978, as enacted by Laws 1995, ch. 35, § 6, relating to duration of scholarship, effective July 1, 2022. For

provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

#### 21-21J-7. Repealed.

**Repeals.** — Laws 2022, ch. 42, § 10 repealed 21-21J-7 NMSA 1978, as enacted by Laws 1995, ch. 35, § 7, relating to termination of scholarship, effective July 1, 2022. For

provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.



## 21-21J-8. Repealed.

**Repeals.** — Laws 2022, ch. 42, § 10 repealed 21-21J-8 NMSA 1978, as enacted by Laws 1995, ch. 35, § 8, relating to fund created, effective July 1, 2022. For provisions

of former section, see the 2021 NMSA 1978 on *NMOneSource.com*.

# ARTICLE 21K

## Education Trusts

Section 21-21K-1. Short title.

21-21K-2. Definitions.

21-21K-3. College savings program created; education trust fund created; purpose; investment of accounts by third parties; board review; program administration fund created; purpose.

21-21K-4. Board created; members; appointment; terms of office.

21-21K-4.1. Board; powers and duties.

21-21K-5. College investment agreements; accounts.

21-21K-6. Claims of creditors; exemption; liability immunity; state not liable.

21-21K-7. Reports.

## 21-21K-1. Short title.

Chapter 21, Article 21K NMSA 1978 may be cited as the "Education Trust Act".

**History:** Laws 1997, ch. 259, § 1; 2014, ch. 76, § 1.

The 2014 amendment, effective May 21, 2014, added the NMSA chapter and article for the Education Trust

Act; and at the beginning of the sentence, deleted "Sections 1 through 7 of this act" and added "Chapter 21, Article 21K NMSA 1978".

## 21-21K-2. Definitions.

As used in the Education Trust Act:

A. "account" means an individual trust account pursuant to a college investment agreement entered into pursuant to the college savings program;

B. "account owner" means the person who has entered into a college investment agreement with the board and is designated as having the right to withdraw money from the account before the account is disbursed to or for the benefit of the beneficiary;

C. "beneficiary" means the person who is designated at the time the account is opened, or the person who replaces a designated beneficiary, as the person whose education expenses are expected to be paid from the account;

D. "board" means the education trust board;

E. "college investment agreement" means an agreement entered into by the board and an account owner to participate in the college savings program and establish an account to be used for the qualified higher education expenses of a beneficiary at an eligible institution of higher education;

F. "department" means the higher education department;

G. "financial institution" means a bank, broker-dealer, insurance company, mutual fund, savings and loan association or other financial entity;

H. "institution of higher education" means a post-secondary educational institution eligible to participate in student financial aid programs administered by the United States department of education;

I. "Internal Revenue Code" means the federal Internal Revenue Code of 1986, as amended; and

J. "manager" means a financial institution under contract with the board to serve as manager of a college savings plan in the college savings program and receive contributions on behalf of the program.

**History:** Laws 1997, ch. 259, § 2; 1999, ch. 221, § 1; repealed and reenacted by Laws 2014, ch. 76, § 2.

**Repeals and reenactments.** — Laws 2014, ch. 76, § 2 repealed former 21-21K-2 NMSA 1978, and enacted a new section, effective May 21, 2014.

**Cross references.** — For the federal Internal Revenue Code, see 26 U.S.C.S. § 1 et seq.

**The 1999 amendment,** effective June 18, 1999, in Subsection G, added "or, if approved by the board, another

public or private post-secondary educational institution located in this state or any other state".

### **21-21K-3. College savings program created; education trust fund created; purpose; investment of accounts by third parties; board review; program administration fund created; purpose.**

A. The "college savings program" is created to allow interested persons to enter into college investment agreements with the board as a means to save money to pay a beneficiary's eligible expenses for a college education. The college savings program may consist of one or more college savings plans. The board shall administer the college savings program through accounts established in the education trust fund pursuant to college investment agreements. Money in an account may be used by the beneficiary at any eligible institution of higher education in New Mexico or any other state.

B. The board shall develop and administer the college savings program in a manner that allows account owners and beneficiaries to obtain and maintain federal income tax benefits or treatment provided by the Internal Revenue Code for qualified state tuition programs and exemptions under the federal securities laws.

C. The "education trust fund" is created as a nonreverting fund in the state treasury. The fund shall be administered by the board to carry out the college savings program. The fund consists of separate trust accounts held in the name of account owners. Income from investment of the fund shall be credited to the separate accounts.

D. The board may contract with one or more managers to invest the contributions deposited to the education trust fund. The board and the managers shall account for each contribution by an account owner.

E. Amounts may be withdrawn or transferred from trust accounts in the education trust fund only as provided in the related college investment agreements. All money contributed to accounts established in the fund are held in trust by the board and the respective managers for the sole benefit of the respective account owners and beneficiaries.

F. The "program administration fund" is created as a nonreverting fund in the state treasury. The fund consists of all administrative and other fees received by the board pursuant to college investment agreements and contracts with managers and any other money credited to the fund. The state treasurer shall invest the fund, and the investment income shall be credited to the fund. Money in the fund may be used to pay costs of establishing, marketing and otherwise administering the college savings program in accordance with the Education Trust Act. Disbursements from the fund shall be by warrants of the secretary of finance and administration on vouchers signed by the director of the board or the director's authorized representative.

**History:** Laws 1997, ch. 259, § 3; 1999, ch. 221, § 2; 2001, ch. 270, § 2; repealed and reenacted by Laws 2014, ch. 76, § 3.

**Repeals and reenactments.** — Laws 2014, ch. 76, § 3 repealed former 21-21K-3 NMSA 1978, and enacted a new section, effective May 21, 2014.

**Cross references.** — For the federal Internal Revenue Code, see 26 U.S.C.S. § 1 et seq.

**The 2001 amendment,** effective June 15, 2001, added Subsection D.

**The 1999 amendment,** effective June 18, 1999, in Subsection A, inserted "The board shall provide that" and "either", deleted "and regulations" following "state investment officer according to rules", and substituted "or by a private investment advisor, approved by the council, pursuant to a contract between the board and the investment

advisor" for "for the investment of funds pursuant to the Education Trust Act" in the seventh sentence; deleted former Subsection C and redesignated former Subsection D as present Subsection C; and, in Subsection C, added the last sentence.

#### **ANNOTATIONS**

**Sovereign immunity.** — Subsection C of Section 21-21K-3 NMSA 1978 does not include an express or an implied grant of sovereign immunity. *Lu v. Education Trust Bd. of N.M.*, 2013-NMCA-010, 293 P.3d 186.

Where investors, who had entered into contracts with the defendants to participate in the state's qualified higher education tuition programs, sued defendants, including the state, for breach of contract for mismanaging the investors' investments; and the state argued that the



provision of Subsection C of Section 21-21K-3 NMSA 1978 which limits the source of recovery to the education trust fund overrides Subsection A of Section 37-1-23 NMSA 1978 which waives governmental immunity for written contracts, the state was not immune from suit because

Subsection C of Section 21-21K-3 NMSA 1978 places limits on liability and identifies sources of recovery, but does not expressly or impliedly grant sovereign immunity. *Lu v. Education Trust Bd. of N.M.*, 2013-NMCA-010, 293 P.3d 186.

## 21-21K-4. Board created; members; appointment; terms of office.

A. The "education trust board" is created. The board is administratively attached to the department, and the department shall provide administrative support for the board in carrying out its duties pursuant to the Education Trust Act. The board shall consist of the following voting members:

- (1) the secretary of higher education or the secretary's designee, who shall be the ex-officio chair of the board;
- (2) two members appointed by the governor;
- (3) one member representing institutions of higher education appointed by the speaker of the house of representatives; and
- (4) one member representing students at institutions of higher education, appointed by the president pro tempore of the senate.

B. The appointed members must possess knowledge, skill and experience in higher education, business or finance.

C. The appointed members shall serve six-year terms, with the exception of the member representing students, who shall be appointed for a two-year term. Vacancies on the board shall be filled by the respective appointing authority for the remainder of the vacating member's term.

D. Three members of the board constitute a quorum. Action may be taken by the board upon an affirmative vote of the majority of members present at the meeting at which a quorum is present. A vacancy in the membership of the board does not impair the right of a quorum to exercise the powers and duties of the board.

E. Members of the board shall be subject to the provisions of the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance for their service on the board.

**History:** Laws 1997, ch. 259, § 4; 2011, ch. 51, § 2; 2014, ch. 76, § 4.

The 2014 amendment, effective May 21, 2014, changed the membership of the education trust board; specified the number of members to constitute a quorum; removed the authority of the board to adopt rules and regulations; in the catchline, after "office", deleted the "powers and duties"; in Subsection A, in the introductory paragraph, in the first sentence, deleted "There is created", and after "attached to the", added "is created", and in the second sentence, after

"attached to the", deleted "higher education"; in Subsection A, Paragraph (2), at the beginning of the sentence, changed "one member" to "two members"; added Subsection D; and deleted former Subsection E, which authorized the board to adopt rules and regulations to carry out the provisions of the Education Trust Act and to determine the cost of attendance at institutions of higher education.

The 2011 amendment, effective July 1, 2011, attached the board to the higher education department and removed the state investment officer as a member of the board.

## 21-21K-4.1. Board; powers and duties.

A. The board may:

- (1) adopt, amend or repeal and promulgate rules necessary to carry out the provisions of the Education Trust Act;
- (2) sue and be sued;
- (3) enter into contracts;
- (4) employ or contract for professional, technical and clerical staff and independent counsel;
- (5) contract with one or more financial institutions to manage the education trust fund and the separate trust accounts;
- (6) enter into college investment agreements with interested persons to participate in the college savings program;

(7) charge, impose and collect administrative fees as provided in a college investment agreement or other contract relating to the college savings program in amounts not exceeding the reasonable costs of establishing, marketing and otherwise administering the program; and

(8) do those things necessary or convenient in accordance with the Education Trust Act to carry out the provisions of that act.

B. The board shall adopt and promulgate education trust fund investment guidelines and otherwise administer the college savings program in compliance with the Uniform Prudent Investor Act [45-7-601 through 45-7-612 NMSA 1978].

**History:** Laws 2014, ch. 76, § 5.

**Effective dates.** — Laws 2014, ch. 76 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 21, 2014, 90 days after the adjournment of the legislature.

## 21-21K-5. College investment agreements; accounts.

A. An account owner may enter into a college investment agreement with the board under which an account in the education trust fund is established and contributions may be made to the account from time to time, consistent with the terms of the agreement, to defray the cost of eligible higher education expenses at institutions of higher education. Each account shall be accounted for separately from all other accounts in the education trust fund. An account owner may enter into a college investment agreement on behalf of any beneficiary.

B. Gifts and bequests by persons other than the account owner may be made to an account in the education trust fund for the benefit of the beneficiary in accordance with the terms of the college investment agreement.

C. The board shall set forth procedures relating to the withdrawal of money from an account established in the education trust fund pursuant to a college investment agreement.

D. A college investment agreement may be terminated by the account owner at any time. The board shall specify by rule appropriate provisions for the term and termination of college investment agreements.

E. Contributions made to an account in the education trust fund, together with accrued investment earnings and capital appreciation in such account, shall be excluded from any calculation of the respective beneficiary's student financial aid eligibility in New Mexico.

F. The board shall notify each account owner annually about the status of the account owner's account in the education trust fund.

**History:** Laws 1997, ch. 259, § 5; 1999, ch. 221, § 3; 2000, ch. 39, § 1; 2001, ch. 270, § 3; repealed and reenacted by Laws 2014, ch. 76, § 6.

**Repeals and reenactments.** — Laws 2014, ch. 76, § 6 repealed former 21-21K-5 NMSA 1978, and enacted a new section, effective May 21, 2014.

**The 2001 amendment,** effective June 15, 2001, rewrote Subsection F, which formerly read "A college investment agreement terminates on the tenth anniversary of the date the beneficiary is projected to graduate from high school, not counting time spent by the beneficiary as an active duty member of the United States armed services"; and deleted "education trust" preceding "fund" in Subsection I.

**The 2000 amendment,** effective May 17, 2000, deleted the proviso that a beneficiary must be under the age of nineteen for an investor to enter into a college investment agreement on their behalf in Subsection A, deleted former Subsection B, concerning age and residency restrictions of a beneficiary, deleted former Subsection D, concerning residency restrictions of a beneficiary or an

investor, and renumbered the remaining subsections accordingly.

**The 1999 amendment,** effective June 18, 1999, in Subsection D, deleted the former last sentence which read "A beneficiary is considered a resident for purposes of tuition regardless of the beneficiary's residence on the date of enrollment"; in Subsection F, substituted "The board shall provide, by rule, procedures for determining the amount to be refunded for college investment agreements terminated" for "If the college investment agreement is terminated", deleted "the board shall refund to the investor an amount equal to all the principal contributed or paid in by the investor plus interest not to exceed four percent annually" following "provisions of this section" in the first sentence, and inserted "the amount refunded and" preceding "administrative costs" in the second sentence; and, in Subsection K, substituted "status of the education trust fund" for "balance of his college savings agreement principal, accrued investment earnings and capital appreciation".



## 21-21K-6. Claims of creditors; exemption; liability immunity; state not liable.

A. Money credited to or expended from any account in the education trust fund by or on behalf of an account owner or beneficiary is exempt from all claims of creditors of the account owner, the beneficiary or the board.

B. If the board carries out its review responsibility of the manager's investment decisions consistent with the Uniform Prudent Investor Act [45-7-601 through 45-7-612 NMSA 1978], the board or an employee shall not be liable to anyone for any losses sustained as a result of investment decisions. A member of the board, while acting within the scope of the member's authority or while acting as a trustee of the education trust fund or any separate trust fund or account of the board, shall not be subject to any personal liability for any action taken or omitted within that scope of authority.

C. In no event shall any liability of or contractual obligation incurred by the college savings program obligate or encumber any of the state's funds or treasury, including but not limited to the state's general fund, land grant permanent funds, the severance tax permanent fund or any other permanent fund or any money that is a part of a state-funded financial aid program. Nothing in the Education Trust Act creates any obligation, legal, moral or otherwise, to fulfill the terms of any college investment agreement or any other obligation or liability out of any source other than the education trust fund or the program administration fund.

**History:** Laws 1997, ch. 259, § 6; 1999, ch. 221, § 4; repealed and reenacted by Laws 2014, ch. 76, § 7.

**Repeals and reenactments.** — Laws 2014, ch. 76, § 7 repealed former 21-21K-6 NMSA 1978, and enacted a new section, effective May 21, 2014.

## 21-21K-7. Reports.

A. The board shall annually submit to the governor and to the appropriate interim legislative committee a report including:

- (1) the board's fiscal transactions during the preceding fiscal year;
- (2) the market value of the education trust fund as of the end of the preceding fiscal year;
- (3) the asset allocations of the education trust fund expressed in percentages of stocks, fixed income securities, cash or other financial assets; and
- (4) the rate of return on the investment of the education trust fund's assets during the preceding fiscal year.

B. The board shall make the report described by Subsection A of this section available to account owners.

**History:** Laws 1997, ch. 259, § 7; 1999, ch. 221, § 5; 2014, ch. 76, § 8.

**The 2014 amendment**, effective May 21, 2014, changed the reporting requirements; in Subsection A, Paragraph (2), after "the market", deleted "and book"; in Subsection A, deleted former Paragraph (5), which required that the annual report include an actuarial valuation of the assets and liabilities of the program, including the extent to which the program's liabilities are unfunded; in Subsection A, deleted former Paragraph (6), which required that

the annual report include complete prepaid tuition contract sales information, including projected enrollments of beneficiaries at institutions of higher education; and in Subsection B, after "available to", deleted "purchasers of prepaid tuition contracts and investments under college investment agreements" and added "account owners".

**The 1999 amendment**, effective June 18, 1999, in Subsection A, deleted "Not later than November 1 of each year" from the beginning and substituted "The board shall annually submit" for "The board shall submit".

## ARTICLE 21L

### College Affordability (Repealed.)

Sec.

- 21-21L-1. Repealed.
- 21-21L-2. Repealed.
- 21-21L-3. Repealed.
- 21-21L-4. Repealed.

Sec.

- 21-21L-5. Repealed.
- 21-21L-6. Repealed.
- 21-21L-7. Repealed.
- 21-21L-8. Repealed.

**21-21L-1. Repealed.**

**Repeals.** — Laws 2022, ch. 42, § 10 repealed 21-21L-1 NMSA 1978, as enacted by Laws 2005, ch. 192, § 1, relating to short title, effective July 1, 2022. For provisions

of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

**21-21L-2. Repealed.**

**Repeals.** — Laws 2022, ch. 42, § 10 repealed 21-21L-2 NMSA 1978, as enacted by Laws 2005, ch. 192, § 2, relating to purpose, effective July 1, 2022. For provisions

of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

**21-21L-3. Repealed.**

**Repeals.** — Laws 2022, ch. 42, § 10 repealed 21-21L-3 NMSA 1978, as enacted by Laws 2005, ch. 192, § 3, relating to definitions, effective July 1, 2022. For provisions

of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

**21-21L-4. Repealed.**

**Repeals.** — Laws 2022, ch. 42, § 10 repealed 21-21L-4 NMSA 1978, as enacted by Laws 2005, ch. 192, § 4, relating to conditions for eligibility, effective July 1, 2022. For

provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

**21-21L-5. Repealed.**

**Repeals.** — Laws 2022, ch. 42, § 10 repealed 21-21L-5 NMSA 1978, as enacted by Laws 2005, ch. 192, § 5, relating to scholarship authorized, administration, preference

in scholarship awards, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

**21-21L-6. Repealed.**

**Repeals.** — Laws 2022, ch. 42, § 10 repealed 21-21L-6 NMSA 1978, as enacted by Laws 2005, ch. 192, § 6, relating to duration of scholarship, effective July 1, 2022. For

provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

**21-21L-7. Repealed.**

**Repeals.** — Laws 2022, ch. 42, § 10 repealed 21-21L-7 NMSA 1978, as enacted by Laws 2005, ch. 192, § 7, relating to termination of scholarship, effective July 1, 2022.

For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

**21-21L-8. Repealed.**

**Repeals.** — Laws 2022, ch. 42, § 10 repealed 21-21L-8 NMSA 1978, as enacted by Laws 2005, ch. 192, § 8, relating to funds created, effective July 1, 2022. For provisions

of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

**ARTICLE 21M****Students with Disabilities Scholarship Act**

Sec.

21-21M-1. Short title.

21-21M-2. Purpose of act.

21-21M-3. Definitions.

21-21M-4. Conditions for eligibility and qualification; awards.

Sec.

21-21M-5. Duration of scholarship.

21-21M-6. Termination of scholarship.

21-21M-7. Fund created.

21-21M-8. Report.



## 21-21M-1. Short title.

This act [21-21M-1 through 21-21M-8 NMSA 1978] may be cited as the "Students with Disabilities Scholarship Act".

**History:** Laws 2007, ch. 75, § 1 and Laws 2007, ch. 76, § 1.

**Compiler's notes.** — Laws 2007, ch. 75, § 1 and Laws 2007, ch. 76, § 1 enacted identical provisions, effective June 15, 2007.

## 21-21M-2. Purpose of act.

The purpose of the Students with Disabilities Scholarship Act is to increase undergraduate enrollment of students with disabilities by establishing a scholarship program for those students in New Mexico's public post-secondary educational institutions.

**History:** Laws 2007, ch. 75, § 2 and Laws 2007, ch. 76, § 2.

**Compiler's notes.** — Laws 2007, ch. 75, § 2 and Laws 2007, ch. 76, § 2 enacted identical provisions, effective June 15, 2007.

## 21-21M-3. Definitions.

As used in the Students with Disabilities Scholarship Act:

- A. "award recipient" means a student with disabilities who receives an undergraduate scholarship;
- B. "department" means the higher education department;
- C. "secretary" means secretary of higher education; and
- D. "student with disabilities" means a student who has a record of a physical or mental condition that substantially limits one or more major life activities, including attention deficit disorder or other specific learning disabilities that the department recognizes as disabilities.

**History:** Laws 2007, ch. 75, § 3 and Laws 2007, ch. 76, § 3.

**Compiler's notes.** — Laws 2007, ch. 75, § 3 and Laws 2007, ch. 76, § 3 enacted identical provisions, effective June 15, 2007.

## 21-21M-4. Conditions for eligibility and qualification; awards.

A. The department shall administer the Students with Disabilities Act and shall promulgate rules to carry out the provisions of that act.

B. A student with disabilities may be awarded a scholarship pursuant to the Students with Disabilities Act if the student:

- (1) is a resident of New Mexico for the purpose of tuition payment;
- (2) has not earned a baccalaureate degree and is enrolled or will be enrolled at least half time in a degree program in a public post-secondary educational institution in New Mexico at the time the scholarship is awarded; and
- (3) has complied with other rules promulgated by the department to carry out the provisions of that act.

C. The department shall allocate money to public post-secondary educational institutions for scholarships for qualified students with disabilities based on the percentage of the institution's students classified as students with disabilities.

D. Public post-secondary educational institutions shall make awards to qualifying students in an amount not to exceed one thousand dollars (\$1,000) per semester as determined by rule of the department; provided that an award shall not exceed the actual cost of educational expenses.

E. Money for an awarded scholarship shall be placed in an account at the public post-secondary educational institution in the name of the student, and the money may be drawn upon to pay educational expenses charged by the institution, including tuition, fees, books and course supplies.

**History:** Laws 2007, ch. 75, § 4 and Laws 2007, ch. 76, § 4.

**Compiler's notes.** — Laws 2007, ch. 75, § 4 and Laws 2007, ch. 76, § 4 enacted identical provisions, effective June 15, 2007.

### 21-21M-5. Duration of scholarship.

Each scholarship is for a period of one semester. A scholarship may be renewed, provided the award recipient continues to meet the conditions of eligibility, until the award recipient has graduated from an eligible four-year public post-secondary educational institution.

**History:** Laws 2007, ch. 75, § 5 and Laws 2007, ch. 76, § 5.

**Compiler's notes.** — Laws 2007, ch. 75, § 5 and Laws 2007, ch. 76, § 5 enacted identical provisions, effective June 15, 2007.

### 21-21M-6. Termination of scholarship.

A scholarship is terminated upon occurrence of one or more of the following:

- A. withdrawal of the award recipient from the public post-secondary educational institution or failure to remain as at least a half-time student;
- B. failure of the award recipient to achieve satisfactory academic progress; or
- C. substantial noncompliance by the award recipient with the Students with Disabilities Scholarship Act or the rules promulgated pursuant to that act.

**History:** Laws 2007, ch. 75, § 6 and Laws 2007, ch. 76, § 6.

**Compiler's notes.** — Laws 2007, ch. 75, § 6 and Laws 2007, ch. 76, § 6 enacted identical provisions, effective June 15, 2007.

### 21-21M-7. Fund created.

The "students with disabilities scholarship fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants, donations and income from investment of the fund. The department shall administer the fund and, subject to appropriation by the legislature, shall provide scholarships to students with disabilities as provided in the Students with Disabilities Scholarship Act. Expenditures from the fund shall be by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary or the secretary's authorized representative.

**History:** Laws 2007, ch. 75, § 7 and Laws 2007, ch. 76, § 7.

**Compiler's notes.** — Laws 2007, ch. 75, § 7 and Laws 2007, ch. 76, § 7 enacted identical provisions, effective June 15, 2007.

### 21-21M-8. Report.

A. Each public post-secondary educational institution shall submit an annual students with disabilities scholarship report to the department that includes information required by the department. The department shall submit an annual report to the legislative finance committee and to the legislative education study committee.

B. The department and public post-secondary educational institutions shall cooperate in data collection and data sharing and for other matters necessary to carry out the provisions of the Students with Disabilities Scholarship Act.

**History:** Laws 2007, ch. 75, § 8 and Laws 2007, ch. 76, § 8.

**Compiler's notes.** — Laws 2007, ch. 75, § 8 and Laws 2007, ch. 76, § 8 enacted identical provisions, effective June 15, 2007.



## ARTICLE 21N

## Legislative Lottery Tuition Scholarship

Sec.		Sec.	
21-21N-1.	Short title.	21-21N-5.	Lottery tuition fund created; purpose.
21-21N-2.	Definitions.	21-21N-6.	Department rulemaking and reporting.
21-21N-3.	Tuition scholarships authorized; qualified students.	21-21N-7.	Lottery student community outreach pilot project; tuition scholarship recipients; additional requirements; mentoring; training.
21-21N-4.	Tuition scholarship amount; fund.		

## 21-21N-1. Short title.

Chapter 21, Article 21N NMSA 1978 may be cited as the "Legislative Lottery Tuition Scholarship Act".

**History:** Laws 2014, ch. 80, § 1; 2015, ch. 84, § 1.  
The 2015 amendment, effective June 19, 2015, changed the statutory reference of the Legislative Lottery

Tuition Scholarship Act from "Sections 1 through 6 of this act" to "Chapter 21, Article 21N NMSA 1978".

## 21-21N-2. Definitions.

As used in the Legislative Lottery Tuition Scholarship Act:

A. "community college" means a branch community college of a four-year state educational institution, a two-year state educational institution or a community college or technical and vocational institute established pursuant to Chapter 21, Article 13 or 16 NMSA 1978, respectively;

B. "comprehensive institution" means eastern New Mexico university, western New Mexico university, New Mexico highlands university or northern New Mexico college;

C. "department" means the higher education department;

D. "full time" means fifteen or more credit hours each semester of the regular academic year in state educational institutions and twelve or more credit hours each semester of the regular academic year in community colleges or for legacy students in any program semester;

E. "fund" means the lottery tuition fund;

F. "legacy student" means a full-time resident student who has received for three or more program semesters by the end of fiscal year 2014 the legislative lottery scholarship awarded pursuant to the former provisions of Sections 21-1-4.3, 21-13-10 and 21-16-10.1 NMSA 1978 prior to the enactment of the Legislative Lottery Tuition Scholarship Act;

G. "program semesters" means those semesters for which a legacy or qualified student may receive a tuition scholarship and excludes the first semester of attendance at a public post-secondary educational institution;

H. "public post-secondary educational institution" means a four-year state educational institution or a community college;

I. "qualified student" means a full-time student who graduated from a public or accredited private New Mexico high school in the state or completed the requirements of a home-based or non-public-school primary educational program in the state or received a high school equivalency credential while maintaining residency in New Mexico and who:

(1) either:

(a) within sixteen months of graduation from a public school in this state or completion of the requirements of a home-based or non-public-school primary educational program or receipt of a high school equivalency credential, was accepted for entrance to and attended a public post-secondary educational institution; or

(b) within four months of graduation from a public school in this state or completion of the requirements of a home-based or non-public-school primary educational program or receipt of a high school equivalency credential, began service in the United States armed forces and within sixteen months of completion of honorable service or medical discharge from the service, attended a public post-secondary educational institution; and

(2) successfully completed the first semester at a public post-secondary educational institution with a grade point average of 2.5 or higher on a 4.0 scale during the first semester of full-time enrollment;

J. "research institution" means the university of New Mexico, New Mexico state university or New Mexico institute of mining and technology;

K. "state educational institution" means an institution of higher education enumerated in Article 12, Section 11 of the constitution of New Mexico;

L. "tribal college" means a tribally, federally or congressionally chartered post-secondary educational institution located in New Mexico that is accredited by the higher learning commission; and

M. "tuition scholarship" means the scholarship that provides tuition assistance per program semester for a qualified student or legacy student attending a public post-secondary educational institution or tribal college.

**History:** Laws 2014, ch. 80, § 2; 2016, ch. 21, § 1; 2017, ch. 97, § 1; 2019, ch. 54, § 1; 2021, ch. 73, § 1.

**The 2021 amendment**, effective June 18, 2021, revised the definition of "qualified student", as used in the Legislative Lottery Tuition Scholarship Act, allowing home school students to qualify for legislative lottery tuition scholarships; and in Subsection I, after "New Mexico high school", added "in the state", after "or", deleted "who" and added "completed the requirements of a home-based or non-public-school primary educational program in the state or", and after "months of graduation", added "from a public school in this state or completion of the requirements of a home-based or non-public-school primary educational program", throughout.

**The 2019 amendment**, effective July 1, 2019, defined "tribal college" as used in the Legislative Lottery Tuition Scholarship Act, and included tribal colleges among the institutions that receive funds from the lottery tuition fund; and added new Subsection L and redesignated former Subsection L as Subsection M, and in Subsection M, after "institution", added "or tribal college".

**The 2017 amendment**, effective June 16, 2017, revised the definition of "qualified student", provided a sixteen-month grace period for students to qualify for a legislative

lottery tuition scholarship, and extended the grace period for qualified students who serve in the military between high school and college; in Subsection I, Subparagraph I(1) (a), deleted "immediately upon" and added "within sixteen months of", and after "receipt of a", added "high school equivalency", and in Subparagraph I(1)(b), after the first occurrence of "within", deleted "one hundred twenty days of completion of a high school curriculum" and added "four months of graduation", and after the second occurrence of "within", deleted "one year" and added "sixteen months".

**The 2016 amendment**, effective May 18, 2016, clarified definitions as used in the Legislative Lottery Tuition Scholarship Act; in Subsection A, after "branch community college of a", added "four-year", and after the comma, added "a two-year state educational institution"; in Subsection H, after "means a", added "four-year state educational institution or a", and after "community college", deleted "comprehensive institution, research institution or state educational institution"; in Subsection K, after "New Mexico", deleted "and excludes a research institution"; and in Subsection L, after "assistance per", added "program".

### 21-21N-3. Tuition scholarships authorized; qualified students.

A. To the extent that funds are made available by the legislature from the fund, the boards of regents or governing bodies of public post-secondary educational institutions and tribal colleges shall award tuition scholarships in department-approved amounts to qualified students and legacy students attending their respective public post-secondary educational institutions.

B. Beginning in fiscal year 2015:

(1) a legacy student is eligible to receive a tuition scholarship until the total number of program semesters for which the legislative lottery scholarship is received pursuant to the former provisions of Sections 21-1-4.3, 21-13-10 and 21-16-10.1 NMSA 1978 or the Legislative Lottery Tuition Scholarship Act reaches eight; provided that the legacy student maintains residency in New Mexico, maintains a grade point average of 2.5 or higher on a 4.0 scale and completes twelve or more credit hours per program semester; and

(2) a qualified student who is not a legacy student is eligible to receive the tuition scholarship for a maximum of seven program semesters and in an amount determined pursuant to the provisions of Section 21-21N-4 NMSA 1978.

C. Except as otherwise provided in this section, a tuition scholarship may be awarded to a qualified student who:

(1) maintains residency in New Mexico;

(2) maintains a grade point average of 2.5 or higher on a 4.0 scale; and

(3) completes:

(a) for a student attending a four-year public post-secondary educational institution or a tribal college, fifteen or more credit hours per program semester; and



(b) for a student attending a two-year public post-secondary educational institution, twelve or more credit hours per program semester.

D. For students with disabilities who may require accommodations, the department, in consultation with the student and the office at the public post-secondary educational institution or the tribal college that serves students with disabilities, shall review both the definition of "full time" and the maximum number of consecutive program semesters of eligibility and adjust either or both as deemed reasonable and appropriate, based on the student's disability needs. In no case, however, shall "full time" mean fewer than six credit hours per semester, and in no case shall eligibility extend beyond fourteen consecutive program semesters. The definition of "qualified student" notwithstanding, a New Mexico resident who had to leave the state to receive an education pursuant to the federal Individuals with Disabilities Education Act shall be eligible for a tuition scholarship if the student graduated from an accredited high school in another state and otherwise meets the qualifications for a tuition scholarship pursuant to the definition of "qualified student" and this section.

**History:** Laws 2014, ch. 80, § 3; 2016, ch. 21, § 2; 2019, ch. 33, § 1; 2019, ch. 54, § 2.

**2019 Multiple Amendments.** — Laws 2019, ch. 33, § 1, effective June 14, 2019, and Laws 2019, ch. 54, § 2, effective July 1, 2019, enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2019, ch. 54, § 2, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2019, ch. 33, § 1 and Laws 2019, ch. 54, § 2 are described below. To view the session laws in their entirety, see the 2019 session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Laws 2019, ch. 33, § 1, extended scholarship eligibility to New Mexico residents who because of a disability left the state to receive a high school education pursuant to the federal Individuals with Disabilities Education Act, and Laws 2019, ch. 54, § 2, authorized tribal colleges to receive funds from the lottery tuition fund and to award scholarships to eligible students.

**Laws 2019 ch. 33, § 1**, effective June 14, 2019, extended scholarship eligibility to New Mexico residents

who because of a disability left the state to receive a high school education pursuant to the federal Individuals with Disabilities Education Act; and in Subsection D, added the last sentence.

**Laws 2019, ch. 54, § 2**, effective July 1, 2019, authorized tribal colleges to receive funds from the lottery tuition fund and to award scholarships to eligible students and added "tribal colleges" in in Subsections A, C and D.

**The 2016 amendment**, effective May 18, 2016, clarified language as used in the Legislative Lottery Tuition Scholarship Act; in Subsection B, in Paragraph (1), after "total number of", added "program", after "legislative lottery scholarship", deleted "was" and added "is", and after "credit hours per", added "program", in Paragraph (2), after "Section", deleted "4 of the Legislative Lottery Tuition Scholarship Act" and added "21-21N-4 NMSA 1978"; in Subsection C, in Subparagraph C(3)(a) after "credit hours per", added "program", and in Subparagraph C(3)(b), after "credit hours per", added "program"; in Subsection D, after each occurrence of "consecutive", added "program".

## 21-21N-4. Tuition scholarship amount; fund.

A. Prior to June 1 of each year, based on the amount appropriated by the legislature from the fund and on the projected enrollment at all public post-secondary educational institutions and tribal colleges, the department shall:

- (1) determine the total amount of money available for all tuition scholarships for qualified students;
- (2) determine the award amount for research institutions, comprehensive institutions, tribal colleges and community colleges; and
- (3) notify all public post-secondary educational institutions and tribal colleges of the determinations made pursuant to Paragraphs (1) and (2) of this subsection.

B. In determining distribution and award amounts for the tuition scholarship program, the department shall:

- (1) maintain the minimum fund balance pursuant to Section 21-21N-5 NMSA 1978;
- (2) distribute to all public post-secondary educational institutions and tribal colleges an amount not to exceed the remaining balance in the fund; and
- (3) subject to the provisions of Paragraphs (1) and (2) of this subsection, distribute to each public post-secondary educational institution or tribal college an amount based on:
  - (a) the projected enrollment at each four-year public post-secondary educational institution and tribal college of qualified students in their first through seventh program semesters, including qualified students in their fourth through seventh program semesters who transferred from community colleges;



(b) the projected enrollment at each community college of qualified students in their first through third program semesters; and

(c) an award for each scholarship recipient distributed in amounts as follows: 1) one thousand five hundred dollars (\$1,500) per scholarship per program semester for a student enrolled at a research institution; 2) one thousand twenty dollars (\$1,020) per scholarship per program semester for a student enrolled at a comprehensive institution or tribal college; and 3) three hundred eighty dollars (\$380) per scholarship per program semester for a student enrolled at a community college.

C. If the total amount available pursuant to Paragraph (1) of Subsection A of this section is less than the amount calculated in Subsection B of this section, the department shall decrease the scholarship award amounts in a manner that maintains the distribution in the same proportions as provided in Subparagraph (c) of Paragraph (3) of Subsection B of this section.

D. If the total amount available pursuant to Paragraph (1) of Subsection A of this section is more than the amount calculated in Subsection B of this section, the department shall increase the scholarship award amounts in a manner that maintains the distribution in the same proportions as provided in Subparagraph (c) of Paragraph (3) of Subsection B of this section.

**History:** Laws 2014, ch. 80, § 4; 2016, ch. 21, § 3; 2018, ch. 70, § 1; 2019, ch. 54, § 3.

**The 2019 amendment**, effective July 1, 2019, provided for tribal colleges to receive lottery tuition scholarship funds, and added "tribal colleges" throughout the section.

**The 2018 amendment**, effective July 1, 2018, amended the Legislative Lottery Tuition Scholarship Act to set flat award amounts for lottery scholarships depending on the sector of institution a student attends, and required the higher education department to reduce or increase scholarship award amounts, depending on available revenues, in a manner that maintains the distribution in the same proportions established in this act; in Paragraph A(2), after "determine the", deleted "uniform percentage by which to calculate tuition scholarships for qualified students attending any public post-secondary educational institution" and added "award amount for research institutions, comprehensive institutions and community colleges"; in Subparagraph B(3)(c), deleted "a uniform percentage of the average of in-state tuition costs charged by: 1) research institutions for each research institution; 2) comprehensive institutions for each comprehensive institution; and 3) community colleges for each community college, except that the uniform percentage for a two-year state educational institution shall be based on

the uniform percentage for community colleges" and completely rewrote the subparagraph; and added Subsections C and D.

**The 2016 amendment**, effective May 18, 2016, clarified language as used in the Legislative Lottery Tuition Scholarship Act and specified that the uniform percentage by which scholarships are calculated for a two-year state educational institution is to be based on the uniform percentage for community colleges; in Subsection B, in Paragraph (1), after "Section", deleted "5 of the Legislative Lottery Tuition Scholarship Act" and added "21-21N-5 NMSA 1978", in Subparagraph B(3)(a), after "enrollment at each", deleted "comprehensive institution, research institution and state educational institution" and added "four-year public post-secondary educational institution, after the first occurrence of "students in their", deleted "second through eighth" and added "first through seventh program", and after the second occurrence of "students in their", deleted "fifth through eighth" and added "fourth through seventh program", in Subparagraph B(3)(b), after "students in their", deleted "second through fourth" and added "first through third program", and in Subparagraph B(3)(c), added "except that the uniform percentage for a two-year state educational institution shall be based on the uniform percentage for community colleges".

## 21-21N-5. Lottery tuition fund created; purpose.

A. The "lottery tuition fund" is created in the state treasury. The fund shall be administered by the department. Earnings from investment of the fund shall accrue to the credit of the fund. The fund shall maintain an annual average balance of two million dollars (\$2,000,000), and any balance in the fund at the end of any fiscal year shall remain in the fund for appropriation by the legislature as provided in this section.

B. Money in the fund shall be appropriated by the legislature to the department for distribution to New Mexico's public post-secondary educational institutions and tribal colleges to provide tuition assistance for qualified students and legacy students as provided in the Legislative Lottery Tuition Scholarship Act.

**History:** Laws 1995, ch. 155, § 23; 1997, ch. 106, § 1; 2001, ch. 300, § 2; 1978 Comp., § 6-24-23, recompiled and amended as § 21-21N-5 by Laws 2014, ch. 80, § 5; 2019, ch. 54, § 4.

**Recompilations.** — Laws 2014, ch. 80, § 5 recompiled and amended former 6-24-23 NMSA 1978 as 21-21N-5 NMSA 1978, effective March 12, 2014.

**The 2019 amendment**, effective July 1, 2019, provided for tribal colleges to receive funds from the lottery tuition fund; and in Subsection B, after "educational institutions", added "and tribal colleges".

**The 2014 amendment**, effective March 12, 2014, required that the fund maintain an annual average balance; provided that the fund shall be used to assist qualified students and legacy students; in Subsection A, in the



second sentence, after "administered by the", changed "commission on higher education" to "department"; and at the beginning of the fourth sentence, added "The fund shall maintain an annual average balance of two million dollars (\$2,000,000), and"; and in Subsection B, after "Money in the", deleted "lottery tuition", changed "is" to "shall be", after "shall be appropriated", added "by the legislature", after "by the legislature", changed "commission on higher education" to "department", and after "tuition assistance for", deleted the "New Mexico undergraduates as provided by law" and added "qualified students and

legacy students as provided in the Legislative Lottery Tuition Scholarship Act".

**Appropriations.** — Laws 2014, ch. 80, § 9, effective March 12, 2014, appropriated \$11,000,000 from the student financial aid fund of the higher education department to the lottery tuition fund for expenditure in fiscal year 2014 and subsequent fiscal years to supplement the lottery tuition fund. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert.

## **21-21N-6. Department rulemaking and reporting.**

A. The department shall promulgate rules setting forth explicit criteria in accordance with the Legislative Lottery Tuition Scholarship Act for:

- (1) student qualification and continuing eligibility; and
- (2) calculating the tuition scholarship award amount pursuant to Section 4, [21-21N-4 NMSA 1978] of the Legislative Lottery Tuition Scholarship Act and guidelines for the administration of the tuition scholarship program.

B. The department shall report by November 1 of each year to the legislative finance committee and the department of finance and administration on:

- (1) the status of the fund;
- (2) tuition scholarship program participation data aggregated for each public post-secondary educational institution to show:
  - (a) the number of qualified students and the number of legacy students who received tuition scholarships in the prior twelve-month period;
  - (b) the total number of students, including qualified students and legacy students, enrolled in the prior twelve-month period;
  - (c) for each semester, the amount of tuition scholarships funded and the amount of tuition costs that were not offset by the tuition scholarship; and
  - (d) the number of qualified students and the number of legacy students who graduated with a degree and, for each qualified student, the number of consecutive semesters and non-consecutive semesters attended prior to graduation; and
- (3) any additional information required or requested by the legislative finance committee or the department of finance and administration.

**History:** Laws 2014, ch. 80, § 6.

**Emergency clauses.** — Laws 2014, ch. 80, § 11, contained an emergency clause and was approved March 12, 2014.

## **21-21N-7. Lottery student community outreach pilot project; tuition scholarship recipients; additional requirements; mentoring; training.**

A. The "lottery student community outreach pilot project" is created as a six-year study that encourages students who receive a tuition scholarship pursuant to the Legislative Lottery Tuition Scholarship Act at participating public post-secondary educational institutions or tribal colleges to volunteer to provide community outreach, chiefly through mentoring public school students. Tuition scholarship students are not required to participate to maintain their tuition scholarship. The purpose of the pilot project is to demonstrate that:

- (1) both mentors and mentees receive similar benefits, including improved grades and on-time graduation and a renewed sense of confidence, purpose and community and civic engagement;
- (2) this service improves the community in which the student volunteer works and the public school student lives;
- (3) mentoring by young adults can help disadvantaged public school students narrow the achievement gap; improve cognitive, social and behavioral skills; and lead to higher test scores and success in school; and

(4) mentoring can also help the student volunteer improve the student volunteer's skills, test scores and success in college and inculcate civic and social engagement in community life.

B. The pilot project shall be administered by the department and shall be conducted with at least three public post-secondary educational institutions around the state, ideally with at least one from the research institutions, at least one from the comprehensive universities or tribal colleges and at least one from the branch and independent community colleges and with at least five hundred tuition scholarship students. Preference for the pilot project shall be given to institutions in areas with high poverty rates and in public schools with eighty-five percent or more of the students eligible for free or reduced-fee lunch and high English language learner populations. The department may expand the pilot project during its term to more participants.

C. The department shall certify a list of nonprofit community- and education-oriented organizations that maintain relationships with public schools with which student volunteers may work. The organizations shall identify public schools in their areas that are interested in having mentors and shall develop a mentoring training program for student volunteers. The organizations shall also identify community-based outreach or specific community-based projects appropriate for students in their first program semester or students unable to mentor during the school year.

D. A participating community- and education-oriented organization shall monitor and evaluate the work of the student volunteers and the time spent mentoring or participating in community-based projects as well as the progress of the public school students being mentored.

E. The department shall determine application requirements and procedures for public post-secondary educational institutions, tribal colleges, nonprofit community- and education-oriented organizations and student volunteers to apply for the pilot project, criteria to evaluate applications and quantitative and qualitative measures of the pilot project's efficacy.

F. In addition to other requirements and qualifications in the Legislative Lottery Tuition Scholarship Act, a tuition scholarship student who participates in the pilot project shall provide at least two hours per week of community outreach with public school students in the area of the public post-secondary educational institution or tribal college the student attends. The community outreach shall consist of:

(1) partnering with community-based organizations and assisting with community-based projects;

(2) mentoring public school students; or

(3) mentoring first-year college students.

G. The following schedule of community outreach for student volunteers is:

(1) students in their first program semester shall partner with a community-based organization to assist it in community outreach or specific community-based projects;

(2) students in their sophomore and junior years shall mentor students in grades kindergarten through twelve; and

(3) students in their senior year shall mentor freshmen college students.

H. If a tuition scholarship student who wants to participate is unable to perform the community outreach service during the school year because of class load, work requirements or other reasons, the student volunteer may volunteer for an approved community outreach project that will be available for the student to participate in during semester breaks or the summer for a total of at least thirty-two hours.

I. Public schools that choose to participate in the pilot project shall identify willing students who would benefit from participation. The student's teacher or school principal shall work with the nonprofit organization and the student volunteer to determine what activities and types of engagement would benefit the mentee student.

J. The department shall establish reporting and evaluation requirements for all participants in the pilot project. The department shall provide interim and final reports annually to the governor and the legislature.

K. The participating public post-secondary educational institutions, tribal colleges, nonprofit community- and education-oriented organizations and public schools shall actively seek public and private grants and donations for any costs of the pilot project. Grants and donations shall be kept and expended as other grants and donations of the institution, tribal college, organization or public school.



**History:** Laws 2015, ch. 84, § 2; 2019, ch. 54, § 5.

The 2019 amendment, effective July 1, 2019, included tribal colleges in the lottery student community outreach pilot project, and added "tribal colleges" throughout the section.

**Applicability.** — Laws 2015, ch. 84, § 3 provided that the provisions of Laws 2015, ch. 84 apply to the fall 2016 and subsequent semesters of the lottery student community outreach pilot project's term.

## ARTICLE 210

### Teacher Preparation Affordability

Sec. 21-210-1. Short title.

21-210-2. Definitions.

21-210-3. Conditions for eligibility.

21-210-4. Scholarship authorized; administration; preference in scholarship awards.

Sec. 21-210-5.

21-210-5. Duration of scholarship.

21-210-6. Termination of scholarship.

21-210-7. Fund created.

#### 21-210-1. Short title.

Sections 7 through 14 [13] [21-210-1 through 21-210-7 NMSA 1978] of this act may be cited as the "Teacher Preparation Affordability Act".

**History:** Laws 2019, ch. 193, § 7.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Effective dates.** — Laws 2019, ch. 193 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

#### 21-210-2. Definitions.

As used in the Teacher Preparation Affordability Act:

- A. "department" means the higher education department;
- B. "eligible student" means a New Mexico resident who is enrolled or enrolling at least half-time in an accredited public education department-approved teacher preparation program at a New Mexico public post-secondary educational institution or tribal college at any time later than one hundred twenty days following high school graduation or the award of a high school equivalency credential and who is pursuing a teaching degree;
- C. "scholarship" means a teacher preparation affordability scholarship; and
- D. "tribal college" means a tribally, federally or congressionally chartered tribal post-secondary educational institution located in New Mexico that is accredited by the north central association of colleges and schools.

**History:** Laws 2019, ch. 193, § 8.

**Effective dates.** — Laws 2019, ch. 193 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

#### 21-210-3. Conditions for eligibility.

A scholarship may be awarded to an eligible student who:

- A. has not earned appropriate educational credentials to be licensed as a teacher by the public education department;
- B. has demonstrated financial need consistent with the criteria promulgated by the department; and
- C. has complied with other rules promulgated by the department to carry out the provisions of the Teacher Preparation Affordability Act.

**History:** Laws 2019, ch. 193, § 9.

**Effective dates.** — Laws 2019, ch. 193 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## **21-210-4. Scholarship authorized; administration; preference in scholarship awards.**

A. The department shall administer the Teacher Preparation Affordability Act and shall promulgate rules to carry out the provisions of that act.

B. Scholarships shall be awarded to qualified eligible students. Qualifications shall be determined by rule of the department.

C. The department shall allocate money to public post-secondary educational institutions and tribal colleges based on a student need formula calculated according to income reported on the free application for federal student aid, on the number of students enrolled in each public education department-approved teacher preparation program at a New Mexico public post-secondary educational institution or tribal college and on the percentage of the teacher preparation program's students classified as returning adults who are otherwise ineligible for state financial aid.

D. Public post-secondary educational institutions and tribal colleges shall make awards to qualifying eligible students based on financial need in an amount not to exceed six thousand dollars (\$6,000) per year for not more than five years as determined by rule of the department.

E. Public post-secondary educational institutions and tribal colleges shall make awards first to qualifying eligible students who:

(1) are English language learners;

(2) are minority students; or

(3) have declared intent to teach in a high-need teacher position as defined by the public education department.

F. After scholarships have been awarded to eligible students pursuant to Subsection E of this section, a public post-secondary educational institution or tribal college shall award scholarships to other eligible students as determined by department rule.

G. Money for the scholarship shall be placed in an account at the public post-secondary educational institution or tribal college in the name of the eligible student, and the money may be drawn upon to pay educational expenses charged by the institution, including tuition, fees, books and course supplies, and living expenses.

**History:** Laws 2019, ch. 193, § 10.

**Effective dates.** — Laws 2019, ch. 193 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## **21-210-5. Duration of scholarship.**

Each scholarship is for a period of one semester. A scholarship may be renewed as long as the eligible student continues to meet the conditions of eligibility, until the eligible student graduates from a public post-secondary educational institution or tribal college.

**History:** Laws 2019, ch. 193, § 11.

**Effective dates.** — Laws 2019, ch. 193 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## **21-210-6. Termination of scholarship.**

A scholarship is terminated upon occurrence of one or more of the following:

A. the eligible student withdraws from the public post-secondary educational institution or tribal college or from the teacher preparation program or the eligible student fails to remain at least a half-time student;

B. the eligible student fails to achieve satisfactory academic progress; or

C. the eligible student is in substantial noncompliance with the Teacher Preparation Affordability Act or the rules promulgated pursuant to that act.



**History:** Laws 2019, ch. 193, § 12.

**Effective dates.** — Laws 2019, ch. 193 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## 21-21O-7. Fund created.

The "teacher preparation affordability scholarship fund" is created as a nonreverting fund in the state treasury that consists of income from investment of the fund; specified distributions; appropriations; and unspecified gifts, grants and donations to the fund. Money in the fund is subject to appropriation by the legislature to the department for scholarship awards as provided in the Teacher Preparation Affordability Act. Expenditures from the fund shall be by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of higher education or the secretary's authorized representative.

**History:** Laws 2019, ch. 193, § 13.

**Effective dates.** — Laws 2019, ch. 193 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

# ARTICLE 21P

## Grow Your Own Teachers

Sec.

- 21-21P-1. Short title.
- 21-21P-2. Definitions.
- 21-21P-3. Fund created; method of payment.
- 21-21P-4. Educational assistants; teacher preparation; professional leave.

Sec.

- 21-21P-5. Conditions for eligibility.
- 21-21P-6. Scholarship authorized; administration; preference in scholarship awards.
- 21-21P-7. Duration of scholarship.
- 21-21P-8. Termination of scholarship.

## 21-21P-1. Short title.

Sections 1 through 8 [21-21P-1 through 21-21P-8 NMSA 1978] of this act may be cited as the "Grow Your Own Teachers Act".

**History:** Laws 2019, ch. 230, § 1.

**Effective dates.** — Laws 2019, ch. 230 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

**Temporary provisions.** — Laws 2019, ch. 230, § 9 provided:

A. At any time before releasing proposed initial rules for the Grow Your Own Teachers Act, the higher education department shall consult with the public education department, and the two departments shall convene or survey a geographically representative sample of educational assistants who want to pursue higher education and teachers who began their education careers as

educational assistants to hear problems and concerns based on their experiences, challenges and expectations in pursuing higher education in general and teacher licensure in particular. The higher education department shall take those problems and concerns into account when issuing proposed rules.

B. The public education department shall report the findings from the consultation or survey of educational assistants and teachers who began their career as educational assistants to all educational assistants in school districts, charter schools, constitutional special schools, state institutions and state agencies that employ educational assistants and shall include copies of the Grow Your Own Teachers Act and the proposed rules.

## 21-21P-2. Definitions.

As used in the Grow Your Own Teachers Act:

- A. "department" means the higher education department;
- B. "public school" includes constitutional special schools and state institutions and state agencies that educate children;
- C. "school employee" means a resident of New Mexico who is authorized to work in the United States and who has been employed by a public school in a position that works directly with students for at least two years and is in good standing with the school district and who is enrolled in or accepted by an undergraduate teacher preparation program at a regionally accredited public post-secondary educational institution in New Mexico; and

D. "teacher preparation program" means a program that has been formally approved as meeting the requirements of the public education department and that leads to level one teacher licensure, including a program in a two-year post-secondary educational institution that meets the requirements for a teacher education transfer module established pursuant to Subsection C of Section 21-1B-4 NMSA 1978.

**History:** Laws 2019, ch. 230, § 2; 2021, ch. 11, § 1.

The 2021 amendment, effective July 1, 2021, defined "school employee", removed the definition of "educational assistant", and revised the definition of "public school" as used in the Grow Your Own Teachers Act; deleted former

Subsection B, which defined "educational assistant", and redesignated former Subsection C as new Subsection B; in Subsection B, after "educate children", deleted "and employ educational assistants"; and added a new Subsection C.

### 21-21P-3. Fund created; method of payment.

The "grow your own teachers fund" is created in the state treasury. The fund consists of money appropriated for scholarships pursuant to the Grow Your Own Teachers Act, earnings from investment of the fund, gifts, grants and donations to the fund. Money in the fund shall not revert at the end of a fiscal year. Money in the fund is subject to appropriation by the legislature to implement the provisions of the Grow Your Own Teachers Act. The fund shall be administered by the department. All payments of money for loans shall be made on warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of higher education or the secretary's designated representative.

**History:** Laws 2019, ch. 230, § 3; 2021, ch. 11, § 2.

The 2021 amendment, effective July 1, 2021, clarified that money in the "grow your own teachers fund" is subject

to legislative appropriation; and added "Money in the fund is subject to appropriation by the legislature to implement the provisions of the Grow Your Own Teachers Act".

### 21-21P-4. Educational assistants; teacher preparation; professional leave.

A. A school employee who wants to become a teacher may petition the public school in which the school employee is employed to grant professional leave for college classes, examinations and practice teaching, as needed. The public school shall grant professional leave if the school employee is a recipient of a scholarship pursuant to the Grow Your Own Teachers Act and the professional leave minimizes disruption to the school day. The public school may require school employees to make up hours in exchange for hours missed during the school day.

B. If a school employee who is accepted into or enrolled in a teacher preparation program offered by a regionally accredited public post-secondary educational institution in New Mexico does not live within a reasonable distance of the public post-secondary educational institution's campus, the public school shall allow the school employee to use the distance education resources of the school district to take classes.

**History:** Laws 2019, ch. 230, § 4; 2021, ch. 11, § 3.

The 2021 amendment, effective July 1, 2021, substituted each occurrence of "educational assistant" with "school employee" to conform to revised definitions in the Grow Your Own Teachers Act, and clarified provisions related to professional leave for recipients of a scholarship pursuant to the Grow Your Own Teachers Act; replaced

each occurrence of "educational assistant" with "school employee" throughout; and in Subsection A, after "Grow Your Own Teachers Act", added "and the professional leave minimizes disruption to the school day. The public school may require school employees to make up hours in exchange for hours missed during the school day".

### 21-21P-5. Conditions for eligibility.

A scholarship may be awarded to a school employee who:

A. has not earned appropriate educational credentials to be licensed as a teacher by the public education department;

B. has demonstrated financial need consistent with the criteria promulgated by the department; and



C. has complied with other rules promulgated by the department to carry out the provisions of the Grow Your Own Teachers Act.

**History:** Laws 2019, ch. 230, § 5; 2021, ch. 11, § 4.  
The 2021 amendment, effective July 1, 2021, expanded the scholarship program eligibility to allow school

employees, as defined in the Grow Your Own Teachers Act, to qualify; and after "awarded to", changed "an educational assistant" to "a school employee".

## 21-21P-6. Scholarship authorized; administration; preference in scholarship awards.

A. The department shall administer the Grow Your Own Teachers Act and shall promulgate rules to carry out the provisions of that act. The department shall consult the public education department any time the department promulgates rules relating to the Grow Your Own Teachers Act.

B. Scholarships shall be awarded to qualified school employees. Qualifications shall be determined by rule of the department.

C. The department shall allocate money to public post-secondary educational institutions based on a student need formula calculated according to income reported on the free application for federal student aid and on the number of students enrolled in each public education department-approved teacher preparation program at a New Mexico public post-secondary educational institution.

D. Public post-secondary educational institutions shall make awards to qualifying eligible students based on financial need in an amount not to exceed six thousand dollars (\$6,000) per year for not more than five years as determined by rule of the department.

E. Money for the scholarship shall be placed in an account at the public post-secondary educational institution in the name of the school employee, and the money may be drawn upon to pay educational expenses charged by the institution, including tuition, fees, books and course supplies.

**History:** Laws 2019, ch. 230, § 6; 2021, ch. 11, § 5.  
The 2021 amendment, effective July 1, 2021, expanded the scholarship program eligibility to allow school employees, as defined in the Grow Your Own Teachers Act, to qualify, and required the higher education department to consult the public education department any time the higher education department promulgates rules related to the Grow Your Own Teachers Act"; and in Subsection A, added the last sentence, and changed "educational assistants" to "school employees" throughout.

**Temporary provisions.** — Laws 2019, ch. 230, § 9 provided:

A. At any time before releasing proposed initial rules for the Grow Your Own Teachers Act, the higher education department shall consult with the public education department, and the two departments shall convene or survey a geographically representative sample of educational

assistants who want to pursue higher education and teachers who began their education careers as educational assistants to hear problems and concerns based on their experiences, challenges and expectations in pursuing higher education in general and teacher licensure in particular. The higher education department shall take those problems and concerns into account when issuing proposed rules.

B. The public education department shall report the findings from the consultation or survey of educational assistants and teachers who began their career as educational assistants to all educational assistants in school districts, charter schools, constitutional special schools, state institutions and state agencies that employ educational assistants and shall include copies of the Grow Your Own Teachers Act and the proposed rules.

## 21-21P-7. Duration of scholarship.

Each scholarship is for a period of one semester. A scholarship may be renewed, as long as the school employee continues to meet the conditions of eligibility, until the school employee graduates from a public post-secondary educational institution.

**History:** Laws 2019, ch. 230, § 7; 2021, ch. 11, § 6.  
The 2021 amendment, effective July 1, 2021, applied the provisions of the section to "school employees" as

newly defined in the Grow Your Own Teachers Act; and replaced "educational assistant" with "school employee" throughout the section.

## 21-21P-8. Termination of scholarship.

A scholarship is terminated upon occurrence of one or more of the following:

A. the school employee withdraws from the public post-secondary educational institution or from the teacher preparation program, or the school employee fails to remain at least a half-time student;

B. the school employee fails to achieve satisfactory academic progress; or

C. the school employee is in substantial noncompliance with the Grow Your Own Teachers Act or the rules promulgated pursuant to that act.

**History:** Laws 2019, ch. 230, § 8; 2021, ch. 11, § 7.

The 2021 amendment, effective July 1, 2021, applied the provisions of the section to "school employees" as

newly defined in the Grow Your Own Teachers Act; and replaced "educational assistant" with "school employee" throughout the section.

## ARTICLE 21Q

### Community Governance Attorney

Sec.

21-21Q-1. Short title.

21-21Q-2. Definitions.

21-21Q-3. Community governance attorney and conditional tuition waiver program created; administration; rulemaking selection process; repayment.

Sec.

21-21Q-4. Commission; duties.

21-21Q-5. Fund created; disbursement.

#### 21-21Q-1. Short title.

This act [21-21Q-1 through 21-21Q-5 NMSA 1978] may be cited as the "Community Governance Attorney Act".

**History:** Laws 2019, ch. 43, § 1.

**Effective dates.** — Laws 2019, ch. 43, § 6 made Laws 2019, ch. 43, § 1 effective July 1, 2019.

#### 21-21Q-2. Definitions.

As used in the Community Governance Attorney Act:

A. "acequia" means a political subdivision organized pursuant to Chapter 73, Article 2 or 3 NMSA 1978;

B. "colonia" means a community as defined in the Colonias Infrastructure Act [Chapter 6, Article 30 NMSA 1978];

C. "commission" means the community governance attorney commission;

D. "community governance attorney" means an attorney with a legal practice that is focused on the requirements and challenges faced by small political subdivisions and unincorporated communities, including the promulgation of land and water use ordinances, contracting and the collection or payment of taxes and fees;

E. "course of study" means a law student's legal education, including clinical and internship programs and preparation courses for the state bar examination;

F. "department" means the higher education department;

G. "fund" means the community governance attorney and conditional tuition waiver fund;

H. "land grant-merced" means a political subdivision organized pursuant to Chapter 49, Article 1 or 4 NMSA 1978;

I. "participant" means an individual who has applied to participate in, has been accepted into and has signed a contract agreeing to the terms of the program;

J. "program" means the community governance attorney and conditional tuition waiver program;

K. "secretary" means the secretary of higher education;

L. "university" means the university of New Mexico school of law; and

M. "waiver" means a loan to cover tuition, fees and a reasonable living stipend that is forgiven in whole or in part if the participant renders service as a community governance attorney.



**History:** Laws 2019, ch. 43, § 2. **Effective dates.** — Laws 2019, ch. 43, § 6 made Laws 2019, ch. 43, § 2 effective July 1, 2019.

### **21-21Q-3. Community governance attorney and conditional tuition waiver program created; administration; rulemaking selection process; repayment.**

A. The "community governance attorney and conditional tuition waiver program" is created and shall be administered by the department. The department shall:

(1) promulgate rules for implementing the program and for a reasonable living stipend in consultation with the university; provided that the maximum living stipend shall be based upon the availability of funds and information provided by the university regarding the current cost of attendance at the university;

(2) publicize the program to law students and to prospective law students;

(3) collect and manage repayment from students who do not meet their obligations under the program; and

(4) solicit and accept funds for the program, including grants and donations.

B. Participants shall enter the program in their final year of law school. The department shall select participants according to rules it promulgates and, in consultation with the commission, shall create a standard process for law students to apply to participate in the program.

C. The department shall award no more than two new waivers a year, in addition to renewing existing waivers for eligible participants, subject to the availability of funding.

D. Participation in the program shall be evidenced by a contract between the participant and the department. The contract shall provide for the payment of a participant's waiver and shall be conditioned upon the participant fulfilling the program obligations and meeting the university's standards for satisfactory academic progress. An applicant to the program shall sign the contract prior to being accepted into the program.

E. The contract shall include the following terms for repayment of the waiver:

(1) interest shall accrue upon termination of the participant's course of study at the following interest rates:

(a) eighteen percent per year if the participant completes a course of study and no portion of the principal and interest is forgiven pursuant to Subsection F of this section; and

(b) seven percent per year in all other cases; and

(2) the maximum period for repayment shall be ten years, commencing six months from the date the participant completes or discontinues the course of study.

F. The contract shall provide that the department forgive fifty percent of a waiver for each year that a participant is employed full time as a community governance attorney with a maximum salary of not more than fifty thousand dollars (\$50,000) per year, subject to adjustment by the commission pursuant to Subsection G of this section.

G. The commission may approve subsequent increases in the maximum salary established pursuant to Subsection F of this section; provided that the maximum salary shall not exceed the salary rate for entry-level attorneys paid by legal service assistance entities in New Mexico that receive funding from the federally established legal services corporation.

**History:** Laws 2019, ch. 43, § 3; 2021, ch. 103, § 1.

The 2021 amendment, effective July 1, 2021, provided for the community governance attorney commission to adjust the maximum allowable salaries for attorneys pursuant to the Community Governance Attorney Act;

in Subsection F, after "community governance attorney with a", added "maximum", and after "(\$50,000) per year", added "subject to adjustment by the commission pursuant to Subsection G of this section."; and added Subsection G.

### **21-21Q-4. Commission; duties.**

A. The "community governance attorney commission" is created. The commission shall be composed of five members as follows:

(1) the secretary or the secretary's designee;

(2) the dean of the university or the dean's designee; and

(3) three members appointed by the governor; provided that one member shall be a member of an acequia, one member shall be a current or past member of the land grant council and one member shall be a current or past member of the colonias infrastructure board and a resident of a colonia.

B. Staff and meeting space for the commission shall be provided by the university. The commission shall elect a chair and such other officers as it deems appropriate and shall meet at the call of the chair. Members of the commission shall receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation.

C. The commission shall:

(1) make recommendations to the department on applicants for the program;

(2) advise the department on the adoption of rules to implement the provisions of the Community Governance Attorney Act;

(3) pursuant to the Procurement Code [13-1-28 through 13-1-199 NMSA 1978], solicit proposals for disbursement from the fund for legal services;

(4) enter into contracts for expenditure of the fund for the purpose of providing community governance attorney services for acequias, land grants-mercedes and low-income residents of colonias on issues regarding the governance of colonias. The contracts shall be entered into with the university or with nonprofit organizations whose mission is to provide a range of free legal services to low-income New Mexicans. No contract shall provide funding in excess of one-half of a full-time community governance attorney position, and each contract shall be executed only with service providers that have secured sufficient matching nonstate funding to provide a full-time position; and

(5) adopt such rules as are necessary to carry out the provisions of this section.

D. The department, pursuant to rules of the commission, shall administer the contracts and programs provided for in this section.

**History:** Laws 2019, ch. 43, § 4.

**Effective dates.** — Laws 2019, ch. 43, § 6 made Laws 2019, ch. 43, § 4 effective July 1, 2019.

## 21-21Q-5. Fund created; disbursement.

A. The "community governance attorney and conditional tuition waiver fund" is created in the state treasury. The fund shall consist of money appropriated, donated or otherwise accruing to the fund. All payments for repayment of waivers and penalties shall be credited to the fund. Balances in the fund shall not revert to any other fund at the end of a fiscal year.

B. Expenditures from the fund shall only be used to make waivers to participants in the program, to pay contracts for community governance attorney services and to pay the administrative expenses associated with the program and collection activity on its behalf; provided that no more than five percent of the annual expenditures from the fund shall be for administrative costs. The department shall require an annual accounting from each organization receiving funds pursuant to this section.

C. All waiver loan payments shall be by warrant drawn by the secretary upon vouchers signed by the designated representative of the department. All disbursements from the fund for community governance attorney services shall be by warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of higher education or the secretary's designee. Money in the fund is subject to appropriation by the legislature to the department for the purposes of carrying out the provisions of the Community Governance Attorney Act.

D. Money disbursed pursuant to this section shall not be used by a recipient to:

(1) support lobbying, as defined in the Lobbyist Regulation Act [Chapter 2, Article 11 NMSA 1978]; or

(2) bring suit against the state.

**History:** Laws 2019, ch. 43, § 5.

**Effective dates.** — Laws 2019, ch. 43, § 6 made Laws 2019, ch. 43, § 5 effective July 1, 2019.



## ARTICLE 21R

### Opportunity Scholarship

Sec.

- 21-21R-1. Short title.  
 21-21R-2. Definitions.  
 21-21R-3. Conditions for eligibility.  
 21-21R-4. Scholarship authorized; administration.

Sec.

- 21-21R-5. Duration of scholarship authorized.  
 21-21R-6. Termination of scholarship authorized.  
 21-21R-7. Fund created.  
 21-21R-8. Department rulemaking and reporting.

#### 21-21R-1. Short title.

This act [21-21R-1 to 21-21R-8 NMSA 1978] may be cited as the "Opportunity Scholarship Act".

**History:** Laws 2022, ch. 42, § 1.

**Effective dates.** — Laws 2022, ch. 42, § 11 made Laws 2022, ch. 42, § 1 effective July 1, 2022.

**Temporary provisions.** — Laws 2022, ch. 42, § 9 provided that on July 1, 2022, the Opportunity Scholarship Act:

A. all balances of the legislative endowment scholarship fund and the college affordability endowment fund shall be transferred to the opportunity scholarship fund; and

B. any appropriation to the opportunity scholarship program within the General Appropriation Act of 2022 shall be transferred to the opportunity scholarship fund.

#### 21-21R-2. Definitions.

As used in the Opportunity Scholarship Act:

A. "community college" means a branch community college of a four-year state educational institution, a two-year state educational institution or a community college or technical and vocational institute established pursuant to Chapter 21, Article 13 or 16 NMSA 1978;

B. "department" means the higher education department;

C. "eligible student" means a New Mexico resident who is enrolled or enrolling in at least six credit hours, excluding the summer semester, in a public post-secondary educational institution or tribal college at any time following high school graduation or the award of a high school equivalency credential;

D. "public post-secondary educational institution" means a four-year state educational institution or a community college;

E. "scholarship" means an opportunity scholarship;

F. "state educational institution" means an institution of higher education enumerated in Article 12, Section 11 of the constitution of New Mexico; and

G. "tribal college" means a tribally, federally or congressionally chartered post-secondary educational institution located in New Mexico that is accredited by the higher learning commission.

**History:** Laws 2022, ch. 42, § 2.

**Effective dates.** — Laws 2022, ch. 42, § 11 made Laws 2022, ch. 42, § 2 effective July 1, 2022.

#### 21-21R-3. Conditions for eligibility.

A. A scholarship may be awarded to an eligible student who:

- (1) has not earned a baccalaureate degree at the time the scholarship is awarded;
- (2) is enrolled in a minimum of six credit hours per semester and no more than eighteen credit hours per fall or spring semester;
- (3) maintains a cumulative grade point average of 2.5 on a 4.0 scale; and
- (4) has complied with other rules promulgated by the department to carry out the provisions of the Opportunity Scholarship Act.

B. A scholarship may be awarded for the summer semester; provided that the student enrolls in no less than three and no more than nine credit hours.

C. A scholarship may be awarded for one credit-bearing certificate or certificates, only one associate degree and only one bachelor's degree per student.

D. A scholarship for a credit-bearing certificate may only be awarded where data indicates that the certificate is in high demand by New Mexico employers as determined by the department in consultation with the workforce solutions department.

E. Students with disabilities or exceptional mitigating circumstances may petition for a waiver of eligibility requirements on a per semester basis. The lead financial aid officer of the public post-secondary institution or tribal college shall exercise professional judgment in consideration of any request for a waiver.

**History:** Laws 2022, ch. 42, § 3.

**Effective dates.** — Laws 2022, ch. 42, § 11 made Laws 2022, ch. 42, § 3 effective July 1, 2022.

#### **21-21R-4. Scholarship authorized; administration.**

A. The department shall administer the Opportunity Scholarship Act and shall promulgate rules to carry out the provisions of that act.

B. Scholarships shall be awarded to qualified eligible students in an amount not to exceed one hundred percent of tuition and fees after all other state financial aid has been applied. Qualifications shall be determined by rule of the department.

C. Prior to June 1 of each year, based on the amount appropriated by the legislature from the opportunity scholarship fund and on the projected enrollment at all public post-secondary educational institutions and tribal colleges, the department shall:

- (1) determine the total amount of money available for all scholarships for eligible students;
- (2) determine the award amount for public post-secondary educational institutions and tribal colleges; and

(3) notify all public post-secondary educational institutions and tribal colleges of the determinations made pursuant to Paragraphs (1) and (2) of this subsection.

D. In determining distribution and award amounts for the scholarships, the department shall:

- (1) distribute to all public post-secondary educational institutions and tribal colleges an amount not to exceed the remaining balance in the opportunity scholarship fund; and
- (2) subject to the provisions of Paragraph (1) of this subsection, distribute to each public post-secondary educational institution and tribal college an amount based on the projected enrollment at each public post-secondary educational institution and tribal college.

**History:** Laws 2022, ch. 42, § 4.

**Effective dates.** — Laws 2022, ch. 42, § 11 made Laws 2022, ch. 42, § 4 effective July 1, 2022.

#### **21-21R-5. Duration of scholarship authorized.**

A. Each scholarship is for a period of one semester, including the summer semester. A scholarship may be renewed; provided that the eligible student continues to meet the conditions of eligibility.

B. Scholarships may be provided to an eligible student until the eligible student receives a credit-bearing certificate or certificates.

C. Scholarships may be provided to an eligible student for up to ninety credit hours for the completion of an associate degree.

D. Scholarships may be provided to an eligible student for up to one hundred sixty credit hours for the completion of a bachelor's degree.

E. Scholarships may be provided to an eligible student until the eligible student graduates from a four-year public post-secondary educational institution or tribal college.

**History:** Laws 2022, ch. 42, § 5.

**Effective dates.** — Laws 2022, ch. 42, § 11 made Laws 2022, ch. 42, § 5 effective July 1, 2022.



## 21-21R-6. Termination of scholarship authorized.

A scholarship is terminated upon occurrence of:

- A. withdrawal of the eligible student from the public post-secondary educational institution or tribal college or failure to remain enrolled in at least six credit hours per semester, excluding the summer semester;
- B. failure of the eligible student to achieve satisfactory academic progress set by the public post-secondary educational institution or tribal college; or
- C. substantial noncompliance by the eligible student with the Opportunity Scholarship Act or the rules promulgated pursuant to that act.

**History:** Laws 2022, ch. 42, § 6.

**Effective dates.** — Laws 2022, ch. 42, § 11 made Laws 2022, ch. 42, § 6 effective July 1, 2022.

## 21-21R-7. Fund created.

The "opportunity scholarship fund" is created as a nonreverting fund in the state treasury, consisting of income from investment of the fund and any specified distributions, appropriations, gifts, grants and donations to the fund. Money in the fund is appropriated to the department for scholarship awards as provided in the Opportunity Scholarship Act. Expenditures from the fund shall be by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of higher education or the secretary's authorized representative.

**History:** Laws 2022, ch. 42, § 7.

**Effective dates.** — Laws 2022, ch. 42, § 11 made Laws 2022, ch. 42, § 7 effective July 1, 2022.

**Temporary provisions.** — Laws 2022, ch. 42, § 9 provided that on July 1, 2022, the Opportunity Scholarship Act:

A. all balances of the legislative endowment scholarship fund and the college affordability endowment fund shall be transferred to the opportunity scholarship fund; and

B. any appropriation to the opportunity scholarship program within the General Appropriation Act of 2022 shall be transferred to the opportunity scholarship fund.

## 21-21R-8. Department rulemaking and reporting.

A. The department shall promulgate rules setting forth explicit criteria in accordance with the Opportunity Scholarship Act for:

- (1) student qualification and continuing eligibility;
- (2) calculating the total amount of money necessary to pay for opportunity scholarships at each eligible institution pursuant to Section 4 [21-21R-4 NMSA 1978] of the Opportunity Scholarship Act and guidelines for the administration of the Opportunity Scholarship Act; and
- (3) requirements for the memoranda of understanding regarding institution eligibility to participate in the opportunity scholarship program.

B. The department shall report by November 1 of each year to the legislative finance committee and the department of finance and administration on the:

- (1) status of the opportunity scholarship fund; and
- (2) Opportunity Scholarship Act participation data aggregated for each eligible institution to show the:
  - (a) number of eligible students who received scholarships in the prior academic year;
  - (b) total number of students enrolled in eligible institutions in the prior academic year; and
  - (c) number of eligible students who graduated with a degree and, for each eligible student, the number of consecutive semesters and nonconsecutive semesters attended prior to graduation.

**History:** Laws 2022, ch. 42, § 8.

**Effective dates.** — Laws 2022, ch. 42, § 11 made Laws 2022, ch. 42, § 8 effective July 1, 2022.

## ARTICLE 22

## Medical Student Loans

Sec.

21-22-1. Short title.

21-22-2. Purpose.

21-22-3. Definitions.

21-22-3.1. Repealed.

21-22-4. Medical student loans; higher education department authorized; qualifications.

21-22-5. Delegation of duties to other agencies.

Sec.

21-22-6. Medical student loans; contract terms; repayment.

21-22-7. Contracts; legal assistance; enforcement.

21-22-8. Fund created; method of payment.

21-22-9. Cancellation.

21-22-10. Reports.

## 21-22-1. Short title.

Chapter 21, Article 22 NMSA 1978 may be cited as the "Medical Student Loan for Service Act".

**History:** 1953 Comp., § 73-38A-1, enacted by Laws 1975, ch. 244, § 1; 1991, ch. 262, § 27.

**Cross references.** — For the Osteopathic Medical Student Loan for Service Act, see Chapter 21, Article 22A NMSA 1978.

For the Nursing Student Loan for Service Act, see Chapter 21, Article 22B NMSA 1978.

For the Allied Health Student Loan for Service Act, see Chapter 21, Article 22C NMSA 1978.

For the Health Professional Loan Repayment Act, see Chapter 21, Article 22D NMSA 1978.

For authorization for program of loans to students of healing arts, see N.M. Const., art. IX, § 14.

**The 1991 amendment**, effective June 14, 1991, rewrote this section which read "This act may be cited as the 'Medical Student Loan Act'."

## 21-22-2. Purpose.

The purpose of the Medical Student Loan for Service Act is to meet the emergency currently existing resulting from the shortage of medical doctors and physician assistants in the less populated areas of the state by increasing the number of practitioners in rural areas through a program of loans for medical and physician assistant students. The program shall require as a condition of each loan that the student declare his intent that after licensure he will commence his practice of medicine within one of the areas of the state designated by the commission [department].

**History:** 1953 Comp., § 73-38A-2, enacted by Laws 1975, ch. 244, § 2; 1991, ch. 262, § 28; 1995, ch. 144, § 2; 2005, ch. 321, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Cross references.** — For provisions on the health profession advisory committee, see 21-1-26.8 NMSA 1978.

**The 2005 amendment**, effective June 17, 2005, changed "health profession advisory committee" to "commission".

**The 1995 amendment**, effective July 1, 1995, deleted Subsection B and, in the former Subsection A, deleted the subsection designation, substituted "health profession advisory committee" for "medical shortage area committee" in the second sentence, and made a minor stylistic change at the end.

**The 1991 amendment**, effective June 14, 1991, added "Committee" in the catchline and rewrote the section to the extent that a detailed analysis would be impracticable.

## 21-22-3. Definitions.

As used in the Medical Student Loan for Service Act:

A. "commission" ["department"] means the commission on higher education [higher education department];

B. "loan" means a grant of funds to defray the costs incidental to a medical education under a contract between the commission [department] and a medical student requiring either repayment with interest or repayment in services; and

C. "student" means a resident of New Mexico who is a student enrolled in a school of medicine.



**History:** 1953 Comp., § 73-38A-3, enacted by Laws 1975, ch. 244, § 3; 1982, ch. 34, § 1; 1987, ch. 299, § 11; 1991, ch. 262, § 29.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**The 1991 amendment**, effective June 14, 1991, substituted "Medical Student Loan for Service Act" for "Medical Student Loan Act" in the introductory paragraph and deleted "'board' or" at the beginning of Subsection A.

### 21-22-3.1. Repealed.

**Repeals.** — Laws 1987, ch. 299, § 12 repealed 21-22-3.1 NMSA 1978, as enacted by Laws 1982, ch. 34, § 5, defining "students for the healing arts", effective June 19, 1987.

### 21-22-4. Medical student loans; higher education department authorized; qualifications.

A. The higher education department is authorized to grant a loan to defray the expenses of the medical education of a student deemed qualified by the department to receive the medical education, upon such terms and conditions as may be imposed by regulations of the department.

B. The department shall only receive, pass upon and allow or disallow those applications for loans made by those students enrolled or accepted by colleges of medicine who are bona fide citizens and residents of the United States and of New Mexico and who declare their intent to practice as physicians within designated areas of the state.

C. The department shall make a full and careful investigation of the ability, character and qualifications of each applicant and determine the applicant's fitness to become a recipient of a student loan. The investigation of each applicant shall include an investigation of the ability of the applicant and the applicant's parents or guardians to pay the applicant's expenses for a medical education. The department shall give preference to qualified applicants who:

(1) are unable, or whose parents or guardians are unable, to pay the applicant's expenses in obtaining a medical education; and

(2) are attending an accredited New Mexico medical school.

D. The department shall arrange for loan recipients to receive assistance in locating, planning and implementing the establishment and maintenance of a medical practice in a designated underserved area.

**History:** 1953 Comp., § 73-38A-4, enacted by Laws 1975, ch. 244, § 4; 1982, ch. 34, § 2; 1991, ch. 262, § 30; 2017, ch. 138, § 1.

**Compiler's notes.** — House Bill 126, enacted by the Fifty-Third Legislature, First Session, 2017, was vetoed by the governor on March 15, 2017. Pursuant to the First Judicial District Court's decision in *State ex rel. New Mexico Legislative Council v. Honorable Susana Martinez, Governor of the State of New Mexico et al.*, D-101-CV-2017-01550, and affirmed by S.Ct. Order No. S-1-SC-36731, on April 25, 2018, which held that Article IV, Section 22 of the New Mexico Constitution requires that objections must accompany a returned bill, House Bill 126 was chaptered into law by the Secretary of State.

**The 2017 amendment**, effective March 15, 2017, required the department of higher education to give preference for financial assistance to qualified applicants who

are attending an accredited New Mexico medical school, and changed "commission" to "department" throughout the section; in Subsection A, at the beginning of the sentence, changed "commission" to "higher education department"; and in Subsection C, replaced "his" with "the applicant's" throughout the subsection, added the paragraph designation "(1)", and added Paragraph C(2).

**The 1991 amendment**, effective June 14, 1991, substituted, "Commission on higher education" for "Board" in the catchline; substituted "commission" for "board" throughout the section; and made a minor stylistic change in Subsection A.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 19 to 22.

14A C.J.S. Colleges and Universities §§ 7, 31, 33.

### 21-22-5. Delegation of duties to other agencies.

The commission [department] may arrange with other agencies for the performance of services required by the provisions of Section 21-22-4 NMSA 1978.

**History:** 1953 Comp., § 73-38A-5, enacted by Laws 1975, ch. 244, § 5; 1982, ch. 34, § 3; 1991, ch. 262, § 31.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

The 1991 amendment, effective June 14, 1991, substituted "commission" for "board".

## **21-22-6. Medical student loans; contract terms; repayment.**

A. Each applicant who is approved for a loan by the commission [department] may be granted a loan, in such amounts and for such periods as determined by the commission [department], with which to defray expenses incurred in obtaining a medical education at any reputable and accredited medical school in the United States if the applicant files with the commission [department] a declaration of his intent to practice his profession as a licensed physician or physician assistant in areas of New Mexico designated as not being adequately served by medical practitioners.

B. The loans shall not exceed the necessary expenses incurred while attending a medical school or college and shall bear interest at the rate of:

- (1) eighteen percent per year if the student completes his medical education and no portion of the principal and interest is forgiven pursuant to Subsection F of this section; and
- (2) seven percent per year in all other cases.

C. Loans made pursuant to the Medical Student Loan for Service Act shall not accrue interest until:

- (1) the commission [department] determines the loan recipient has terminated the recipient's medical education prior to completion;
- (2) the commission [department] determines the loan recipient has failed to fulfill the recipient's obligation to serve in a health professional shortage area; or
- (3) the commission [department] cancels a contract between a student and the commission [department] pursuant to Section 21-22-9 NMSA 1978.

D. The loan shall be evidenced by a contract between the student and the commission [department] acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum covering the costs of a medical education and shall be conditioned upon the repayment of the loan to the state over a period established by the commission [department] in consultation with the student after completion of medical school and any period of internship or residency required to complete the student's education.

E. Loans made to students who fail to complete their medical education shall become due immediately upon termination of their medical education. The commission [department], in consultation with the student, shall establish terms of repayment, alternate service or cancellation terms.

F. The contract shall provide that the commission [department] shall forgive a portion of the loan for each year that a loan recipient practices his profession as a licensed physician or physician assistant in areas approved by the commission [department] as not being adequately served by medical practitioners. The loan shall be forgiven as follows:

- (1) loan terms of one year shall require one year of practice in a designated health professional shortage area. Upon completion of service, one hundred percent of the loan shall be forgiven;
- (2) loan terms of two years shall require one year of practice in a designated health professional shortage area for each year of the loan. Upon completion of the first year of service, fifty percent of the loan shall be forgiven. Upon completion of the second year of service, the remainder of the loan shall be forgiven; and
- (3) for loan terms of three years or more, forty percent of the loan shall be forgiven upon completion of the first year of service in a designated health professional shortage area, thirty percent of the loan shall be forgiven upon completion of the second year of service and the remainder of the loan shall be forgiven upon completion of the third year of service.

G. Recipients shall serve a complete year in order to receive credit for that year. The minimum credit for a year shall be established by the commission [department].

H. If a loan recipient completes his professional education and does not serve in a health professional shortage area, the commission [department] shall assess a penalty of up to three times the principal due, plus eighteen percent interest, unless the commission [department] finds acceptable extenuating circumstances for why the student cannot serve. If the commission [department] does not find acceptable extenuating circumstances for the student's failure to carry out his declared intent to serve in a health professional shortage area in the state, the commission



[department] shall require immediate repayment of the loan plus the amount of any interest and penalty assessed pursuant to this subsection.

I. The commission [department] shall adopt regulations to implement the provisions of this section. The regulations may provide for the repayment of medical student loans in annual or other periodic installments.

**History:** 1953 Comp., § 73-38A-6, enacted by Laws 1975, ch. 244, § 6; 1982, ch. 34, § 4; 1991, ch. 262, § 32; 1994, ch. 57, § 1; 1995, ch. 144, § 3; 2005, ch. 321, § 2; 2005, ch. 323, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**2005 Multiple Amendments.** — Laws 2005, ch. 321, § 2 and Laws 2005, ch. 323, § 1 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2005, ch. 323, § 1, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2005, ch. 321, § 2 and Laws 2005, ch. 323, § 1 are described below. To view the session laws in their entirety, see the 2005 session laws on *NMOneSource.com*.

Laws 2005, ch. 323, § 1, effective June 17, 2005, added Subsections C(1) through (3); deleted former references to repayment of the loan "together with interest" and loan "principal and interest"; in Subsection D, deleted the former provision which provided that the contract shall provide that immediately upon completion or termination of the student's medical education, all interest then accrued shall be capitalized; changed "principal plus accrued interest" to "loan"; and in Subsection H, provided that if the commission does not find acceptable circumstances for a student's failure to serve in a health professional shortage area, the commission shall require repayment of the loan plus the amount of any interest.

Laws 2005, ch. 321, § 2, effective June 17, 2005, in Subsection E, changed "health professional advisory committee" to "commission".

**The 1995 amendment,** effective July 1, 1995, in Subsection E, substituted "health profession advisory committee" for "New Mexico medical shortage area committee", substituted Paragraphs (1) to (3) for a formula forgiving

forty percent of the principal in the first year and thirty percent in the second and third years, regardless of the loan term, and made a stylistic change; redesignated the last two sentences of Subsection E as Subsection F; redesignated former Subsections F and G as Subsections G and H; and substituted "health professional shortage" for "medical shortage" in two places in Subsection G.

**The 1994 amendment,** effective July 1, 1994, substituted "if the applicant" for "providing the applicant" in Subsection A and "shall" for "may" in the first two sentences in Subsection E, added present Subsection F, and redesignated former Subsection F as present Subsection G.

**The 1991 amendment,** effective June 14, 1991, substituted "commission" for "board" throughout the section; inserted "or physician assistant" near the end of Subsection A and in the first sentence in Subsection E; in Subsection C, substituted "established by the commission in consultation with the student" for "not to exceed four years, negotiated between the student and the state" in the first sentence and added the final sentence; rewrote the second sentence in Subsection D which read "These students shall negotiate with the state a term of repayment not to exceed four years"; in Subsection E, rewrote the formula in the second sentence which read "forty percent for the first year served, thirty percent for the second year and thirty percent for the third year" and substituted "established by the commission" for "six thousand dollars (\$6,000) in principal plus accrued interest" at the end of the final sentence; and made minor stylistic changes throughout the section.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Constitutionality of statute authorizing state to loan money or engage in business of a private nature, 14 A.L.R. 1151, 115 A.L.R. 1456.

81A C.J.S. States §§ 155, 208, 225.

## 21-22-7. Contracts; legal assistance; enforcement.

The general form of the contract provided for in Section 21-22-6 NMSA 1978 shall be prepared and approved by the attorney general and signed by the student and a designee of the commission [department] on behalf of the state. The commission [department] is vested with full and complete authority and power to sue in its own name for any balance due the state from any student on any such contract.

**History:** 1953 Comp., § 73-38A-7, enacted by Laws 1975, ch. 244, § 7; 1991, ch. 262, § 33.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**The 1991 amendment,** effective June 14, 1991, inserted "provided for in Section 21-22-6 NMSA 1978" and

substituted "a designee of the commission" for "the chairman and executive secretary of the board" in the first sentence and "commission" for "board" in the second sentence.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 5.

14A C.J.S. Colleges and Universities § 17.

## 21-22-8. Fund created; method of payment.

There is created in the state treasury the "medical student loan for service fund". All money appropriated for loans to medical students under the Medical Student Loan for Service Act shall

be credited to the fund. All payments of principal and interest on loans made pursuant to that act received by the commission [department] shall be deposited with the state treasurer to the credit of the fund. All payments of funds for loans shall be made upon vouchers signed by the designated representatives of the commission [department].

**History:** 1953 Comp., § 73-38A-8, enacted by Laws 1975, ch. 244, § 8; 1989, ch. 324, § 14; 1991, ch. 262, § 34.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

The 1991 amendment, effective June 14, 1991, inserted "for service" in the first sentence and "for Service" in the second sentence; deleted "on higher education" following "commission" in the third sentence; substituted

"the designated representatives" for "the chairman and the executive director" in the final sentence; and made a minor stylistic change.

#### ANNOTATIONS

**General rule is that interest is accretion or increment to principal fund earning it, and becomes a part of that fund.** 1980 Op. Att'y Gen. No. 80-17.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63A Am. Jur. 2d Public Funds § 3. 81A C.J.S. States § 135.

### 21-22-9. Cancellation.

The commission [department] is authorized to cancel any contract made between it and any student for any reasonable cause deemed sufficient by the commission [department].

**History:** 1953 Comp., § 73-38A-9, enacted by Laws 1975, ch. 244, § 9; 1991, ch. 262, § 35.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

The 1991 amendment, effective June 14, 1991, substituted "commission" for "board".

### 21-22-10. Reports.

The commission [department] shall make annual reports to the governor and to the legislature, prior to each regular session, of its activities, the loans granted, the names and addresses of persons to whom loans were granted and the medical schools or colleges attended by those receiving the loans, together with a list of the names and locations of practice of those students who have completed their education and have become licensed physicians or physician assistants in New Mexico as a result of a student loan pursuant to the Medical Student Loan for Service Act.

**History:** 1953 Comp., § 73-38A-10, enacted by Laws 1975, ch. 244, § 10; 1991, ch. 262, § 36.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

The 1991 amendment, effective June 14, 1991, substituted "commission" for "board"; inserted "or physician assistants"; added "pursuant to the Medical Student Loan for Service Act" at the end of the section; and made minor stylistic changes.

## ARTICLE 22A

### Osteopathic Medical Student Loans

Sec.

21-22A-1. Short title.

21-22A-2. Repealed

21-22A-3. Definitions.

21-22A-4. Osteopathic medical student loans; department authorized; qualifications.

21-22A-5. Delegation of duties to other state agencies.

Sec.

21-22A-6. Osteopathic medical student loans; contract terms; repayment.

21-22A-7. Contracts; legal assistance; enforcement.

21-22A-8. Fund created; method of payment.

21-22A-9. Cancellation.

21-22A-10. Reports.

#### 21-22A-1. Short title.

Chapter 21, Article 22A NMSA 1978 may be cited as the "Osteopathic Medical Student Loan for Service Act".



**History:** 1978 Comp., § 21-22A-1, enacted by Laws 1978, ch. 109, § 1; 1991, ch. 262, § 37.

**Cross references.** — For the Medical Student Loan for Service Act, see Chapter 21, Article 22 NMSA 1978.

For the Nursing Student Loan for Service Act, see Chapter 21, Article 22B NMSA 1978.

For the Allied Health Student Loan for Service Act, see Chapter 21, Article 22C NMSA 1978.

For the Health Professional Loan Repayment Act, see Chapter 21, Article 22D NMSA 1978.

**The 1991 amendment**, effective June 14, 1991, rewrote this section which read "This act may be cited as the 'Osteopathic Medical Student Loan Act'."

## 21-22A-2. Repealed

**Repeals.** — Laws 2016, ch. 42, § 9 repealed 21-22A-2 NMSA 1978, as enacted by Laws 1978, ch. 109, § 2, relating to purpose, effective May 18, 2016. For provisions

of former section, see the 2015 NMSA 1978 on *NMOneSource.com*.

## 21-22A-3. Definitions.

As used in the Osteopathic Medical Student Loan for Service Act:

- A. "department" means the higher education department;
- B. "health professional shortage area" means an area in the state of New Mexico designated as having a shortage of primary care medical care, dental or mental health providers by the health resources and services administration of the United States department of health and human services;
- C. "loan" means a grant of funds to defray the costs incidental to an osteopathic medical education, under a contract between the department and an osteopathic medical student, requiring either repayment with interest or repayment in services;
- D. "osteopathic medical education" means the education required to be an osteopathic physician or osteopathic physician's assistant; and
- E. "student" means a person enrolled in a school of osteopathic medicine or an osteopathic physician's assistant program in New Mexico.

**History:** 1978 Comp., § 21-22A-3, enacted by Laws 1978, ch. 109, § 3; 1991, ch. 262, § 39; 1995, ch. 144, § 5; 2016, ch. 42, § 1.

**The 2016 amendment**, effective May 18, 2016, changed references to the commission on higher education to the higher education department, and added definitions as used in the Osteopathic Medical Student Loan for Service Act; in Subsection A, after the subsection designation, deleted "commission" and added "department", and after "means the", deleted "commission on", and after "higher education", added "department"; added new Subsection B and redesignated the succeeding subsections accordingly; in Subsection C, after "contract between the", deleted "commission" and added "department"; in Subsection E,

after "means", deleted "a resident of New Mexico who is a student" and added "a person", and after "assistant program", added "in New Mexico".

**The 1995 amendment**, effective July 1, 1995, rewrote Subsection C and added "or an osteopathic physician's assistant program" at the end of Subsection D.

**The 1991 amendment**, effective June 14, 1991, inserted "for Service" in the introductory paragraph; rewrote Subsection A which read "board" means the board of educational finance; substituted "commission" for "board" in Subsection B; added present Subsection C; designated former Subsection C as Subsection D and made a minor stylistic change therein.

## 21-22A-4. Osteopathic medical student loans; department authorized; qualifications.

A. The department is authorized to grant a loan to defray the expenses of the osteopathic medical education of a student deemed qualified by the department to receive the osteopathic medical education, upon such terms and conditions as may be imposed by regulations of the department.

B. The department shall only receive, pass upon and allow or disallow those applications for loans made by those students enrolled in or accepted by a New Mexico college of osteopathic medicine or osteopathic physician's assistant program who declare their intent to practice as osteopathic physicians or osteopathic physician's assistants within designated areas of the state.

C. The department shall make a full and careful investigation of the ability, character and qualifications of each applicant and determine the applicant's fitness to become a recipient of a student loan. The investigation of each applicant shall include an investigation of the ability of the applicant and the applicant's parents or guardians to pay the applicant's expenses for an

osteopathic medical education. The department shall give preference to qualified applicants who are unable, or whose parents or guardians are unable, to pay the applicant's expenses in obtaining an osteopathic medical education.

D. The department shall arrange for loan recipients to receive assistance in locating, planning and implementing the establishment and maintenance of a practice as an osteopathic physician or osteopathic physician's assistant in a health professional shortage area.

**History:** 1978 Comp., § 21-22A-4, enacted by Laws 1978, ch. 109, § 4; 1991, ch. 262, § 40; 1995, ch. 144, § 6; 2016, ch. 42, § 2.

**The 2016 amendment**, effective May 18, 2016, changed references to the commission on higher education to the higher education department; in the heading, deleted "commission" and added "department", throughout the section, deleted "commission" and added "department"; in Subsection B, after "accepted by", deleted "colleges" and added "a New Mexico college", and after "physician's assistant", deleted "programs who are bona fide citizens and residents of New Mexico and" and added "program"; in Subsection C, after "applicant and determine", deleted "his" and added "the applicant's", and after "ability of the applicant and", deleted "his" and added "the applicant"; and in Subsection D, after "osteopathic physician's assistant in", deleted "designated underserved areas" and added "a health professional shortage area".

**The 1995 amendment**, effective July 1, 1995, in Subsection B, deleted "on higher education" following "commission" in the section heading, inserted "or osteopathic physician's assistant programs" in two places and made a stylistic change and, in Subsection D, substituted "a practice as an osteopathic physician or osteopathic physician's assistant" for "an osteopathic medical practice".

**The 1991 amendment**, effective June 14, 1991, substituted "Commission on higher education" for "Board" in the catchline; substituted "commission" for "board" throughout the section; added Subsection D; and made a minor stylistic change in Subsection A.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 19 to 22.  
14A C.J.S. Colleges and Universities §§ 7, 31, 33.

### 21-22A-5. Delegation of duties to other state agencies.

The department may arrange with other agencies for the performance of services required by the provisions of Section 21-22A-4 NMSA 1978.

**History:** 1978 Comp., § 21-22A-5, enacted by Laws 1978, ch. 109, § 5; 1991, ch. 262, § 41; 2016, ch. 42, § 3.

**The 2016 amendment**, effective May 18, 2016, changed the reference to commission on higher education to the higher education department, and after "The", deleted "commission" and added "department".

**The 1991 amendment**, effective June 14, 1991, substituted "commission" for "board" and substituted "Section 21-22A-4 NMSA 1978" for "Section 4 of the Osteopathic Medical Student Loan Act".

### 21-22A-6. Osteopathic medical student loans; contract terms; repayment.

A. Each applicant who is approved for a loan by the department may be granted a loan, in such amounts and for such periods as determined by the department, with which to defray expenses incurred in obtaining an osteopathic medical education at an accredited osteopathic medical school in New Mexico if the applicant files with the department a declaration of intent to practice as a licensed osteopathic physician or osteopathic physician's assistant in a health professional shortage area.

B. The loan shall not exceed the necessary expenses incurred while attending a New Mexico osteopathic medical school or college or osteopathic physician's assistant program and shall bear interest at the rate of:

(1) eighteen percent per year if the loan recipient completes an osteopathic medical education and no portion of the principal and interest is forgiven pursuant to Subsection F of this section; and

(2) seven percent per year in all other cases.

C. Loans made pursuant to the Osteopathic Medical Student Loan for Service Act shall not accrue interest until the department:

(1) determines the loan recipient has terminated the recipient's osteopathic medical education prior to completion;

(2) determines the loan recipient has failed to fulfill the recipient's obligation to serve in a health professional shortage area; or



(3) cancels a contract between a loan recipient and the department pursuant to Section 21-22A-9 NMSA 1978.

D. The loan shall be evidenced by a contract between the loan recipient and the department acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum covering the costs of an osteopathic medical education and shall be conditioned upon the repayment of the loan to the state over a period established by the department in consultation with the loan recipient after the completion of osteopathic medical school or an osteopathic physician's assistant program and any period of internship or residency required to complete the loan recipient's education.

E. Loans made to loan recipients who fail to complete their osteopathic medical education shall become due immediately upon termination of their osteopathic medical education. The department, in consultation with the loan recipient, shall establish terms of repayment, alternate service or cancellation terms.

F. The contract shall provide that the department shall forgive a portion of the loan for each year that a loan recipient practices as a licensed osteopathic physician or osteopathic physician's assistant in a health professional shortage area and shall require a period of four years of service in exchange for the loan. Ten percent of the loan shall be forgiven upon completion of the first year of service, twenty percent of the loan shall be forgiven upon completion of the second year of service, thirty percent of the loan shall be forgiven upon completion of the third year of service and the remainder of the loan shall be forgiven upon completion of the fourth year of service.

G. Loan recipients shall serve a complete year in order to receive credit for that year. The minimum credit for a year shall be established by the department.

H. If a loan recipient completes a professional education and does not meet all requirements of this section, the department shall assess a penalty of up to three times the principal due, plus eighteen percent interest, unless the department finds acceptable extenuating circumstances for why the requirements should be waived. If the department does not find acceptable extenuating circumstances for the loan recipient's failure to meet the requirements of this section, the department shall require immediate repayment of the loan plus the amount of any interest and penalty assessed pursuant to this section.

I. The department shall adopt rules to implement the provisions of this section. The rules may provide for the repayment of osteopathic medical student loans in annual or other periodic installments.

**History:** 1978 Comp., § 21-22A-6, enacted by Laws 1978, ch. 109, § 6; 1981, ch. 292, § 1; 1991, ch. 262, § 42; 1994, ch. 57, § 2; 1995, ch. 144, § 7; 2005, ch. 321, § 4; 2005, ch. 323, § 2; 2016, ch. 42, § 4.

**Cross references.** — For the health profession advisory committee, see 21-1-26.8 NMSA 1978.

**The 2016 amendment,** effective May 18, 2016, changed references to the commission on higher education to the higher education department, and provided for osteopathic medical student loans to students of a New Mexico college or osteopathic medicine or osteopathic physician's assistant program in exchange for service in a health professional shortage area; throughout the section, changed "commission" to "department", and changed "student" to "loan recipient"; in Subsection A, after "medical education at", deleted "any reputable and" and added "an", after "medical school in", deleted "in United States" and added "New Mexico", after "declaration of", deleted "his", after "intent to practice", deleted "his profession", and after "physician's assistant in", deleted "areas of New Mexico designated as not being adequately served by osteopathic medical practitioners" and added "a health professional shortage area"; in Subsection B, in the introductory sentence, after "while attending", deleted "an" and added "a New Mexico", and in Paragraph (1), after "completes", deleted "his" and added "an"; in Subsection C, in the introductory sentence, after "accrue interest until", added "the department", in Paragraph (1), after the paragraph designation, deleted "the commission", in Paragraph (2),

after the paragraph designation, deleted "the commission", and after "obligation to serve in", deleted "an area of New Mexico designated as not being adequately served by osteopathic medical practitioners" and added "a health professional shortage area", in Paragraph (3), after the paragraph designation, deleted "the commission"; in Subsection F, after "recipient practices", deleted "his profession", and after "osteopathic physician's assistant in", deleted "areas approved by the commission as not being adequately served by osteopathic medical practitioners. The loan shall be forgiven as follows:", deleted Paragraphs (1) and (2) of Subsection F, deleted the subparagraph designation for Paragraph (3) and deleted "for loan terms of three years or more, forty", and added "a health professional shortage area and shall require a period of four years of service in exchange for the loan. Ten", after "first year of service", deleted "in a designated health professional shortage area, thirty", after the comma, added "twenty", after "second year of service", added "thirty percent of the loan shall be forgiven upon completion of the third year of service", and after "remainder of the loan shall be forgiven upon completion of the", deleted "third" and added "fourth"; in Subsection G, after the subsection designation, added "Loan"; in Subsection H, after "recipient completes", deleted "his" and added "a", after "does not", deleted "serve in a health professional shortage area" and added "meet all requirements of this section", after the first occurrence of "extenuating circumstances for why the", deleted "student cannot serve" and added "requirements should be waived", and



after "failure to", deleted "carry out his declared intent to serve in a health professional shortage area in the state", and added "meet the requirements of this section"; and in Subsection I, after "shall adopt", deleted "regulations" and added "rules", and after the second occurrence of "The", deleted "regulations" and added "rules".

**The 2005 amendment**, effective June 17, 2005, added Subsections C(1) through (3); deleted former references to repayment of the loan "together with interest" and loan "principal and interest"; deleted the former provision in Subsection D which provided that the contract shall provide that immediately upon completion or termination of the student's osteopathic medical education, all interest then accrued shall be capitalized; changed "health professional advisory committee" to "commission" in Subsection F; changed "principal plus accrued interest" to "loan"; and provided in Subsection H that if the commission does not find acceptable circumstances for a student's failure to serve in a health professional shortage area, the commission shall require repayment of the loan plus the amount of any interest.

**The 1995 amendment**, effective July 1, 1995, substituted "health profession advisory committee" for "medical shortage area committee" throughout the section; inserted "or osteopathic physician's assistant" following "osteopathic physician" in Subsections A and E; inserted "or osteopathic physician's assistant program" following "medical school" in Subsections B and C; inserted "osteopathic" preceding "medical education" in Paragraph (1) of Subsection B, in the last sentence of Subsection C, and in Subsection D; in Subsection E, substituted Paragraphs (1) to (3) for a previous loan forgiveness formula; redesignated the last two sentences of Subsection E as Subsection F; and redesignated the remaining subsections accordingly.

**The 1994 amendment**, effective July 1, 1994, substituted "if the applicant" for "providing the applicant" in Subsection A and "shall" for "may" in the first three

sentences in Subsection E; divided the formerly undivided language in Subsection B into an introductory paragraph and Paragraphs (1) and (2); added present Subsection F; and redesignated former Subsection F as present Subsection G.

**The 1991 amendment**, effective June 14, 1991, substituted "commission" for "board" throughout the section; substituted "eighteen percent per year if the student completes his medical education and no portion of the principal and interest is forgiven pursuant to Subsection E of this section and seven percent per year in all other cases" for "nine percent per year" at the end of Subsection B; in Subsection C, substituted "over a period established by the commission in consultation with the student" for "within five years" in the second sentence and added the third sentence; rewrote Subsection D which read "In the event a loan recipient fails to complete his osteopathic medical education, the board shall establish a period of time, within five years of the date the student leaves school, in which the loan must be repaid with interest"; rewrote Subsection E which read "The contract shall provide that the state may forgive one year of the principal amount of the loan together with interest for each year that a student practices his profession as a licensed osteopathic physician in areas designated by the osteopathic medical advisory committee as not being adequately served by osteopathic medical practitioners. However, in order to qualify for such repayment credit, the student must enter into an agreement with the board to serve in one of these areas for at least two years"; and made minor stylistic changes throughout the section.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Constitutionality of statute authorizing state to loan money or engage in business of a private nature, 14 A.L.R. 1151, 115 A.L.R. 1456. 81A C.J.S. States §§ 155, 208, 225.

## 21-22A-7. Contracts; legal assistance; enforcement.

The general form of the contract provided for in Section 21-22A-6 NMSA 1978 shall be prepared and approved by the attorney general and signed by the loan recipient and a designee of the department on behalf of the state. The department is vested with full and complete authority and power to sue in its own name for any balance due the state from any loan recipient on any such contract.

**History:** 1978 Comp., § 21-22A-7, enacted by Laws 1978, ch. 109, § 7; 1991, ch. 262, § 43; 2016, ch. 42, § 5.

**The 2016 amendment**, effective May 18, 2016, changed references to commission on higher education to the higher education department; after "signed by the", deleted "student" and added "loan recipient", after "designee of the", deleted "commission" and added "department"; after "behalf of the state. The", deleted "commission" and added "department", and after "the state from any", deleted "student" and added "loan recipient".

**The 1991 amendment**, effective June 14, 1991, substituted "commission" for "board" in two places and, in the first sentence, inserted "provided for in Section 21-22A-6 NMSA 1978" and substituted "a designee" for "the chairman and executive secretary".

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 5. 14A C.J.S. Colleges and Universities § 17.

## 21-22A-8. Fund created; method of payment.

There is created in the state treasury the "osteopathic medical student loan for service fund". All money appropriated for loans to osteopathic medical students under the Osteopathic Medical Student Loan for Service Act shall be credited to the fund. All payments of principal and interest on loans made pursuant to that act received by the department shall be deposited with the state treasurer to the credit of the fund or shall be deposited with the department's administrative



agent. All payments of funds for loans shall be made upon vouchers signed by designated representatives of the department.

**History:** 1978 Comp., § 21-22A-8, enacted by Laws 1978, ch. 109, § 8; 1989, ch. 324, § 15; 1991, ch. 262, § 44; 2016, ch. 42, § 6.

**The 2016 amendment**, effective May 18, 2016, changed references to the commission on higher education to the higher education department; after "received by the", deleted "commission" and added "department", after "deposited with the", deleted "commission's" and added "department's", and after "representatives of the", deleted "commission" and added "department".

**The 1991 amendment**, effective June 14, 1991, inserted "for service" and "for Service" in the first and second sentences; deleted "on higher education" following

"commission" and added "or shall be deposited with the commission's administrative agent" at the end of the third sentence; substituted "designated representatives" for "the chairman and the executive director" in the final sentence; and made a minor stylistic change.

#### ANNOTATIONS

**General rule is that interest is accretion or increment to principal fund earning it**, and becomes a part of that fund. 1980 Op. Att'y Gen. No. 80-17.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63A Am. Jur. 2d Public Funds § 3.

81A C.J.S. States § 135.

## 21-22A-9. Cancellation.

The department is authorized to cancel any contract made between it and any loan recipient for any reasonable cause deemed sufficient by the department.

**History:** 1978 Comp., § 21-22A-9, enacted by Laws 1978, ch. 109, § 9; 1991, ch. 262, § 45; 2016, ch. 42, § 7.

**The 2016 amendment**, effective May 18, 2016, changed references to the commission on higher education to the higher education department; after "The", deleted "commission" and added "department", and after

"between it and any", deleted "student" and added "loan recipient", after "sufficient by the", deleted "commission" and added "department".

**The 1991 amendment**, effective June 14, 1991, substituted "commission" for "board".

## 21-22A-10. Reports.

The department shall make annual reports to the governor and to the legislature, prior to each regular session, of its activities, the loans granted and the names and addresses of persons to whom loans were granted and the osteopathic medical schools or colleges or osteopathic physician's assistant programs attended by those receiving the loans, together with a list of the names and locations of practice of those loan recipients who have completed their education and have become licensed osteopathic physicians or osteopathic physician's assistants in New Mexico as a result of a student loan pursuant to the Osteopathic Medical Student Loan for Service Act.

**History:** 1978 Comp., § 21-22A-10, enacted by Laws 1978, ch. 109, § 10; 1991, ch. 262, § 46; 1995, ch. 144, § 8; 2016, ch. 42, § 8.

**The 2016 amendment**, effective May 18, 2016, changed the reference to "commission on higher education" to the higher education department; after "The", deleted "commission" and added "department", and after "locations of practice of those", deleted "students" and added "loan recipients".

**The 1995 amendment**, effective July 1, 1995, inserted "or osteopathic physician's assistant programs" following "colleges", inserted "or osteopathic physician's assistants" following "osteopathic physicians", and made a minor stylistic change.

**The 1991 amendment**, effective June 14, 1991, substituted "commission" for "board" near the beginning; added "pursuant to the Osteopathic Medical Student Loan for Service Act" at the end of the section; and made minor stylistic changes.

## ARTICLE 22B

### Nursing Student Loans

Sec.

21-22B-1. Short title.

21-22B-2. Purpose.

21-22B-3. Definitions.

21-22B-4. Nursing student loans; commission [department] authorized; qualification.

21-22B-5. Delegation of duties to other agencies.

Sec.

21-22B-6. Nursing student loans; contract terms; repayment.

21-22B-7. Contracts; legal assistance; enforcement.

21-22B-8. Fund created; method of payment.

21-22B-9. Cancellation.

21-22B-10. Reports.

## 21-22B-1. Short title.

Chapter 21, Article 22B NMSA 1978 may be cited as the "Nursing Student Loan for Service Act".

**History:** 1978 Comp., § 21-22B-1, enacted by Laws 1987, ch. 299, § 1; 1991, ch. 262, § 47.

**Cross references.** — For the Medical Student Loan for Service Act, *see* Chapter 21, Article 22 NMSA 1978.

For the Osteopathic Medical Student Loan for Service Act, *see* Chapter 21, Article 22A NMSA 1978.

For the Allied Health Student Loan for Service Act, *see* Chapter 21, Article 22C NMSA 1978.

For the Health Professional Loan Repayment Act, *see* Chapter 21, Article 22D NMSA 1978.

**The 1991 amendment**, effective June 14, 1991, inserted "for Service".

## 21-22B-2. Purpose.

The purpose of the Nursing Student Loan for Service Act is to meet the emergency currently existing resulting from the shortage of nurses in the underserved areas of the state by increasing the number of practitioners in rural areas through a program of loans for nursing students. The program will require as a condition of each loan that the student declare intent prior to the granting of the loan that the nurse will practice nursing within one of the areas of the state designated as an underserved area by the commission [department].

**History:** 1978 Comp., § 21-22B-2, enacted by Laws 1987, ch. 299, § 2; 1991, ch. 262, § 48; 1995, ch. 144, § 9; 2005, ch. 321, § 5.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

**The 2005 amendment**, effective June 17, 2005, changed "health professional advisory committee" to "commission".

**The 1995 amendment**, effective July 1, 1995, substituted "health profession advisory committee" for "medical shortage area committee" at the end of the section.

**The 1991 amendment**, effective June 14, 1991, inserted "for Service" in the first sentence and substituted "the medical shortage area committee" for "a nursing advisory committee established and organized by the commission" at the end of the section.

## 21-22B-3. Definitions.

As used in the Nursing Student Loan for Service Act:

A. "commission" ["department"] means the commission on higher education [higher education department];

B. "loan" means a grant of funds to defray the costs incidental to a nursing education, under a contract between the commission [department] and a nursing student, requiring repayment with services or repayment with interest;

C. "student" means a resident of New Mexico who is a student enrolled in a program of nursing; and

D. "program of nursing" means a nursing education program in a New Mexico institution accredited by a member of the council on post-secondary accreditation or a nursing education program approved by the New Mexico board of nursing.

**History:** 1978 Comp., § 21-22B-3, enacted by Laws 1987, ch. 299, § 3; 1991, ch. 262, § 49; 1995, ch. 144, § 10.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

**The 1995 amendment**, effective July 1, 1995, deleted Subsection C which defined "medical shortage area committee" and redesignated former Subsections D and E as Subsections C and D.

**The 1991 amendment**, effective June 14, 1991, inserted "for Service" in the introductory paragraph; added present Subsection C; designated former Subsections C and D as Subsections D and E; and made a minor stylistic change in Subsection D.

## 21-22B-4. Nursing student loans; commission [department] authorized; qualification.

A. The commission [department] is authorized to grant a loan to defray the expenses of the nursing education of a student deemed qualified by the commission [department] to receive the same, upon such terms and conditions as may be imposed by regulations of the commission [department].



B. The commission [department] shall only receive, pass upon and allow or disallow those applications for loans made by those students enrolled or accepted by programs of nursing who are bona fide citizens and residents of the United States and of New Mexico and who declare their intent to practice nursing within designated areas of the state.

C. The commission [department] shall make a full and careful investigation of the ability, character and qualifications of each applicant and determine fitness to become a recipient of a student loan. The investigation of each applicant shall include an investigation of the ability of the applicant and the applicant's parents or guardians to pay the applicant's expenses for a nursing education. The commission [department] shall give preference to qualified applicants who are unable, or whose parents or guardians are unable, to pay the applicant's expenses in obtaining a nursing education.

D. The commission [department] shall arrange for loan recipients to receive assistance in locating appropriate practice positions in designated underserved areas.

**History:** 1978 Comp., § 21-22B-4, enacted by Laws 1987, ch. 299, § 4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 19 to 22.  
14A C.J.S. Colleges and Universities §§ 7, 31, 33.

### 21-22B-5. Delegation of duties to other agencies.

The commission [department] may arrange with other agencies for the performance of services required by the provisions of Section 21-22B-4 NMSA 1978.

**History:** 1978 Comp., § 21-22B-5, enacted by Laws 1987, ch. 299, § 5.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

### 21-22B-6. Nursing student loans; contract terms; repayment.

A. Each applicant who is approved for a loan by the commission [department] may be granted a loan, in such amounts for such periods as determined by the commission [department], with which to defray expenses incurred in obtaining a nursing education; provided that the applicant files with the commission [department] a declaration of intent to practice as a licensed nurse in areas of New Mexico designated as underserved.

B. The loans shall not exceed the necessary expenses incurred while attending a program of nursing and shall bear interest at the rate of:

- (1) eighteen percent per year if the student completes his nursing education and no portion of the principal and interest is forgiven pursuant to Subsection F of this section; and
- (2) seven percent per year in all other cases.

C. Loans made pursuant to the Nursing Student Loan for Service Act shall not accrue interest until:

- (1) the commission [department] determines the loan recipient has terminated the recipient's nursing education prior to completion;
- (2) the commission [department] determines the loan recipient has failed to fulfill the recipient's obligation to practice nursing in areas approved by the health profession advisory committee; or
- (3) the commission [department] cancels a contract between a student and the commission [department] pursuant to Section 21-22B-9 NMSA 1978.

D. The loan shall be evidenced by a contract between the student and the commission [department] acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum covering the costs of a nursing education and shall be conditioned upon the repayment

of the loan to the state over a period negotiated between the student and the commission [department] after completion of a nursing program.

E. Loans made to students who fail to complete their nursing education shall become due immediately upon termination of nursing education. The commission [department], in consultation with the student, shall establish terms of repayment, alternate service or cancellation terms with the commission [department].

F. The contract shall provide that the commission [department] may forgive a portion of the loan for each year that a loan recipient practices nursing in areas approved by the commission [department]. The loan shall be forgiven as follows:

(1) loan terms of one year shall require one year of practice in a designated health professional shortage area. Upon completion of service, one hundred percent of the loan shall be forgiven;

(2) loan terms of two years shall require one year of practice in a designated health professional shortage area for each year of the loan. Upon completion of the first year of service, fifty percent of the loan shall be forgiven. Upon completion of the second year of service, the remainder of the loan shall be forgiven; and

(3) for loan terms of three years or more, forty percent of the loan shall be forgiven upon completion of the first year of service in a designated health professional shortage area, thirty percent of the loan shall be forgiven upon completion of the second year of service and the remainder of the loan shall be forgiven upon completion of the third year of service.

G. Recipients shall serve a complete year in order to receive credit for that year. The minimum credit for a year shall be established by the commission [department].

H. The commission [department] shall adopt regulations to implement the provisions of this section. The regulations may provide for the repayment of nursing student loans in annual or other periodic installments.

**History:** 1978 Comp., § 21-22B-6, enacted by Laws 1987, ch. 299, § 6; 1991, ch. 262, § 50; 1995, ch. 144, § 11; 2005, ch. 321, § 6; 2005, ch. 323, § 3.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**2005 Multiple Amendments.** — Laws 2005, ch. 321, § 6 and Laws 2005, ch. 323, § 3 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2005, ch. 323, § 3, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2005, ch. 321, § 6 and Laws 2005, ch. 323, § 3 are described below. To view the session laws in their entirety, see the 2005 session laws on *NMOneSource.com*.

Laws 2005, ch. 323, § 3, effective June 17, 2005, added Subsections C(1) through (3); deleted former references to repayment of the loan "together with interest" and loan "principal and interest"; deleted the former provision in Subsection D which provided that the contract shall provide that immediately upon completion or termination of the student's nursing education, all interest then accrued shall be capitalized; changed "health professional

advisory committee" to "commission" in Subsection F; and changed "principal plus accrued interest" to "loan".

Laws 2005, ch. 321, § 6, effective June 17, 2005, changed "health professional advisory committee" to "commission" in Subsection E.

**The 1995 amendment**, effective July 1, 1995, made a minor stylistic change in Subsection A, rewrote Subsection E, redesignated the last two sentences of Subsection E as Subsection F, and redesignated former Subsection F as Subsection G.

**The 1991 amendment**, effective June 14, 1991, substituted "commission" for "state" in Subsections C, D and E; added the final sentence in Subsection C; rewrote the second sentence in Subsection D which read "These students shall negotiate terms of repayment with the state"; in Subsection E, substituted "medical shortage area committee" for "nursing advisory committee" in the first sentence, rewrote the formula which read "(1) forty percent for the first year served (2) thirty percent for the second year served and (3) thirty percent for the third year served" and added the final sentence.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 81A C.J.S. States §§ 155, 208, 225.

## 21-22B-7. Contracts; legal assistance; enforcement.

The general form of the contract shall be prepared and approved by the attorney general and signed by the student and designated representative of the commission [department] on behalf of the state. The commission [department] is vested with full and complete authority and power to sue in its own name for any balance due the state from any student on any such contract.

**History:** 1978 Comp., § 21-22B-7, enacted by Laws 1987, ch. 299, § 7.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.



For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references. — 15A**  
**Am. Jur. 2d** Colleges and Universities § 5.  
**14A C.J.S.** Colleges and Universities § 17.

### 21-22B-8. Fund created; method of payment.

There is created in the state treasury the "nursing student loan for service fund". All money appropriated for loans to nursing students under the Nursing Student Loan for Service Act shall be credited to the fund and all payments of principal and interest on loans made pursuant to that act received by the commission [department] shall be deposited with the state treasurer for credit to the fund or shall be deposited with the commission's [department's] administrative agent. All payments for loans shall be made upon vouchers signed by the designated representatives of the commission [department].

**History:** 1978 Comp., § 21-22B-8, enacted by Laws 1987, ch. 299, § 8; 1989, ch. 324, § 16; 1991, ch. 262, § 51.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

The 1991 amendment, effective June 14, 1991, inserted "for service" and "for Service" in the first and second

sentences; inserted "or shall be deposited with the commission's administrative agent" at the end of the second sentence; and deleted the former final sentence which read "The provisions of this section are effective July 1, 1990".

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references. — 63A**  
**Am. Jur. 2d** Public Funds § 3.  
**81A C.J.S.** States § 135.

### 21-22B-9. Cancellation.

The commission [department] is authorized to cancel any contract made between it and any student for any reasonable cause deemed sufficient by the commission [department].

**History:** 1978 Comp., § 21-22B-9, enacted by Laws 1987, ch. 299, § 9.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

### 21-22B-10. Reports.

The commission [department] shall make annual reports to the governor and to the legislature, prior to each regular session, of its activities, the loans granted, the names and addresses of persons to whom loans were granted and the nursing program attended by those receiving the loans, together with a list of the names and locations of the practices of those students who have completed their education.

**History:** 1978 Comp., § 21-22B-10, enacted by Laws 1987, ch. 299, § 10.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

## ARTICLE 22C

### Allied Health Student Loan for Service

Sec.

21-22C-1. Short title.  
 21-22C-2. Purpose.  
 21-22C-3. Definitions.  
 21-22C-4. Allied health loans; qualifications.  
 21-22C-5. Delegation of duties.  
 21-22C-6. Allied health student loans; contract terms; repayment.

Sec.

21-22C-7. Contracts; legal assistance; enforcement.  
 21-22C-8. Fund created; method of payment.  
 21-22C-9. Cancellation.  
 21-22C-10. Reports.

## 21-22C-1. Short title.

Chapter 21, Article 22C NMSA 1978 may be cited as the "Allied Health Student Loan for Service Act".

**History:** Laws 1994, ch. 57, § 3; 2005, ch. 321, § 7.

**Cross references.** — For the Medical Student Loan for Service Act, see Chapter 21, Article 22 NMSA 1978.

For the Osteopathic Medical Student Loan for Service Act, see Chapter 21, Article 22A NMSA 1978.

For the Nursing Student Loan for Service Act, see Chapter 21, Article 22B NMSA 1978.

For the Health Professional Loan Repayment Act, see Chapter 21, Article 22D NMSA 1978.

**The 2005 amendment**, effective June 17, 2005, added the statutory reference to the act.

## 21-22C-2. Purpose.

The purpose of the Allied Health Student Loan for Service Act is to meet the emergency currently existing resulting from the shortage of allied health professionals in underserved areas of the state by increasing the number of practitioners in rural areas through a program of loans for allied health students. Each applicant shall declare his intent to practice his allied health profession within one of the areas of the state designated as an underserved area by the commission [department].

**History:** Laws 1994, ch. 57, § 4; 1995, ch. 144, § 12; 2005, ch. 321, § 8.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**The 2005 amendment**, effective June 17, 2005, changed "health professional advisory committee" to "commission".

**The 1995 amendment**, effective July 1, 1995, substituted "health profession advisory committee" for "medical shortage area committee" at the end of the section.

## 21-22C-3. Definitions.

As used in the Allied Health Student Loan for Service Act:

A. "allied health profession" means physical therapy, occupational therapy, speech-language pathology, audiology, pharmacy, nutrition, respiratory care, laboratory technology, radiologic technology, dental hygiene, mental health services, emergency medical services or a licensed or certified health profession as defined by the department;

B. "department" means the higher education department;

C. "loan" means a grant of money to defray the costs incidental to an allied health profession education, under a contract between the department and an allied health profession student, requiring repayment with services or repayment of principal and interest; and

D. "student" means a resident of New Mexico who is enrolled in an accredited program for one of the allied health professions.

**History:** Laws 1994, ch. 57, § 5; 1995, ch. 144, § 13; 2007, ch. 77, § 1.

**The 2007 amendment**, effective June 15, 2007, included dental hygiene in "allied health profession".

**The 1995 amendment**, effective July 1, 1995, in Subsection A, deleted "practice" preceding "laboratory technology", inserted "or a licensed or certified health profession as defined by the commission", and made a minor stylistic change.

## 21-22C-4. Allied health loans; qualifications.

A. The commission [department] may grant a loan to a student it deems qualified to receive the loan upon terms and conditions it determines pursuant to the provisions of the Allied Health Student Loan for Service Act and regulations adopted pursuant to that act.

B. The commission [department] shall only receive, pass on and allow or disallow an application for a loan made by a student enrolled or accepted in an allied health profession program who is a bona fide citizen and resident of the United States and of New Mexico and who declares his intent to practice an allied health profession within a designated area of the state.



C. The commission [department] shall make a full and careful investigation of the ability, character and qualifications of each applicant and determine fitness to become a recipient of a student loan. The investigation of each applicant shall include an investigation of the ability of the applicant and the applicant's parent or guardian to pay the applicant's expenses for an allied health profession education. The commission [department] shall give preference to qualified applicants who are unable, or whose parents or guardians are unable, to pay the educational expenses.

D. The commission [department] shall arrange for loan recipients to receive assistance in locating appropriate practice positions in designated underserved areas.

**History: Laws 1994, ch. 57, § 6.**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

## 21-22C-5. Delegation of duties.

The commission [department] may arrange with other agencies for the performance of services required by the provisions of the Allied Health Student Loan for Service Act.

**History: Laws 1994, ch. 57, § 7.**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

## 21-22C-6. Allied health student loans; contract terms; repayment.

A. Prior to receiving a loan, each applicant approved for a loan shall file with the commission [department] a declaration of intent to practice as a licensed allied health professional in areas of New Mexico designated as underserved.

B. The loans shall not exceed the necessary expenses incurred while attending an allied health profession program and shall bear interest at the rate of:

(1) eighteen percent per year if the student completes his allied health profession education and no portion of the principal and interest is forgiven pursuant to Subsection F of this section; and

(2) seven percent per year in all other cases.

C. Loans made pursuant to the Allied Health Student Loan for Service Act shall not accrue interest until:

(1) the commission [department] determines the loan recipient has terminated the recipient's allied health profession education prior to completion;

(2) the commission [department] determines the loan recipient has failed to fulfill the recipient's obligation to practice as a licensed allied health professional in areas of New Mexico designated as underserved; or

(3) the commission [department] cancels a contract between a student and the commission [department] pursuant to Section 21-22C-9 NMSA 1978.

D. The loan shall be evidenced by a contract between the student and the commission [department] acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum covering the costs of an allied health profession education and shall be conditioned on the repayment of the loan to the state over a period negotiated between the student and the commission [department] after completion of an allied health profession education.

E. Loans made to students who fail to complete their allied health profession education shall become due immediately upon termination of that education. The commission [department], in consultation with the student, shall establish repayment terms, alternate service or cancellation terms.

F. The contract shall provide that the commission [department] shall forgive a portion of the loan for each year that a loan recipient practices an allied health profession in areas approved by the commission [department]. The loan shall be forgiven as follows:

(1) loan terms of one year shall require one year of practice in a designated health professional shortage area. Upon completion of service, one hundred percent of the loan shall be forgiven;

(2) loan terms of two years shall require one year of practice in a designated health professional shortage area for each year of the loan. Upon completion of the first year of service, fifty percent of the loan shall be forgiven. Upon completion of the second year of service, the remainder of the loan shall be forgiven; and

(3) for loan terms of three years or more, forty percent of the loan shall be forgiven upon completion of the first year of service, thirty percent of the loan shall be forgiven upon completion of the second year of service and the remainder of the loan shall be forgiven upon completion of the third year of service.

G. Recipients shall serve a complete year in order to receive credit for that year. The minimum credit for a year shall be established by the commission [department].

H. If a loan recipient completes his professional education and does not serve the required number of years in a health professional shortage area, the commission [department] shall assess a penalty of up to three times the principal due, plus eighteen percent interest, unless the commission [department] finds acceptable extenuating circumstances for why the student cannot serve. If the commission [department] does not find acceptable extenuating circumstances for the student's failure to carry out his declared intent to serve in a health professional shortage area in the state, the commission [department] shall require immediate repayment of the loan plus the amount of any interest and penalty assessed pursuant to this subsection.

I. The commission [department] shall adopt regulations to implement the provisions of this section. The regulations may provide for the repayment of allied health student loans in annual or other periodic installments.

**History:** Laws 1994, ch. 57, § 8; 1995, ch. 144, § 14; 2005, ch. 321, § 9; 2005, ch. 323, § 4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**2005 Multiple Amendments.** — Laws 2005, ch. 321, § 9 and Laws 2005, ch. 323, § 4 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2005, ch. 323, § 4, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2005, ch. 321, § 9 and Laws 2005, ch. 323, § 4 are described below. To view the session laws in their entirety, see the 2005 session laws on *NMOneSource.com*.

Laws 2005, ch. 323, § 4, effective June 17, 2005, added Subsections C(1) through (3); deleted former references to repayment of the loan "together with interest" and loan "principal and interest"; deleted the former provision in Subsection D which provided that the contract shall provide that immediately upon completion or termination of

the student's allied health profession education, all interest then accrued shall be capitalized; changed "health professional advisory committee" to "commission" in Subsection F; changed "principal plus accrued interest" to "loan"; and provided in Subsection H that if the commission does not find acceptable circumstances for a student's failure to serve in a health professional shortage area, the commission shall require repayment of the loan plus the amount of any interest.

Laws 2005, ch. 321, § 9, effective June 17, 2005, changed "health professional advisory committee" to "commission" in Subsection E.

**The 1995 amendment**, effective July 1, 1995, substituted "receiving" for "granting" following "Prior to" in Subsection A; inserted "profession" following "allied health" in Subsections C and D; rewrote Subsection E; redesignated the last two sentences of Subsection E as Subsection F and redesignated the remaining subsections accordingly; and, in Subsection G, substituted "the required number of years" for "three years" and substituted "health profession shortage" for "medical shortage".

## 21-22C-7. Contracts; legal assistance; enforcement.

The general form of the contract shall be prepared and approved by the attorney general and signed by the student and designated representative of the commission [department] on behalf of the state. The commission [department] is vested with full and complete authority and power to sue in its own name for any balance due the state from any student on any such contract.

**History:** Laws 1994, ch. 57, § 9.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

## 21-22C-8. Fund created; method of payment.

The "allied health student loan for service fund" is created in the state treasury. All money appropriated for loans to allied health students pursuant to the provisions of the Allied Health Student Loan



for Service Act shall be credited to the fund and all payments of principal and interest on loans made pursuant to that act received by the commission [department] shall be credited to the fund or shall be deposited with the commission's [department's] administrative agent. All payments for loans shall be made upon vouchers signed by the designated representative of the commission [department].

**History:** Laws 1994, ch. 57, § 10. For designation of the commission on higher education

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

as the higher education department, see 9-25-4.1 NMSA 1978.

## 21-22C-9. Cancellation.

The commission [department] may cancel any contract made between it and any student for any reasonable cause deemed sufficient by the commission [department].

**History:** Laws 1994, ch. 57, § 11.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

## 21-22C-10. Reports.

The commission [department] shall make annual reports to the governor and to the legislature, prior to each regular session, of its activities, the loans granted, the names and addresses of loan recipients, the allied health program attended by loan recipients, the names and locations of the practices of those allied health professionals who have completed their education and are serving in a health professional shortage area of the state and the name of each loan recipient who has completed his education and is not serving in a health professional shortage area, the reason the person is not serving and the amount owed and paid on the loan.

**History:** Laws 1994, ch. 57, § 12; 1995, ch. 144, § 15.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**The 1995 amendment,** effective July 1, 1995, substituted "health profession shortage" for "medical shortage" in two places.

# ARTICLE 22D

## Health Professional Loan Repayment

Sec. 21-22D-1. Short title.

21-22D-2. Purpose.

21-22D-3. Definitions.

21-22D-4. Commission [department] powers and duties; participant eligibility; qualifications.

21-22D-5. Delegation of duties.

21-22D-6. Award criteria; contract terms; payment.

21-22D-7. Contracts; enforcement.

21-22D-8. Fund created; method of payment.

Sec. 21-22D-9.

21-22D-9. Cancellation.

21-22D-10. Reports.

21-22D-11. Nurses in advanced practice; nursing excellence program; license renewal surcharge; eligibility for loan repayment assistance funded by other sources.

21-22D-12. Osteopathic physician excellence fund.

21-22D-13. Osteopathic physician excellence fund; creation; administration; appropriation.

## 21-22D-1. Short title.

Chapter 21, Article 22D NMSA 1978 may be cited as the "Health Professional Loan Repayment Act".

**History:** Laws 1995, ch. 144, § 16; 2005, ch. 321, § 10.

**Cross references.** — For the Medical Student Loan for Service Act, see Chapter 21, Article 22 NMSA 1978.

For the Osteopathic Medical Student Loan for Service Act, see Chapter 21, Article 22A NMSA 1978.

For the Nursing Student Loan for Service Act, see Chapter 21, Article 22B NMSA 1978.

For the Allied Health Student Loan for Service Act, see Chapter 21, Article 22C NMSA 1978.

**The 2005 amendment,** effective June 17, 2005, added the statutory reference to the act.

## 21-22D-2. Purpose.

The purpose of the Health Professional Loan Repayment Act is to increase the number of health professionals in underserved areas of the state through an educational loan repayment program. The act provides for repayment of the principal and reasonable interest accrued on loans obtained from the federal government or a commercial lender for health education purposes.

**History:** Laws 1995, ch. 144, § 17.

**Effective dates.** — Laws 1995, ch. 144, § 26 made the Health Professional Loan Repayment Act effective July 1, 1995.

## 21-22D-3. Definitions.

As used in the Health Professional Loan Repayment Act:

- A. "department" means the higher education department;
- B. "health professional" means a primary care physician, optometrist, podiatrist, physician's assistant, dentist, nurse, member of an allied health profession as defined in the Allied Health Student Loan for Service Act [Chapter 21, Article 22C NMSA 1978] or a licensed or certified health professional as determined by the department;
- C. "loan" means a grant of money to defray the costs incidental to a health education, under a contract between the federal government or a commercial lender and a health professional, requiring either repayment of principal and interest or repayment in services;
- D. "nurse in advanced practice" means a registered nurse, including a:
  - (1) certified nurse practitioner, certified registered nurse anesthetist or clinical nurse specialist, authorized pursuant to the Nursing Practice Act [Chapter 61, Article 3 NMSA 1978] to function beyond the scope of practice of professional registered nursing; or
  - (2) certified nurse-midwife licensed by the department of health; and
- E. "osteopathic primary care physician" means an osteopathic physician licensed pursuant to the Medical Practice Act [Chapter 61, Article 6 NMSA 1978] with specialty training in family medicine, general internal medicine, obstetrics, gynecology or general pediatrics.

**History:** Laws 1995, ch. 144, § 18; 2017, ch. 91, § 1; 2019, ch. 68, § 1; 2021, ch. 54, § 3.

The 2021 amendment, effective June 18, 2021, removed osteopathic physicians licensed pursuant to the Osteopathic Medicine Act from the definition of "osteopathic

primary care physician", and added osteopathic physicians licensed pursuant to the Medical Practice Act to the definition of "osteopathic primary care physician"; and in Subsection E, after "pursuant to the", changed "Osteopathic Medicine" to "Medical Practice".

## 21-22D-4. Commission [department] powers and duties; participant eligibility; qualifications.

A. The commission [department] may grant an award to repay loans obtained for health educational expenses of a health professional upon such terms and conditions as may be imposed by regulations of the commission [department].

B. Applicants shall be licensed or certified to practice in New Mexico as health professionals and shall be bona fide citizens and residents of the United States and of New Mexico. Applicants shall declare their intent to practice as health professionals within designated health professional shortage areas of the state.

C. The commission [department] shall make a full and careful investigation of the ability, character and qualifications of each applicant and determine fitness to become a health professional in the health professional loan repayment program.

D. The commission [department] shall assist selected health professionals in locating practice positions in designated health professional shortage areas.

**History:** Laws 1995, ch. 144, § 19.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.



**Effective dates.** — Laws 1995, ch. 144, § 26 made the Health Professional Loan Repayment Act effective July 1, 1995.

### 21-22D-5. Delegation of duties.

The commission [department] may delegate to other agencies or contract for the performance of services required by the provisions of the Health Professional Loan Repayment Act.

**History: Laws 1995, ch. 144, § 20.**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1995, ch. 144, § 26 made the Health Professional Loan Repayment Act effective July 1, 1995.

### 21-22D-6. Award criteria; contract terms; payment.

A. Prior to receiving an award, the health professional shall file with the higher education department a declaration of intent to practice as a health professional in areas of New Mexico designated as underserved by the department.

B. Award criteria shall provide that:

(1) amounts shall be dependent upon the location of the practice, the applicant's total health professional education indebtedness and characteristics of the practice;

(2) preference in making awards shall be to individuals who have graduated from a New Mexico post-secondary educational institution;

(3) recruitment awards shall be made to eligible participants who agree to relocate to an approved designated area;

(4) highest priority shall be given to participants in practices in which health profession vacancies are difficult to fill, practices that require after hours call at least every other night and practices that have heavy obstetrical responsibilities;

(5) award amounts may be modified based upon available funding or other special circumstances; and

(6) an award shall not exceed the total medical education indebtedness of any participant.

C. The following education debts are not eligible for repayment pursuant to the Health Professional Loan Repayment Act:

(1) amounts incurred as a result of participation in state loan-for-service programs or other state programs whose purpose states that service be provided in exchange for financial assistance;

(2) scholarships that have a service component or obligation;

(3) personal loans from friends or relatives; and

(4) loans that exceed individual standard school expense levels.

D. The loan repayment award shall be evidenced by a contract between the health professional and the department acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum to the health professional's debtors and shall state the obligations of the health professional under the program, including a minimum two-year period of service, quarterly reporting requirements and other policies established by the department.

E. Recipients shall serve a complete year in order to receive credit for that year. The minimum credit for a year shall be established by the department.

F. If a health professional does not comply with the terms of the contract, the department shall assess a penalty of up to three times the amount of award disbursed plus eighteen percent interest, unless the department finds acceptable extenuating circumstances for why the health professional cannot serve or comply with the terms of the contract. If the department does not find acceptable extenuating circumstances for the health professional's failure to comply with the contract, the department shall require immediate repayment plus the amount of the penalty.

G. The department shall adopt regulations to implement the provisions of this section. The regulations may provide for the disbursement of loan repayment awards to the lenders of health professionals in annual or other periodic installments.

**History:** Laws 1995, ch. 144, § 21; 2005, ch. 321, § 11; 2017, ch. 138, § 2.

**Compiler's notes.** — House Bill 126, enacted by the Fifty-Third Legislature, First Session, 2017, was vetoed by the governor on March 15, 2017. Pursuant to the First Judicial District Court's decision in *State ex rel. New Mexico Legislative Council v. Honorable Susana Martinez, Governor of the State of New Mexico et al.*, D-101-CV-2017-01550, and affirmed by S.Ct. Order No. S-1-SC-36731, on April 25, 2018, which held that Article IV, Section 22 of the New

Mexico Constitution requires that objections must accompany a returned bill, House Bill 126 was chaptered into law by the Secretary of State.

**The 2017 amendment**, effective March 15, 2017, in Subsection A, after "shall file with the", deleted "commission" and added "higher education department", and replaced "commission" with "department" throughout the section.

**The 2005 amendment**, effective June 17, 2005, changed "health professional advisory committee" to "commission" in Subsection A.

## 21-22D-7. Contracts; enforcement.

The general form of the contract required shall be prepared and approved by the attorney general and signed by the health professional and the designated representative of the commission [department] on behalf of the state. The commission [department] is vested with full and complete authority and power to sue in its own name for any balance due the state from any student on any such contract.

**History:** Laws 1995, ch. 144, § 22.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1995, ch. 144, § 26 made the Health Professional Loan Repayment Act effective July 1, 1995.

## 21-22D-8. Fund created; method of payment.

The "health professional loan repayment fund" is created in the state treasury. All money appropriated for the health professional loan repayment program shall be credited to the fund, and all payments for penalties or repayment of awards received by the commission [department] shall be credited to the fund or shall be deposited with the commission's [department's] administrative agent. All payments for loan repayment awards shall be made upon vouchers signed by the designated representative of the commission [department] and upon warrant issued by the secretary of finance and administration.

**History:** Laws 1995, ch. 144, § 23.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1995, ch. 144, § 26 made the Health Professional Loan Repayment Act effective July 1, 1995.

## 21-22D-9. Cancellation.

The commission [department] may cancel any contract made between it and any health professional for any reasonable cause deemed sufficient by the commission [department].

**History:** Laws 1995, ch. 144, § 24.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1995, ch. 144, § 26 made the Health Professional Loan Repayment Act effective July 1, 1995.

## 21-22D-10. Reports.

The commission [department] shall make annual reports to the governor and to the legislature, prior to each regular session, of its activities, the loan repayment awards granted, the



names and addresses of loan repayment award recipients, the names and locations of the practices of those health professionals who are serving in a designated health professional shortage area of the state pursuant to the Health Professional Loan Repayment Act and the name of each loan repayment award recipient who is not serving in a designated health professional shortage area, the reason the person is not serving and the amount owed and paid on the loan and loan repayment award.

**History:** Laws 1995, ch. 144, § 25.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1995, ch. 144, § 26 made the Health Professional Loan Repayment Act effective July 1, 1995.

### **21-22D-11. Nurses in advanced practice; nursing excellence program; license renewal surcharge; eligibility for loan repayment assistance funded by other sources.**

A. The department shall apply funds appropriated to the department from the nursing excellence program license renewal surcharge established pursuant to Subsection B of Section 61-3-10.5 NMSA 1978 exclusively for health professional loan repayment assistance for nurses in advanced practice who practice in areas that the department has designated as underserved.

B. Eligibility for loan repayment assistance pursuant to the provisions of Subsection A of this section shall not render nurses in advanced practice ineligible for loan repayment assistance pursuant to the Health Professional Loan Repayment Act that derives from any other source of funding.

**History:** Laws 2017, ch. 91, § 2.

**Effective dates.** — Laws 2017, ch. 91, § 4 made Laws 2017, ch. 91, § 2 effective July 1, 2017.

### **21-22D-12. Osteopathic physician excellence fund.**

The department shall apply funds appropriated to the department from the osteopathic physician excellence fund established pursuant to Section 21-22D-13 NMSA 1978 exclusively for health professional loan repayment assistance for osteopathic primary care physicians who are licensed pursuant to the Medical Practice Act [Chapter 61, Article 6 NMSA 1978] and who practice in areas of New Mexico that the department has designated as underserved.

**History:** Laws 2019, ch. 68, § 2; 2021, ch. 54, § 4.

**The 2021 amendment,** effective June 18, 2021, after "pursuant to the", changed "Osteopathic Medicine" to "Medical Practice".

### **21-22D-13. Osteopathic physician excellence fund; creation; administration; appropriation.**

The "osteopathic physician excellence fund" is created in the state treasury to support awards established through the Health Professional Loan Repayment Act to osteopathic primary care physicians who practice in areas of New Mexico that the department has designated as underserved. The fund consists of license application and renewal surcharges pursuant to Section 61-10-6.1 NMSA 1978, appropriations, gifts, grants, donations and income from investment of the fund. Any income earned on investment of the fund shall remain in the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year. The fund shall be administered by the department, and money in the fund is appropriated to the department to make awards established through the Health Professional Loan Repayment Act to osteopathic primary care physicians who

practice in areas of New Mexico that the department has designated as underserved. Disbursements from the fund shall be made only upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of higher education or the secretary's authorized representative.

**History:** Laws 2019, ch. 68, § 3.

**Effective dates.** — Laws 2019, ch. 68 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## ARTICLE 22E

### Teacher Loan for Service

Sec. 21-22E-1. Short title.	Sec. 21-22E-6. Teacher loans; contract terms; repayment.
21-22E-2. Purpose.	21-22E-7. Contracts; legal assistance; enforcement.
21-22E-3. Definitions.	21-22E-8. Fund created; method of payment.
21-22E-4. Teacher student loans authorized; qualifications.	21-22E-9. Cancellation.
21-22E-5. Delegation of duties to other state agencies.	21-22E-10. Reports.

#### 21-22E-1. Short title.

Chapter 21, Article 22E NMSA 1978 may be cited as the "Teacher Loan for Service Act".

**History:** Laws 2001, ch. 288, § 1; 2005, ch. 202, § 1.

**The 2005 amendment**, effective June 17, 2005, added the statutory reference to the act.

#### 21-22E-2. Purpose.

The purpose of the Teacher Loan for Service Act is to proactively address New Mexico's looming teacher shortage by providing students with the financial means to complete or enhance their post-secondary teacher preparation education.

**History:** Laws 2001, ch. 288, § 2.

**Effective dates.** — Laws 2001, ch. 288, § 11 made the Teacher Loan for Service Act effective July 1, 2001.

#### 21-22E-3. Definitions.

As used in the Teacher Loan for Service Act:

A. "commission" [department] means the commission on higher education [higher education department];

B. "loan" means a payment of money under contract between the commission [department] and a student that defrays the costs incidental to a teacher preparation program offered in a regionally accredited post-secondary educational institution in New Mexico and that requires repayment in services;

C. "student" means a United States citizen who is enrolled in or accepted by an undergraduate or graduate teacher preparation program at a regionally accredited post-secondary educational institution in New Mexico; and

D. "teacher preparation program" means a program that has been formally approved as meeting the requirements of the public education department and that leads to initial licensure or to additional licensure endorsements, including a program in a two-year post-secondary educational institution that meets the requirements for a teacher education transfer module established pursuant to Subsection C of Section 21-1B-4 NMSA 1978.

**History:** Laws 2001, ch. 288, § 3; 2005, ch. 202, § 2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.



The 2005 amendment, effective June 17, 2005, provided in Subsection D that a teacher preparation program includes a program in a two-year post-secondary

educational institution that meets the requirements for a teacher education transfer module established pursuant to Section 21-1B-4C NMSA 1978.

#### 21-22E-4. Teacher student loans authorized; qualifications.

A. The commission [department] may grant a loan to a student deemed qualified by the commission [department] upon such terms and conditions as may be imposed by rule of the commission [department].

B. The commission [department] shall only receive, pass upon and allow or disallow an application for a loan made by a student who declares his intent to serve as a public school teacher in a designated teacher shortage area of New Mexico. Teacher shortage areas may be either geographic or discipline specific.

C. The commission [department] shall make a full and careful investigation of the ability and qualifications of each applicant to become a recipient of a loan. The commission [department] shall give preference to qualified applicants who demonstrate financial need.

D. The commission [department] and the state department of public education shall arrange for loan recipients to receive assistance in locating employment with public schools in New Mexico.

**History:** Laws 2001, ch. 288, § 4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2001, ch. 288, § 11 made the Teacher Loan for Service Act effective July 1, 2001.

#### 21-22E-5. Delegation of duties to other state agencies.

The commission [department] may arrange with other agencies for the performance of services required by the provisions of Section 4 [21-22E-4 NMSA 1978] of the Teacher Loan for Service Act.

**History:** Laws 2001, ch. 288, § 5.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2001, ch. 288, § 11 made the Teacher Loan for Service Act effective July 1, 2001.

#### 21-22E-6. Teacher loans; contract terms; repayment.

A. Each applicant who is approved for a loan by the commission [department] may be granted a loan in such amounts and for such periods as the commission [department] determines. The loan shall not exceed the necessary expenses incurred while attending a teacher preparation program.

B. A loan shall bear interest at the rate of:

- (1) eighteen percent per year if the loan recipient completes his teacher preparation program and no portion of the principal and interest is forgiven pursuant to Subsection F of this section; or
- (2) seven percent per year in all other cases.

C. Loans made pursuant to the Teacher Loan for Service Act shall not accrue interest until:

- (1) the commission [department] determines the loan recipient has terminated the recipient's teacher preparation program prior to completion;
- (2) the commission [department] determines the loan recipient has failed to fulfill the recipient's obligation to practice as a licensed teacher in New Mexico; or
- (3) the commission [department] cancels a contract between a student and the commission [department] pursuant to Section 21-22E-9 NMSA 1978.

D. The loan shall be evidenced by a contract between the loan recipient and the commission [department] acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum covering the costs of a teacher preparation program and shall be conditioned on the repayment of the loan to the state over a period established by the commission [department].

after the completion of the teacher preparation program and any postgraduate study or internship required to complete the loan recipient's education.

E. A loan made to a recipient who fails to complete his teacher preparation program shall become due immediately upon termination of his teacher preparation program. The commission [department], in consultation with the loan recipient, shall establish terms of repayment, alternate service or cancellation terms.

F. The contract shall provide that the commission [department] shall forgive a portion of the loan for each year that the loan recipient practices his profession as a licensed teacher in New Mexico. The loan shall be forgiven as follows:

(1) loan terms of one year shall require one year of practice. Upon completion of service, one hundred percent of the loan shall be forgiven;

(2) loan terms of two years shall require one year of practice for each year of the loan. Upon completion of the first year of service, fifty percent of the loan shall be forgiven. Upon completion of the second year of service, the remainder of the loan shall be forgiven; and

(3) for loan terms of three years or more, forty percent of the loan shall be forgiven upon completion of the first year of service, thirty percent of the loan shall be forgiven upon completion of the second year of service and the remainder of the loan shall be forgiven upon completion of the third year of service.

G. A loan recipient shall serve a complete contract year in order to receive credit for that year. The minimum credit for a year shall be established by the commission [department].

H. If a loan recipient completes his teacher preparation program and does not serve in a New Mexico public school, the commission [department] shall assess a penalty of up to three times the principal due, plus eighteen percent interest, unless the commission [department] finds acceptable extenuating circumstances that prevent the loan recipient from serving. If the commission [department] does not find acceptable extenuating circumstances for the loan recipient's failure to carry out his declared intent to serve, the commission [department] shall require immediate repayment of the loan plus the amount of any interest and penalty assessed pursuant to this section.

I. The commission [department] shall adopt and promulgate rules to implement the provisions of this section. The rules may provide for the repayment of loans in annual or other periodic installments.

**History:** Laws 2001, ch. 288, § 6; 2005, ch. 323, § 5.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**The 2005 amendment**, effective June 17, 2005, added Subsections C(1) through (3) to provide that loans shall not accrue interest until the recipient has terminated the recipient's teacher preparation program prior to completion, the recipient has failed to fulfill the recipient's obligation to practice as a licensed teacher in New Mexico or the commission cancels a contract

between a student and the commission; deleted former references to repayment of the loan "together with interest" and loan "principal and interest"; deleted the former provision in Subsection D which provided that the contract shall provide that immediately upon completion or termination of the student's education, all interest then accrued shall be capitalized; changed "principal plus accrued interest" to "loan"; and provided in Subsection H that if the commission does not find acceptable circumstances for a student's failure to serve, the commission shall require repayment of the loan plus the amount of any interest.

## 21-22E-7. Contracts; legal assistance; enforcement.

The general form of the contract shall be prepared and approved by the attorney general and signed by the loan recipient and a designee of the commission [department] on behalf of the state. The commission [department] is vested with full and complete authority and power to sue in its own name for any balance due the state from a loan recipient on a contract.

**History:** Laws 2001, ch. 288, § 7.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2001, ch. 288, § 11 made the Teacher Loan for Service Act effective July 1, 2001.



## 21-22E-8. Fund created; method of payment.

The "teacher loan for service fund" is created in the state treasury. Money appropriated for loans pursuant to the Teacher Loan for Service Act; earnings from investment of the fund; gifts, grants and donations to the fund; and all payments of principal and interest on loans made pursuant to that act shall be deposited in the fund. Money in the fund shall not revert at the end of a fiscal year. The fund shall be administered by the commission [department]. All payments of money for loans shall be made on warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the commission's [department's] designated representative.

**History:** Laws 2001, ch. 288, § 8.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2001, ch. 288, § 11 made the Teacher Loan for Service Act effective July 1, 2001.

## 21-22E-9. Cancellation.

The commission [department] may cancel a contract between it and a loan recipient for any reasonable cause deemed sufficient by the commission [department].

**History:** Laws 2001, ch. 288, § 9.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Effective dates.** — Laws 2001, ch. 288, § 11 made the Teacher Loan for Service Act effective July 1, 2001.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

## 21-22E-10. Reports.

The commission [department] shall report annually by January 1 to the governor and the legislature on its activities pursuant to the Teacher Loan for Service Act, including the loans granted, the names and addresses of loan recipients, the teacher preparation programs loan recipients are attending and the names and locations of practice of loan recipients who have completed their teacher preparation education and are teaching.

**History:** Laws 2001, ch. 288, § 10.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Effective dates.** — Laws 2001, ch. 288, § 11 made the Teacher Loan for Service Act effective July 1, 2001.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

# ARTICLE 22F

## Public Service Law Loan Repayment Act

Sec.		Sec.	
21-22F-1.	Short title.	21-22F-7.	Contracts; enforcement.
21-22F-2.	Purpose.	21-22F-8.	Public service law advisory committee; created; duties.
21-22F-3.	Definitions.	21-22F-9.	Fund created; method of payment.
21-22F-4.	Commission [department]; powers and duties.	21-22F-10.	Cancellation.
21-22F-5.	Loan repayment program; participant eligibility; award criteria.	21-22F-11.	Reports.
21-22F-6.	Loan repayment contract terms; payment.		

## 21-22F-1. Short title.

Chapter 21, Article 22F NMSA 1978 may be cited as the "Public Service Law Loan Repayment Act".

**History:** Laws 2005, ch. 83, § 1; 2008, ch. 61, § 1.

**The 2008 amendment**, effective May 14, 2008, added the statutory reference to the act.

## 21-22F-2. Purpose.

The purpose of the Public Service Law Loan Repayment Act is to improve access to the justice system in New Mexico by increasing the number of attorneys in public service employment through a legal education loan repayment program.

**History:** Laws 2005, ch. 83, § 2.

**Effective dates.** — Laws 2005, ch. 83 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 21-22F-3. Definitions.

As used in the Public Service Law Loan Repayment Act:

- A. "committee" means the public service law advisory committee;
- B. "department" means the higher education department;
- C. "legal education" means education at an accredited law school and any bar review preparation courses for the state bar examination;
- D. "loan" means money allocated to defray the costs incidental to a legal education under a contract between the federal government or a commercial lender and a law school student, requiring either repayment of principal and interest or repayment in services;
- E. "participating attorney" means an attorney who receives a loan repayment award from the department pursuant to the provisions of the Public Service Law Loan Repayment Act; and
- F. "public service employment" means employment with:
  - (1) an organization that is exempt from taxation pursuant to Section 501(c)(3) of Title 26 of the United States Code and that provides for the care and maintenance of indigent persons in New Mexico through civil legal services;
  - (2) the public defender department; or
  - (3) a New Mexico district attorney's office.

**History:** Laws 2005, ch. 83, § 3; 2008, ch. 61, § 2.

**Cross references.** — For Section 501(c)(3) of the Internal Revenue Code of 1986, see 26 U.S.C.S. § 501(c)(3).

**The 2008 amendment**, effective May 14, 2008, deleted the definition of commission and added Subsection B.

## 21-22F-4. Commission [department]; powers and duties.

- A. The commission [department] may:
  - (1) grant an award to repay loans obtained for legal education expenses of a participating attorney as consideration and inducement to the attorney to engage in public service employment; and
  - (2) delegate to other agencies or contract for the performance of services required by the provisions of the Public Service Law Loan Repayment Act.
- B. The commission [department] shall make a full and careful investigation of the ability, character and qualifications of each applicant and determine fitness to become a participating attorney in the public service law loan repayment program.

**History:** Laws 2005, ch. 83, § 4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.



**Effective dates.** — Laws 2005, ch. 83 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## **21-22F-5. Loan repayment program; participant eligibility; award criteria.**

A. An applicant shall be licensed to practice in New Mexico as an attorney and shall declare an intent to practice as an attorney in public service employment.

B. Prior to submitting an application to the public service law loan repayment program, an applicant shall apply to all available legal education loan repayment programs offered by the applicant's law school for which the applicant qualifies.

C. Prior to receiving a loan repayment award, the applicant shall file with the department:

- (1) a declaration of intent to practice as an attorney in public service employment;
- (2) proof of prior application to all legal education loan repayment programs offered by the applicant's law school for which the applicant qualifies; and
- (3) documentation that includes the applicant's total legal education debt, salary, any amounts received by the applicant from other law loan repayment programs and other sources of income deemed by the department as appropriate for consideration; provided that the applicant shall not be required to disclose amounts of income from military service.

D. Award criteria shall provide that:

- (1) preference in making awards shall be to applicants who:
  - (a) have graduated from the university of New Mexico law school;
  - (b) have the greatest financial need based on legal education indebtedness and salary;
  - (c) work in public service employment that has the lowest salaries; and
  - (d) work in public service employment in underserved areas of New Mexico that are in greatest need of attorneys practicing in public service employment;
- (2) an applicant's employment as an attorney in public service employment prior to participation in the public service law loan repayment program shall not count as time spent toward the minimum three-year period of service requirement pursuant to the contract between the participating attorney and the department acting on behalf of the state;
- (3) award amounts are dependent upon the applicant's total legal education debt, salary and sources of income other than income from military service deemed by the department as appropriate for consideration;
- (4) award amounts may be modified based upon available funding or other special circumstances;
- (5) an award shall not exceed the total legal education debt of any participant;
- (6) award amounts shall be reduced by the sum of the total award amounts received by the participant from other legal education loan repayment programs; and
- (7) an award determination may be appealed to the secretary of higher education.

E. The following legal education debts are not eligible for repayment pursuant to the Public Service Law Loan Repayment Act:

- (1) amounts incurred as a result of participation in state or law school loan-for-service programs or other state or law school programs whose purposes state that service be provided in exchange for financial assistance;
- (2) scholarships that have a service component or obligation;
- (3) personal loans from relatives or friends; and
- (4) loans that exceed individual standard school expense levels.

**History:** Laws 2005, ch. 83, § 5; 2008, ch. 61, § 3; 2013, ch. 147, § 1; 2018, ch. 32, § 1.

The 2018 amendment, effective July 1 2018, deleted the provision that attorneys who intend to practice in a public service employment position who earn more than \$55,000 are not eligible to participate in the public service law loan repayment program; deleted former Subsection

C and redesignated former Subsections D through F as Subsections C through E, respectively.

The 2013 amendment, effective June 14, 2013, raised the cap for public service loan repayments; and in Subsection C, after "employment position that earns more than", deleted "forty-five thousand dollars (\$45,000)" and added "fifty-five thousand dollars (\$55,000)".

The 2008 amendment, effective May 14, 2008, in Paragraph (3) of Subsection D, provided that the applicant shall not be required to disclose amounts of income from military service; in Paragraph (3) of Subsection E,

provided that award criteria shall not include income from military service; and added Paragraph (7) of Subsection E.

## 21-22F-6. Loan repayment contract terms; payment.

A. The loan repayment award shall be evidenced by a contract between the participating attorney and the commission [department] acting on behalf of the state. The contract shall state the amount of the award and the obligations of the participating attorney under the public service law loan repayment program, including a minimum three-year period of service, quarterly reporting requirements and other policies established by the commission [department].

B. A participating attorney shall serve a complete year in order to receive credit for that year. The minimum credit for a year shall be established by the commission [department]. The maximum credit for a year shall not exceed seven thousand two hundred dollars (\$7,200).

C. If a participating attorney does not comply with the terms of the contract, the commission [department] shall require immediate repayment of the award plus eighteen percent interest and may assess a penalty of up to three times the amount of award disbursed, unless the commission [department] finds acceptable extenuating circumstances for why the participating attorney cannot serve or comply with the terms of the contract. If the commission [department] does not find acceptable extenuating circumstances for the participating attorney's failure to comply with the contract, the commission [department] shall require immediate repayment of the award plus the amount of the penalty.

D. The commission [department], in consultation with the committee, shall adopt rules to implement the provisions of this section. The rules may provide for the disbursement of loan repayment awards in annual or other periodic installments.

**History: Laws 2005, ch. 83, § 6.**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 83 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 21-22F-7. Contracts; enforcement.

The general form of the contract required shall be prepared and approved by the attorney general and the department of finance and administration and signed by the participating attorney and by the executive director of the commission [department] or the executive director's designated representative on behalf of the state. The commission [department] is vested with full and complete authority and power to sue in its own name for any balance due the state from any attorney on any such contract.

**History: Laws 2005, ch. 83, § 7.**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 83 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 21-22F-8. Public service law advisory committee; created; duties.

A. The "public service law advisory committee" is created to advise the commission [department] on matters relating to the administration of the Public Service Law Loan Repayment Act.

B. The committee is composed of:

- (1) the dean of the university of New Mexico law school or the dean's designee;
- (2) the executive director of New Mexico legal aid or the director's designee who shall be an attorney employed with an organization that is exempt from taxation pursuant to Section 501(c)



(3) of Title 26 of the United States Code and that provides civil legal services to indigent persons in New Mexico;

(3) the chief public defender or the chief's designee;

(4) a district attorney appointed by the New Mexico district attorneys association; and

(5) a financial aid or career services officer of the university of New Mexico law school designated by the dean.

C. The committee shall:

(1) make recommendations to the commission [department] on applicants for the public service law loan repayment program;

(2) advise the commission [department] on the adoption of rules to implement the provisions of the Public Service Law Loan Repayment Act; and

(3) give advice or other assistance to the commission [department] as requested.

**History:** Laws 2005, ch. 83, § 8.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 83 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 21-22F-9. Fund created; method of payment.

The "public service law loan repayment fund" is created in the state treasury. All money appropriated for the public service law loan repayment program shall be credited to the fund and all payments for repayment of awards or penalties received by the commission [department] shall be credited to the fund. All payments for loan repayment awards shall be by warrant of the secretary of finance and administration upon vouchers signed by the designated representative of the commission [department]. Any unexpended or unencumbered balance remaining in the public service law loan repayment fund at the end of a fiscal year shall not revert to the general fund.

**History:** Laws 2005, ch. 83, § 9.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 83 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 21-22F-10. Cancellation.

The commission [department] may cancel any contract made between it and any participating attorney for any reasonable cause deemed sufficient by the commission [department].

**History:** Laws 2005, ch. 83, § 10.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 83 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 21-22F-11. Reports.

The commission [department] shall make an annual report to the governor and the legislature, prior to each regular session, of its activities, including the loan repayment awards granted, the names and addresses of participating attorneys and their employers who are in public service employment pursuant to the Public Service Law Loan Repayment Act and the names of participating attorneys who are not employed in public service employment, the reason they are not employed in public service employment and the amounts owed and paid on loans and loan repayment awards.

**History:** Laws 2005, ch. 83, § 11.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 83 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## ARTICLE 22G

### Conditional Tuition Waiver for Primary Care Medical Students

(Repealed by Laws 2009, ch. 225, § 6.)

#### 21-22G-1. Repealed.

**Repeals.** — Laws 2009, ch. 225, § 6 repealed 21-22G-1 NMSA 1978, as enacted by Laws 2009, ch. 225, § 1, relating to the short title, effective January 1, 2020. For provisions

of the former section, *see* the 2019 NMSA 1978 on *NMOneSource.com*.

#### 21-22G-2. Repealed.

**Repeals.** — Laws 2009, ch. 225, § 6 repealed 21-22G-2 NMSA 1978, as enacted by Laws 2009, ch. 225, § 2, relating to definitions, effective January 1, 2020. For provisions

of former section, *see* the 2019 NMSA 1978 on *NMOneSource.com*.

#### 21-22G-3. Repealed.

**Repeals.** — Laws 2009, ch. 225, § 6 repealed 21-22G-3 NMSA 1978, as enacted by Laws 2009, ch. 225, § 3, relating to primary care physician conditional tuition waiver program created, administration, rulemaking, selection

process, repayment, effective January 1, 2020. For provisions of former section, *see* the 2019 NMSA 1978 on *NMOneSource.com*.

#### 21-22G-4. Repealed.

**Repeals.** — Laws 2009, ch. 225, § 6 repealed 21-22G-4 NMSA 1978, as enacted by Laws 2009, ch. 225, § 4, relating to creation of primary care physician conditional

tuition waiver fund, effective January 1, 2020. For provisions of former section, *see* the 2019 NMSA 1978 on *NMOneSource.com*.

## ARTICLE 22H

### Teacher Loan Repayment

Sec.

21-22H-1. Short title.

21-22H-2. Purpose.

21-22H-3. Definitions.

21-22H-4. Department powers and duties; teacher eligibility; qualifications.

21-22H-5. Loan repayment award criteria; contract terms; payment.

Sec.

21-22H-6. Contracts; enforcement.

21-22H-7. Teacher loan repayment fund created; method of payment.

21-22H-8. Cancellation.

21-22H-9. Reports.

#### 21-22H-1. Short title.

Chapter 21, Article 22H NMSA 1978 may be cited as the "Teacher Loan Repayment Act".

**History:** Laws 2013, ch. 177, § 1; 2019, ch. 193, § 1.

**The 2019 amendment**, effective June 14, 2019, changed "This act" to "Chapter 21, Article 22H NMSA 1978".



## 21-22H-2. Purpose.

The purpose of the Teacher Loan Repayment Act is to increase the number of teachers in designated high-risk teacher positions in public schools through an educational loan repayment program. The act provides for repayment of the principal and reasonable interest accrued on loans obtained from the federal government for teacher education purposes.

**History:** Laws 2013, ch. 177, § 2. **Effective dates.** — Laws 2013, ch. 177 contained no adjournment of the legislature. effective date provision, but, pursuant to N.M. Const., art.

## 21-22H-3. Definitions.

As used in the Teacher Loan Repayment Act:

- A. "department" means the higher education department;
- B. "designated high-need teacher positions" means teacher positions in specific public schools that are:
  - (1) for teachers who are endorsed and teach bilingual education;
  - (2) for teachers who are endorsed and teach early childhood education or special education;
  - (3) for teachers who are endorsed and teach science, technology, engineering, mathematics or career technical education courses; or
  - (4) for teachers who are minorities; and
  - (5) in a public school that is low-performing or serves a high percentage of economically disadvantaged students; and
- C. "loan" means a grant of money to defray the costs incidental to a teacher education, under a contract between the federal government and a teacher, requiring repayment of principal and interest.

**History:** Laws 2013, ch. 177, § 3; 2019, ch. 193, § 2. **The 2019 amendment**, effective June 14, 2019, defined "designated high-need teacher" as used in the Teacher Loan Repayment Act, and made conforming and technical amendments; in Subsection B, after "designated", deleted "high-risk" and added "high-need", after "that", added "are", deleted former Paragraphs B(1) and B(2) and added new Paragraphs B(1) through B(5).

## 21-22H-4. Department powers and duties; teacher eligibility; qualifications.

A. The department may grant a loan repayment award to repay loans obtained for the teacher educational expenses of a teacher upon such terms and conditions as may be imposed by rules of the department.

B. Applicants shall be licensed New Mexico teachers who are bona fide citizens and residents of the United States and of New Mexico and have taught at least three years in New Mexico. High priority shall be given to applicants who are teaching in designated high-need teacher positions in the state.

C. The department and the public education department shall jointly make a full and careful investigation of the ability and qualifications of each applicant and determine the fitness of a teacher to participate in the teacher loan repayment program.

**History:** Laws 2013, ch. 177, § 4; 2019, ch. 193, § 3. **The 2019 amendment**, effective June 14, 2019, revised the qualifications for receiving a loan repayment award to repay loans obtained for the teacher educational expenses of a teacher; in Subsection B, after the second occurrence of "New Mexico", added "and have taught at least three years in New Mexico. High priority shall be given to", after "applicants", deleted "shall declare their intent to practice as teachers" and added "who are teaching", and after "designated", deleted "high-risk" and added "high-need".

**21-22H-5. Loan repayment award criteria; contract terms; payment.**

A. Loan repayment award criteria shall provide that:

(1) for high-priority applicants, award amounts shall be dependent upon a specific public school's need for the designated high-need teacher position, as determined by the public education department, the teacher's total teacher education indebtedness and available balances in the teacher loan repayment fund;

(2) award amounts for other teachers shall be based on the need for a teacher position that can be filled by the applicant, as determined by the public education department, the teacher's total teacher education indebtedness and available balances in the teacher loan repayment fund;

(3) preference in making awards shall be to teachers who have graduated from a New Mexico public post-secondary educational institution;

(4) award amounts shall not exceed six thousand dollars (\$6,000) per year and may be modified based upon funding availability or other special circumstances; and

(5) the total amount of awards made to any one teacher shall not exceed the total teacher education indebtedness remaining for that teacher.

B. The following teacher education debts are not eligible for repayment pursuant to the Teacher Loan Repayment Act:

(1) amounts incurred as a result of participation in state loan-for-service programs or other state programs whose purpose states that service be provided in exchange for financial assistance;

(2) scholarships that have a service component or obligation;

(3) loans from a commercial lender;

(4) personal loans from friends or relatives; and

(5) loans that exceed individual standard school expense levels.

C. Every loan repayment award shall be evidenced by a contract between the teacher and the department acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum each year to the teacher's federal government lender not to exceed six thousand dollars (\$6,000) per year and shall state the obligations of the teacher under the program, including a minimum two-school-year period of service, quarterly reporting requirements and other obligations established by the department. Execution of contracts shall occur prior to the start of a school year and the two-school-year period of service starts at the execution of the contract.

D. The department shall make annual payments pursuant to contracts only after satisfactory completion of a full year of teaching as certified by the public education department. The contract of any teacher who does not complete a full year of teaching shall be voided, and the teacher shall forfeit any right to that year's payment pursuant to the contract.

E. Each contract shall be for an initial two-year period and may be extended for three additional two-year contracts. The department shall not enter into any contracts with a single teacher for more than eight years of repayment.

F. Loan repayment awards shall be in the form of payments from the teacher loan repayment fund directly to the federal government lender of a teacher who has received the award and shall be considered a payment on behalf of the teacher pursuant to the contract between the department and the teacher. A loan repayment award shall not obligate the state or the department to the teacher's federal government lender for any other payment and shall not be considered to create any privity of contract between the state or the department and the lender.

G. The department, after consulting with the public education department, shall adopt rules to implement the provisions of the Teacher Loan Repayment Act. The rules shall provide:

(1) a procedure for determining the amount of a loan that will be repaid for each year of service; and

(2) for the disbursement of loan repayment awards to a teacher's federal government lender in annual installments after completion of each qualifying full year of teaching.



**History:** Laws 2013, ch. 177, § 5; 2019, ch. 193, § 4.

The 2019 amendment, effective June 14, 2019, revised the loan repayment award criteria, placed a maximum limit on the amount of a loan repayment award, and revised provisions related to contracts between a teacher and the higher education department; in Subsection A, in Paragraph A(1), added "for high-priority applicants"; and after "designated", deleted "high-risk" and added "high-need", added new Paragraph A(2) and redesignated former Paragraph A(2) as Paragraph A(3), deleted former Paragraph A(3), in Paragraph A(4), after "amounts", added "shall not exceed six thousand dollars (\$6,000) per year and", and in Paragraph A(5), after "indebtedness", deleted "of" and added "remaining"; in Subsection C, after "stated sum", added "each year",

after "federal government lender", added "not to exceed six thousand dollars (\$6,000)", after "period of service", deleted "in a designated high-risk teacher position", and after "established by the department.", added "Execution of contracts shall occur prior to the start of a school year and the two-school-year period of service starts at the execution of the contract."; deleted former Subsections D and E and added new Subsections D and E; in Subsection G, after "rules", added "shall provide", in Paragraph G(1), deleted "shall provide", after "year of service", deleted "in a designated high-risk teacher position", and in Paragraph G(2), deleted "may provide", after "annual", deleted "or other periodic", and after "installments", added "after completion of each qualifying full year of teaching".

## 21-22H-6. Contracts; enforcement.

The general form of a contract required pursuant to the Teacher Loan Repayment Act shall be prepared and approved by the attorney general, and each contract shall be signed by the teacher and the designated representative of the department on behalf of the state. The department is vested with full and complete authority and power to sue in its own name for any balance due the state from a teacher under any such contract.

**History:** Laws 2013, ch. 177, § 6.

**Effective dates.** — Laws 2013, ch. 177 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

## 21-22H-7. Teacher loan repayment fund created; method of payment.

The "teacher loan repayment fund" is created in the state treasury. All money appropriated for the teacher loan repayment program shall be credited to the fund, and any repayment of awards and interest received by the department shall be credited to the fund. Income from the fund shall be credited to the fund, and balances in the fund shall not revert to any other fund. Money in the fund is subject to appropriation by the legislature to the department for making loan repayment awards pursuant to the Teacher Loan Repayment Act. All payments for loan repayment awards shall be made upon vouchers signed by the designated representative of the department and upon a warrant issued by the secretary of finance and administration.

**History:** Laws 2013, ch. 177, § 7; 2019, ch. 193, § 5.

The 2019 amendment, effective June 14, 2019, provided that money in the teacher loan repayment fund is

subject to appropriation by the legislature; after "Money in the fund", deleted "appropriated" and added "subject to appropriation by the legislature".

## 21-22H-8. Cancellation.

The department may cancel any contract made between it and a teacher pursuant to the Teacher Loan Repayment Act for any reasonable cause deemed sufficient by the department.

**History:** Laws 2013, ch. 177, § 8.

**Effective dates.** — Laws 2013, ch. 177 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

## 21-22H-9. Reports.

Prior to each regular session of the legislature, the department shall make annual reports to the governor and the legislature of the department's activities pertaining to the Teacher Loan Repayment Act; the loan repayment awards granted; the names and addresses of teachers who received loan repayment awards; the names and locations of the positions filled by those teachers; the name

of each teacher who received a loan repayment award who is not serving in a designated high-need teacher position, the amount owed on each teacher's loan and the amount paid on each teacher's loan by loan repayment awards; and the number of teachers whose contracts were voided because they did not complete a full year of teaching.

**History:** Laws 2013, ch. 177, § 9; 2019, ch. 193, § 6.

The 2019 amendment, effective June 14, 2019, revised requirements for the content of reports made by the higher education department to the legislature regarding the department's activities pertaining to the Teacher Loan Repayment Act; after "designated", deleted "high-risk" and

added "high-need", after "teacher position", deleted "the reason the teacher is not serving in a designated high-risk teacher position" after "repayment awards"; added "and the number of teachers whose contracts were voided because they did not complete a full year of teaching".

## ARTICLE 22I

### Children, Youth and Families Worker Loan Repayment

Sec.

- 21-22I-1. Short title.
- 21-22I-2. Purpose.
- 21-22I-3. Definitions.
- 21-22I-4. Powers and duties.

Sec.

- 21-22I-5. Awards; criteria; contract terms.
- 21-22I-6. Contracts; enforcement; cancellation.
- 21-22I-7. Loan repayment fund created.
- 21-22I-8. Reports.

#### 21-22I-1. Short title.

This act [21-22I-1 through 21-22I-8 NMSA 1978] may be cited as the "Children, Youth and Families Worker Loan Repayment Act".

**History:** Laws 2015, ch. 16, § 1.

**Effective dates.** — Laws 2015, ch. 16, § 9 made Laws 2015, ch. 16, § 1 effective July 1, 2015.

#### 21-22I-2. Purpose.

The purpose of the Children, Youth and Families Worker Loan Repayment Act is to increase the number of public service workers employed with the children, youth and families department who are direct service providers in the protective services division or juvenile justice division of the children, youth and families department. That act provides for repayment of the principal and reasonable interest accrued on higher education loans obtained from the federal government or a commercial lender.

**History:** Laws 2015, ch. 16, § 2.

**Effective dates.** — Laws 2015, ch. 16, § 9 made Laws 2015, ch. 16, § 2 effective July 1, 2015.

#### 21-22I-3. Definitions.

As used in the Children, Youth and Families Worker Loan Repayment Act:

- A. "applicant" means a person applying for an award;
- B. "award" means the grant of money to repay loans;
- C. "critical field" means social work or other academic field of study that leads to a bachelor's or master's degree and that the children, youth and families department has determined to be critical to the work of the protective services division or juvenile justice division of the children, youth and families department;
- D. "department" means the higher education department;
- E. "fund" means the children, youth and families worker loan repayment fund;
- F. "loan" means a grant of money under contract between the student and the federal government or a commercial lender to defray the costs incidental to an undergraduate or master's level education in a critical field and that requires either repayment of principal and interest or repayment in services;



G. "program" means the children, youth and families public service worker loan repayment program, which provides money to repay student loans in a critical field; and

H. "public service worker" means an employee of the children, youth and families department with a completed bachelor's or master's degree in a critical field who works directly with children and families in either the protective services division or juvenile justice division of the children, youth and families department. The children, youth and families department shall provide an annual list to the department of job classifications that qualify as "public service workers" for the purposes of the Children, Youth and Families Worker Loan Repayment Act.

**History:** Laws 2015, ch. 16, § 3.

**Effective dates.** — Laws 2015, ch. 16, § 9 made Laws 2015, ch. 16, § 3 effective July 1, 2015.

## **21-22I-4. Powers and duties.**

A. The department may:

- (1) grant an award to repay loans obtained for a public service worker upon such terms and conditions as may be imposed by rule of the department; and
- (2) delegate to other agencies or contract for the performance of services required by the program.

B. An applicant must be a public service worker before applying for the program.

**History:** Laws 2015, ch. 16, § 4.

**Effective dates.** — Laws 2015, ch. 16, § 9 made Laws 2015, ch. 16, § 4 effective July 1, 2015.

## **21-22I-5. Awards; criteria; contract terms.**

A. Prior to receiving an award, the public service worker shall file an application with the department that meets the criteria established by rule of the department.

B. The following debts are not eligible for repayment pursuant to the Children, Youth and Families Worker Loan Repayment Act:

- (1) amounts incurred as a result of participation in state loan-for-service programs or other state programs whose purpose states that service be provided in exchange for financial assistance;
- (2) scholarships that have a service component or obligation;
- (3) personal loans from friends or relatives;
- (4) loans that exceed individual standard school expense levels; and
- (5) loans that are eligible for another state or federal loan repayment program.

C. Award criteria shall provide that:

- (1) the applicant has satisfactorily completed at least one year of service with the children, youth and families department as a public service worker;
- (2) the percentage of repayment directly relates to years of service completed as a public service worker;
- (3) the highest priority shall be given to public service workers who work in geographic areas or division positions where vacancies are difficult to fill as determined by the secretary of children, youth and families;
- (4) award amounts may be modified based on available funding or other special circumstances; and
- (5) an award for each public service worker shall not exceed twenty-five thousand dollars (\$25,000) or the loan indebtedness of the worker, whichever is less.

D. Every loan repayment award shall be evidenced by a contract between the public service worker and the department working on behalf of the state. The contract shall provide for the payment by the state of a stated sum to the public service worker's federal government or commercial lender and shall state the obligations of the public service worker under the program as established by the department.

E. The contract between a public service worker and the department shall provide that, if the public service worker does not comply with the terms of the contract, the public service worker shall reimburse the department for all loan payments made on the public service worker's behalf, plus reasonable interest at a rate to be determined by the department, unless the department finds acceptable extenuating circumstances for why the public service worker cannot serve or comply with the terms of the contract.

F. Loan repayment awards shall be in the form of payments from the fund directly to the federal government or commercial lender of a public service worker who has received the award and shall be considered a payment on behalf of the public service worker pursuant to the contract between the department and the public service worker. A loan repayment award shall not obligate the state or the department to a public service worker's lender for any other payment and shall not be considered to create any privity of contract between the state or the department and the lender.

G. The department, after consulting with the children, youth and families department, shall adopt rules to implement the provisions of the Children, Youth and Families Worker Loan Repayment Act. The rules:

- (1) shall provide a procedure for determining the amount of a loan that will be repaid; and
- (2) may provide for the disbursement of loan repayment awards to the lender in annual or other periodic installments.

**History:** Laws 2015, ch. 16, § 5.

**Effective dates.** — Laws 2015, ch. 16, § 9 made Laws 2015, ch. 16, § 5 effective July 1, 2015.

## **21-22I-6. Contracts; enforcement; cancellation.**

A. The general form of a contract required pursuant to the Children, Youth and Families Worker Loan Repayment Act shall be prepared and approved by the department's general counsel; and each contract shall be signed by the public service worker and the secretary of higher education or the secretary's authorized representative on behalf of the state. The department is vested with full and complete authority and power to sue in its own name for any balance due the state from a public service worker under a loan repayment contract.

B. The department may cancel a contract made between it and a public service worker pursuant to the Children, Youth and Families Worker Loan Repayment Act for any reasonable cause deemed sufficient by the department.

**History:** Laws 2015, ch. 16, § 6.

**Effective dates.** — Laws 2015, ch. 16, § 9 made Laws 2015, ch. 16, § 6 effective July 1, 2015.

## **21-22I-7. Loan repayment fund created.**

The "children, youth and families worker loan repayment fund" is created in the state treasury. The fund consists of appropriations, repayment of awards and interest received by the department, income from investment of the fund, gifts, grants and donations. The fund shall be administered by the department, and money in the fund is appropriated to the department to make loan repayment awards pursuant to the Children, Youth and Families Worker Loan Repayment Act. Money in the fund at the end of a fiscal year shall not revert to any other fund. All payments for loan repayment awards shall be made on warrants of the secretary of finance and administration on vouchers signed by the secretary of higher education or the secretary's authorized representative.

**History:** Laws 2015, ch. 16, § 7.

**Effective dates.** — Laws 2015, ch. 16, § 9 made Laws 2015, ch. 16, § 7 effective July 1, 2015.

## **21-22I-8. Reports.**

The department shall make annual reports to the governor and the legislature prior to each regular session of its activities, the loan repayment awards granted and the title and job duties of



each loan recipient. The report shall also include any contract cancellations and any enforcement actions the department has taken.

**History:** Laws 2015, ch. 16, § 8.

**Effective dates.** — Laws 2015, ch. 16, § 9 made Laws 2015, ch. 16, § 8 effective July 1, 2015.

## ARTICLE 23

### Post-Secondary Educational Institution Act

Sec. 21-23-1.

21-23-1. Short title.

21-23-2. Purpose of act.

21-23-3. Definitions.

21-23-4. Exceptions.

21-23-5. Duties of the department.

21-23-6. Registration of colleges and universities; submission of materials.

21-23-6.1. Licensure of career schools; licensure of certain colleges and universities.

21-23-6.2. Licensure standards; requirements; fee authorization.

21-23-6.3. Fee authorization.

21-23-7. Claims; limitations; appeals.

Sec.

21-23-7.1. Surety bond required; alternative surety.

21-23-8. Fund created.

21-23-9. Repealed.

21-23-10. Disciplinary actions; civil penalties.

21-23-10.1. Enforcement.

21-23-11. Existing post-secondary educational institutions.

21-23-12. Cooperation.

21-23-13. Procedure.

21-23-14. Prohibition.

21-23-15. Post-secondary educational institutions; termination.

21-23-16. Disclosure agreements.

#### 21-23-1. Short title.

Chapter 21, Article 23 NMSA 1978 may be cited as the "Post-Secondary Educational Institution Act".

**History:** 1953 Comp., § 73-40-1, enacted by Laws 1971, ch. 303, § 1; 1975, ch. 148, § 1; 1994, ch. 108, § 2.

**Cross references.** — For Post-Secondary Educational Planning Act, see Chapter 21, Article 2 NMSA 1978.

**The 1994 amendment,** effective July 1, 1994, substituted "Chapter 21, Article 23 NMSA 1978" for "This act".

#### 21-23-2. Purpose of act.

The purpose of the Post-Secondary Educational Institution Act is to improve the quality of private post-secondary education, to prevent misrepresentation, fraud and collusion in offering educational programs to persons over the compulsory school attendance age and to protect consumers enrolled in private post-secondary educational institutions when those schools cease operation or fail to meet standards of quality established by the department.

**History:** 1953 Comp., § 73-40-2, enacted by Laws 1971, ch. 303, § 2; 1975, ch. 148, § 2; 1994, ch. 108, § 3; 2013, ch. 59, § 1.

**The 2013 amendment,** effective June 14, 2013, assigned administration of the Post-Secondary Educational Institution Act to the higher education department; and

after "established by the", deleted "commission" and added "department".

**The 1994 amendment,** effective July 1, 1994, inserted "private" preceding "post-secondary", deleted "and" following "education", and inserted the language following "school attendance age".

#### 21-23-3. Definitions.

As used in the Post-Secondary Educational Institution Act:

A. "career school" means a private post-secondary educational institution offering a formal educational curriculum in New Mexico for a fee to members of the general public beyond compulsory school age, terminating in a certificate, diploma, associate degree or comparable confirmation of completion of the curriculum;

B. "college" or "university" means a private post-secondary educational institution offering a formal educational curriculum in New Mexico for a fee to members of the general public beyond

compulsory school age, terminating in a baccalaureate, master's or doctoral degree or comparable confirmation of completion of the curriculum;

C. "department" means the higher education department;

D. "enrollment agreement" means an agreement, instrument or note executed before a person begins coursework that creates a binding obligation between the person and the post-secondary educational institution;

E. "license" means a written acknowledgment by the department that a career school or nonregionally accredited college or university has met the requirements of the department for offering a formal educational curriculum within New Mexico;

F. "post-secondary educational institution" includes an academic, vocational, technical, business, professional or other school, college or university or other organization or person offering or purporting to offer courses, instruction, training or education from a physical site in New Mexico, through distance education, correspondence or in person;

G. "private post-secondary educational institution" means a nonpublicly funded post-secondary educational institution that offers post-secondary education for a fee to members of the general public;

H. "prospective student" means a person who demonstrates interest in signing an enrollment agreement with a post-secondary educational institution; and

I. "registration" means a written acknowledgment by the department that a regionally accredited college or university has filed pertinent curriculum and enrollment information, as required by the department, and is authorized to operate a private post-secondary educational institution.

**History:** 1953 Comp., § 73-40-3, enacted by Laws 1971, ch. 303, § 3; 1975, ch. 148, § 3; 1994, ch. 108, § 4; 2005, ch. 223, § 1; 2013, ch. 59, § 2; 2020, ch. 55, § 1.

**The 2020 amendment**, effective January 1, 2021, defined "enrollment agreement", "private post-secondary educational institution" and "prospective student" as used in the Post-Secondary Educational Institution Act; added a new Subsection D and redesignated former Subsections D and E as Subsections E and F, respectively; and added new Subsections G and H and redesignated former Subsection F as Subsection I.

**The 2013 amendment**, effective June 14, 2013, changed terms to assign administration of the Post-Secondary Educational Institution Act to the higher education department; deleted former Subsection A, which defined "commission"; added Subsection C; in Subsections D and F, deleted "commission" and added "department"; in Subsection F, after "acknowledgment by the"

deleted "commission" and added "department" and after "as required by the", deleted "commission" and added "department, and is authorized to operate a private post-secondary educational institution".

**The 2005 amendment**, effective June 17, 2005, defined "license" in Subsection D to include a written acknowledgment that a non-regionally accredited college or university has met the requirement of the commission; defined "post-secondary educational institution" in Subsection E to mean an institution that offers courses, instruction, training or education, which may include distance education, from a physical site in New Mexico; and defined "registration" in Subsection F to mean an acknowledgment that a regionally accredited college or university has filed the information required by the commission.

**The 1994 amendment**, effective July 1, 1994, rewrote the section to the extent that a detailed comparison is impracticable.

## 21-23-4. Exceptions.

A. The Post-Secondary Educational Institution Act does not apply to or affect:

(1) a post-secondary educational institution that is established by name as an educational institution by the state through a charter, constitutional provision or other action and is supported in whole or in part by state or local taxation;

(2) an occupational, trade or professional school operating pursuant to any New Mexico occupational licensing law;

(3) a course of instruction provided by an employer to its own employees for training purposes;

(4) institutions that exclusively offer education that is solely avocational or recreational in nature;

(5) a course of instruction or study sponsored by a recognized fraternal, trade, business or professional organization or labor union for the instruction of its members;

(6) chartered, nonprofit religious institutions whose sole purpose is to train students in religious disciplines to prepare them to assume a vocational objective relating primarily to religion;



(7) institutions that exclusively offer instruction at any level from preschool through the twelfth grade;

(8) an institution funded in full or in part by an Indian tribe or pueblo in the state of New Mexico; and

(9) an organization that provides only brief courses of instruction designed to teach specific skills that may be applicable in a work setting but are not sufficient in themselves to be a program of training in employment.

B. An institution, school or program described in this section shall not be entitled to an exemption unless it presents satisfactory evidence to the department that it qualifies.

**History:** 1953 Comp., § 73-40-4, enacted by Laws 1971, ch. 303, § 4; 1975, ch. 148, § 4; 1994, ch. 108, § 5; 2005, ch. 223, § 2; 2013, ch. 59, § 3.

**The 2013 amendment**, effective June 14, 2013, exempts post-secondary educational institutions established by the state; in Paragraph (1) of Subsection A, after "post-secondary educational institution", added "that is established by name as an educational institution by the state through charter, constitutional provision or other action and is"; deleted former Paragraph (6) of Subsection A, which exempted regionally accredited private colleges or universities; deleted former Paragraph (7) of Subsection A, which exempted proprietary schools; and in Subsection B, after "satisfactory evidence to the", deleted "commission" and added "department".

**The 2005 amendment**, effective June 17, 2005, added Subsection A(11) to provide that the Post-Secondary Education Institution Act does not apply to an organization that provides only brief courses designed to teach specific skills.

**The 1994 amendment**, effective July 1, 1994, substituted "operating pursuant" for "accredited under" in Subsection B; in Subsection F, inserted "regionally accredited college or university that is a" and deleted "or private, accredited colleges or universities" following "colleges or universities"; in Subsection G, deleted "out-of-state" preceding "proprietary" and substituted "21-24-2 NMSA 1978" for "73-41-2 NMSA 1953"; deleted former Subsections H and I, relating to accredited institutions, and renumbered the remaining subsections accordingly; substituted "commission" for "board" in the last paragraph; and made stylistic changes throughout the section.

#### ANNOTATIONS

**Law reviews.** — For note, "Human Rights Commission v. Board of Regents: Should a University Be Considered a Public Accommodation Under the New Mexico Human Rights Act"? see 12 N.M.L. Rev. 541 (1982).

## 21-23-5. Duties of the department.

A. The department is charged with oversight of all private post-secondary educational institutions operating within the state.

B. The department shall provide for the registration of all regionally accredited colleges and universities operating in the state pursuant to the Post-Secondary Educational Institution Act.

C. The department shall provide for the licensure of all career schools and all nonregionally accredited colleges and universities operating in the state pursuant to the Post-Secondary Educational Institution Act.

**History:** 1978 Comp., § 21-23-5, enacted by Laws 1994, ch. 108, § 6; 2005, ch. 223, § 3; 2013, ch. 59, § 4.

**Repeals and reenactments.** — Laws 1994, ch. 108, § 6 repealed § 21-23-5, as amended by Laws 1975, ch. 148, § 5, relating to the requirement of certification, and enacted a new section, effective July 1, 1994.

**The 2013 amendment**, effective June 14, 2013, changed terms to assign administration of the Post-Secondary Educational Institution Act to the higher education department; in the title of the section, deleted "commission" and

added "department"; in Subsections A through C, deleted "commission" and added "department".

**The 2005 amendment**, effective June 17, 2005, provided in Subsection C that the commission shall provide for licensure of all non-regionally accredited colleges and universities.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 6.  
14A C.J.S. Colleges and Universities § 3.

## 21-23-6. Registration of colleges and universities; submission of materials.

A. Every college or university operating in New Mexico that is regionally accredited or seeking regional accreditation by an accrediting agency approved by the department shall register with the department.

B. A college or university registering with the department pursuant to this section shall provide curriculum and enrollment information, financial information and all publication materials requested by the department.

C. A college or university registering with the department shall adopt a procedure for the resolution of student complaints.

D. A college's or university's registration is valid for the same period as its grant of regional accreditation from its accrediting agency.

**History:** 1978 Comp., § 21-23-6, enacted by Laws 1994, ch. 108, § 7; 2005, ch. 223, § 4; 2013, ch. 59, § 5.

**Repeals and reenactments.** — Laws 1994, ch. 108, § 7 repealed 21-23-6 NMSA 1978, as amended by Laws 1975, ch. 148, § 6 relating to requirements for permits or certificates of approval for post-secondary educational institutions, and enacted a new section, effective July 1, 1994.

**The 2013 amendment,** effective June 14, 2013, required registered colleges and universities to adopt procedures to handle student complaints; provided that a college's university's registration is valid for the same period

as the term of its regional accreditation; in Subsections A and B, deleted "commission" and added "department"; and added Subsections C and D.

**The 2005 amendment,** effective June 17, 2005, changed "accredited" to "regionally accredited" and changes "accreditation" to "regional accreditation".

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 4, 6, 7, 8, 23, 42. 14A C.J.S. Colleges and Universities §§ 3, 6, 16.

### 21-23-6.1. Licensure of career schools; licensure of certain colleges and universities.

A. A career school or nonregionally accredited college or university operating in New Mexico shall be licensed by the department. It is unlawful to operate a career school or nonregionally accredited college or university without first obtaining a license from the department.

B. A college or university operating in New Mexico that is not regionally accredited or is not seeking regional accreditation by an accrediting agency approved by the department shall be licensed by the department in the manner provided for career schools or other nonregionally accredited colleges or universities. It is unlawful to operate a college or university that is not accredited or seeking accreditation by an accrediting agency approved by the department without first obtaining a license from the department.

C. No person other than an employee of an institution licensed pursuant to this section shall, for a salary or fee, solicit attendance at that institution.

**History:** 1978 Comp., § 21-23-6.1, enacted by Laws 1994, ch. 108, § 8; 2005, ch. 223, § 5; 2013, ch. 59, § 6.

**The 2013 amendment,** effective June 14, 2013, changed terms to assign administration of the Post-Secondary Educational Institution Act to the higher education department; and in Subsections A and B, deleted "commission" and added "department".

**The 2005 amendment,** effective June 17, 2005, provided in Subsection A that a non-regionally accredited

college or university operating in New Mexico shall be licensed by the commission; changed "accredited" to "regionally accredited" and changed "accreditation" to "regional accreditation" in Subsection B; and provided in Subsection B that a college or university that is operating in New Mexico but that is not regionally accredited or seeking regional accreditation shall be licensed in the manner provided for non-regionally accredited colleges or universities.

### 21-23-6.2. Licensure standards; requirements; fee authorization.

A. Every career school and nonregionally accredited college and university operating in the state shall annually apply to the department for licensure. The career school and nonregionally accredited college or university shall apply on forms approved by the department, shall supply all information requested by the department and shall pay an annual licensure fee set by the department.

B. The department or its designee shall consider information submitted by the career school and nonregionally accredited college or university, information from independent accreditation bodies and information gathered during visits to the career school and nonregionally accredited college or university in determining eligibility for licensure.

C. The department shall promulgate and file, in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], rules that:



- (1) require each career school and nonregionally accredited college and university to supply annually information regarding enrollment, program completion by students, employment and other educational placements of students and operating revenue budgets;
- (2) provide standards and methods for the evaluation and appraisal of career schools and nonregionally accredited colleges and universities;
- (3) provide for a tuition refund policy;
- (4) require maintenance of adequate records by each career school and nonregionally accredited college and university and provide reasonable availability of records for inspection;
- (5) regulate the use of deceptive and misleading advertising and determine what information shall be furnished each student prior to enrollment;
- (6) assure that any career school or nonregionally accredited college or university licensed pursuant to the Post-Secondary Educational Institution Act has entered into a teach-out agreement with at least one other private or public institution operating in the state unless the department determines that such an agreement is not feasible;
- (7) provide standards for the award of associate, baccalaureate, master's and doctoral degrees;
- (8) require all degree-granting schools to seek appropriate external accreditation by an agency recognized by the federal department of education as a means of assuring quality instruction;
- (9) name an advisory committee of education providers and consumers, including owners and operators of career schools and nonregionally accredited colleges and universities;
- (10) provide for the maintenance of records for career schools and nonregionally accredited colleges and universities no longer in operation;
- (11) provide standards for the evaluation of the financial stability and ability to meet the commitments of career schools and nonregionally accredited colleges and universities;
- (12) require each career school and nonregionally accredited college and university to adopt a procedure for the resolution of student complaints; and
- (13) establish other requirements necessary to carry out the provisions of the Post-Secondary Educational Institution Act.

D. The department may solicit information pertaining to the financial history and stability of a career school or nonregionally accredited college or university and its owners, including information pertaining to actions of bankruptcy filed within the immediately preceding five years. The department may consider such information in determining eligibility for licensure.

**History:** 1978 Comp., § 21-23-6.2, enacted by Laws 1994, ch. 108, § 9; 2005, ch. 223, § 6; 2013, ch. 59, § 7.

The 2013 amendment, effective June 14, 2013, changed terms to assign administration of the Post-Secondary Educational Institution Act to the higher education department; and in Subsections A through D, deleted "commission" and added "department".

The 2005 amendment, effective June 17, 2005, provided in Subsection A that every non-regionally accredited college or university operating in New Mexico shall annually apply for a license; provided in Subsection B that the commission shall consider information submitted by the non-regionally accredited college or university and

information gathered during visits to the non-regionally accredited college or university in determining eligibility for licensure; provided in Subsections C (1), (2), (4), (6), (9), (10), (11) and (12) that rules promulgated by the commission shall apply to non-regionally accredited college or university; provided in Subsection C(8) that the rules promulgated by the commission shall require all degree granting schools to seek accreditation by an agency recognized by the federal department of education; and provided in Subsection D that the commission shall solicit information about the financial history and stability of non-regionally accredited college or university and their owners.

### 21-23-6.3. Fee authorization.

A. The department may establish initial application fees for all colleges, universities or career schools seeking to operate in New Mexico. The initial application fee shall be not less than two hundred dollars (\$200) or more than five thousand dollars (\$5,000). In setting the fee, the department shall consider the projected revenue of the institution and the projected cost of performing the review.

B. The department may establish an annual licensing fee for all career schools or nonregionally accredited colleges or universities licensed by the department. The licensing fee shall be proportionate to each school's gross annual tuition revenue; provided the fee shall be not less than two hundred dollars (\$200) or more than five thousand dollars (\$5,000).



C. The department may charge a reasonable administrative fee not to exceed the actual cost of providing the administrative service.

D. All fees imposed and collected by the department shall be deposited in the post-secondary educational institution fund.

**History:** 1978 Comp., § 21-23-6.3, enacted by Laws 1994, ch. 108, § 10; 2005, ch. 223, § 7; 2013, ch. 59, § 8.

The 2013 amendment, effective June 14, 2013, changed terms to assign administration of the Post-Secondary Educational Institution Act to the higher education department; and in Subsections A through D, deleted "commission" and added "department".

The 2005 amendment, effective June 17, 2005, provided in Subsection B that the commission may establish an annual license fee for non-regionally accredited colleges and universities license by the commission and added Subsection C to provide that the commission may charge a reasonable administrative fee not to exceed the actual cost of providing administrative services.

## 21-23-7. Claims; limitations; appeals.

A. Any person having a claim against a college, university or career school registered or licensed by the department or that college's, university's or career school's agents, instructors or other personnel shall first seek resolution of the claim with the college, university or career school; thereafter, a person may file a verified complaint with the department, setting forth the basis of the claim and the name and address of the college, university or career school complained against and any other persons involved or having knowledge of the claim. All claims shall be limited to the amount of tuition actually paid or to any charge or fee received by the college, university or career school or its agents or employees.

B. Upon the receipt of a verified complaint, the department or its authorized employee shall attempt to resolve the claim outlined in the complaint. The department or its authorized employee may convene a hearing and shall give written notice to the college, university or career school and to all persons involved of the hearing and its time, date and place. The notice shall state that the hearing is an informal one for the purpose of determining the facts surrounding the claim and, if the claim is correct, to effect a settlement by persuasion and conciliation.

C. In the event that the party complained against refuses to attend the hearing or effect the settlement of any claim determined by the department to be correct, the department shall invoke its powers to take such action as shall be necessary for the indemnification of the claimant.

D. Any person aggrieved by a department decision rendered subsequent to a claim hearing may appeal to the district court in the judicial district in which the hearing was conducted. The appeal shall be based upon the record established at the claim hearing.

**History:** 1953 Comp., § 73-40-7, enacted by Laws 1971, ch. 303, § 7; 1975, ch. 148, § 7; 1994, ch. 108, § 11; 2013, ch. 59, § 9.

**Cross references.** — For procedures governing administrative appeals to the district court, see Rule 1-074 NMRA.

For scope of review of the district court, see *Zamora v. Village of Ruidoso Downs*, 1995-NMSC-072, 120 N.M. 778, 907 P.2d 182.

The 2013 amendment, effective June 14, 2013, changed terms to assign administration of the Post-Secondary Educational Institution Act to the higher education department; provided for resolution of claims against registered colleges and universities; in Subsections A through D, deleted "commission" and added "department"; in Subsection A, in the first sentence, after "having a claim against a", added "college, university or", after "university or career school" added "registered or", after "licensed by the department or that", added "college's, university's or", after "the claim with the", added "college, university or", and after "and address of the", added "college, university or", and in the second sentence, after "fee received by the", added "college, university or"; and in Subsection B, in the second sentence, after "written notice to the", added "college, university or".

The 1994 amendment, effective July 1, 1994, substituted "Appeals" for "Surety bonds" in the section heading;

added the subsection designations; in Subsection A, substituted "career school licensed by the commission or that career school's" for "post-secondary educational institution holding a permit or certificate of approval its," added "first seek resolution of the claim with the career school; thereafter, a person may," substituted "commission" for "board," substituted "career school" for "institution" and substituted "career school or" for "institution"; in Subsection B, substituted "commission" for "board," added "shall attempt to resolve the claim outlined in the complaint. The commission or its authorized employee may convene a hearing and," deleted "ten days" preceding "written notice," and substituted "career school" for "institution"; in Subsection C, substituted "commission" for "board" twice, deleted "to notify the principal on the surety bond and" following "powers," and deleted "on the bond" following "action"; and added Subsection D.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 22.

Absence from, or inability to attend, school or college as affecting liability for, or right to recover payments for tuition or board, 20 A.L.R.4th 303.

14A C.J.S. Colleges and Universities §§ 48, 50.



### 21-23-7.1. Surety bond required; alternative surety.

A. A college, university or career school registered or licensed by the department shall post with the department and maintain in effect a surety bond. The bond shall be payable to the department and shall be sufficient in amount to indemnify any student damaged as a result of fraud or misrepresentation by a registered or licensed college, university or career school or as a result of the college, university or career school ceasing operation prior to its students having completed the programs for which they have contracted.

B. The department is authorized to establish the amount of bond required on an individual basis, taking into consideration factors such as the college's, university's or career school's size, number of students and total income and assets of the college, university or career school in the state. In no case shall the bond be less than five thousand dollars (\$5,000) nor shall it exceed twenty percent of a college's, university's or career school's gross annual tuition revenue in New Mexico.

C. Surety bonds may be canceled only following delivery of written notice to the department no less than ninety days prior to the date of cancellation. In case of cancellation, the college, university or career school shall provide the department with a like surety or acceptable alternative in order to maintain licensure.

D. As an alternative to a surety bond, a college, university or career school may elect to and the department may require that a college, university or career school establish and maintain a cash deposit escrow account, irrevocable letter of credit or alternative payable to the department in an amount set by the department and subject to rules promulgated by the department. In no case shall the deposit or account required exceed twenty percent of the college's, university's or career school's gross tuition annual revenue in New Mexico.

**History:** 1978 Comp., § 21-23-7.1, enacted by Laws 1994, ch. 108, § 12; 2013, ch. 59, § 10.

The 2013 amendment, effective June 14, 2013, changed terms to assign administration of the Post-Secondary Educational Institution Act to the higher education department; provided for surety bonds by registered colleges and universities; in Subsections A through D, deleted "commission" and added "department"; in Subsection A, at the beginning of the first sentence, added "college, university or", in the second sentence, after "misrepresentation by a", added "registered or", after "registered or licensed", added "college, university or", and after

"as a result of the", added "college, university or"; in Subsection B, in the first sentence, after "factors such as the", added "college's, university's or" and after "assets of the", added "college, university or", and in the second sentence, after "twenty percent of a", added "college's or university's or"; in Subsection C, in the second sentence, after "cancellation, the", added "college, university or"; and in Subsection D, after "surety bond, a", added "college, university or", after "require that a", added "college, university or", and after "and subject to", deleted "regulations" and added "rules", and in the second sentence, after "twenty percent of the", added "college's, university's or".

### 21-23-8. Fund created.

There is created in the state treasury the "post-secondary educational institution fund". Money appropriated to this fund or accruing to it through gifts, grants or bequests shall not be transferred to another fund or encumbered or disbursed in any manner except for the administration of the Post-Secondary Educational Institution Act or the Out-of-State Proprietary School Act [Chapter 21, Article 24 NMSA 1978]. The fund shall not revert at the end of the fiscal year. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of higher education or the secretary's authorized representative.

**History:** 1953 Comp., § 73-40-8, enacted by Laws 1975, ch. 148, § 8; 1977, ch. 247, § 193; 1989, ch. 324, § 17; 2013, ch. 59, § 11.

**Repeals and reenactments.** — Laws 1975, ch. 148, § 8, repealed former 73-40-8, 1953 Comp., relating to collection and deposit of fees, and enacted a new 73-40-8, 1953 Comp.

The 2013 amendment, effective June 14, 2013, changed terms to assign administration of the Post-Secondary Educational Institution Act to the higher

education department; and in the fourth sentence, after "vouchers signed by the", deleted "executive director" and added "secretary", after "secretary of" deleted "the commission on", and after "higher education", added "or the secretary's authorized representative".

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63A Am. Jur. 2d Public Funds § 3.  
81A C.J.S. States § 135.

## 21-23-9. Repealed.

**Repeals.** — Laws 1994, ch. 108, § 29 repealed 21-23-9 NMSA 1978, as enacted by Laws 1975, ch. 148, § 9, relating to transfer of funds, effective July 1, 1994. For

provisions of former section, *see* the 1993 NMSA 1978 on *NMOneSource.com*.

## 21-23-10. Disciplinary actions; civil penalties.

A. A person shall not:

- (1) operate a career school or nonregionally accredited college or university within the state until that school has been licensed by the department;
- (2) operate a regionally accredited college or university within the state until that college or university has registered with the department;
- (3) deny enrollment to or make any distinction or classification of students in the program or practices of any post-secondary educational institution under the jurisdiction of the department on account of race, color, culture, ancestry, national origin, sex, age, religion or disability; or
- (4) solicit, directly or through an agent or employee, the enrollment of any person in a post-secondary educational institution within the state by the use of fraud, misrepresentation or collusion.

B. Whoever violates any provision of this section may be assessed a civil penalty not to exceed five hundred dollars (\$500) per day per violation. Civil penalties shall be credited to the current school fund as provided in Article 12, Section 4 of the constitution of New Mexico.

C. After an investigation, the department may take any one or a combination of the following disciplinary actions against a post-secondary educational institution registered or licensed in accordance with the Post-Secondary Educational Institution Act:

- (1) revoke a license;
- (2) revoke the registration, if the institution has had its regional accreditation revoked by its accrediting agency;
- (3) assess a civil penalty as provided in Subsection B of this section; or
- (4) impose probation requirements.

**History:** 1953 Comp., § 73-40-9, enacted by Laws 1971, ch. 303, § 9; 1975, ch. 148, § 10; 1994, ch. 108, § 13; 2005, ch. 223, § 8; 2013, ch. 59, § 12.

**Cross references.** — For misrepresenting permit or certificate as approval or accreditation, *see* 21-23-14 NMSA 1978.

**The 2013 amendment**, effective June 14, 2013, changed terms to assign administration of the Post-Secondary Educational Institution Act to the higher education department; authorized the higher education department to revoke an institution's registration if its regional accreditation is revoked; in Subsections A and C, deleted "commission" and added "department"; in Subsection C, in the introductory sentence, after "educational institution", added "registered or"; and added Paragraph (2) of Subsection C.

**The 2005 amendment**, effective June 17, 2005, provided in Subsection A(1) that a person shall not operate a non-regionally accredited college or university without a license from the commission; provided in Subsection A(2) that a person shall not operate a regionally accredited

college or university without registration with the commission; provided in Subsection B that civil penalties shall be credited to the current school fund; and added Subsection C to provide the disciplinary action the commission may take against post-secondary educational institutions.

**The 1994 amendment**, effective July 1, 1994, added "Civil" to the section heading; rewrote the introductory paragraph, which read: "It is a misdemeanor for any person, firm or corporation to"; and rewrote Subsections A, B, and C and the final undesignated paragraph to the extent that a detailed comparison is impracticable.

### ANNOTATIONS

**Law reviews.** — For note, "Human Rights Commission v. Board of Regents: Should a University Be Considered a Public Accommodation Under the New Mexico Human Rights Act"? *see* 12 N.M.L. Rev. 541 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 73 Am. Jur. 2d Statutes § 294.  
36A C.J.S. Fines § 4.

### 21-23-10.1. Enforcement.

The department or any state or local prosecuting officer may, by request or on the officer's own motion, bring an appropriate action in any court of competent jurisdiction to enforce the provisions of the Post-Secondary Educational Institution Act.

**History:** Laws 1994, ch. 108, § 14; 2013, ch. 59, § 13.

**The 2013 amendment**, effective June 14, 2013, changed terms to assign administration of the

Post-Secondary Educational Institution Act to the higher education department; and at the beginning of the sentence, deleted "commission" and added "department".



## 21-23-11. Existing post-secondary educational institutions.

All post-secondary educational institutions existing prior to July 1, 1994 shall have ninety days to register or to apply for a license in accordance with the terms of the Post-Secondary Educational Institution Act.

**History:** 1953 Comp., § 73-40-10, enacted by Laws 1971, ch. 303, § 10; 1975, ch. 148, § 11; 1994, ch. 108, § 15.

**The 1994 amendment**, effective July 1, 1994, rewrote this section to the extent that a detailed comparison is impracticable.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities § 6.  
14A C.J.S. Colleges and Universities § 3.

## 21-23-12. Cooperation.

The higher education department shall cooperate with federal and other state agencies in administering the provisions of the Post-Secondary Educational Institution Act. The secretary of state shall cooperate with the higher education department by identifying post-secondary educational institutions that apply for corporate charters. The public education department shall cooperate with the higher education department by providing the technical assistance necessary to develop minimum standards that post-secondary educational institutions shall meet and any other assistance that would be of aid in the administration of the Post-Secondary Educational Institution Act.

**History:** 1953 Comp., § 73-40-11, enacted by Laws 1975, ch. 148, § 12; 1994, ch. 108, § 16; 2013, ch. 59, § 14; 2013, ch. 75, § 12.

**2013 Multiple Amendments.** — Laws 2013, ch. 59, § 14, effective June 14, 2013, and Laws 2013, ch. 75, § 12, effective July 1, 2013, enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2013, ch. 75, § 12, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2013, ch. 59, § 14 and Laws 2013, ch. 75, § 12 are described below. To view the session laws in their entirety, see the 2013 session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Laws 2013, ch. 59, § 14 replaced "commission" with "department" and Laws 2013, ch. 75, § 12 replaced "commission" with "higher education department".

Laws 2013, ch. 75, § 12, effective July 1, 2013, assigned administration of the Post-Secondary Educational Institution Act to the department of higher education and required the secretary of state to assist the department

identify post-secondary educational institutions that apply for charters; deleted "commission" and added "higher education department" throughout the section, and in the second sentence, deleted "state corporation commission" and added "secretary of state".

Laws 2013, ch. 59, § 14, effective June 14, 2013, changed terms to assign administration of the Post-Secondary Educational Institution Act to the department of higher education; required the secretary of state to assist the department identify post-secondary educational institutions that apply for charters; deleted "commission" and added "department" throughout the section, and in the second sentence, at the beginning of the sentence, deleted "state corporation commission" and added "secretary of state".

**The 1994 amendment**, effective July 1, 1994, substituted "commission" for "board" in three locations, added "state" preceding "corporation commission," substituted "that" for "which" in three locations, added "public" preceding "education," and substituted "shall" for "must" in the last sentence.

## 21-23-13. Procedure.

The department shall follow the procedures set out in the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978] in administering the provisions of the Post-Secondary Educational Institution Act. When the Uniform Licensing Act refers to the process of examination, that process means the process of application for the purposes of the administration of the Post-Secondary Educational Institution Act.

**History:** 1953 Comp., § 73-40-12, enacted by Laws 1975, ch. 148, § 13; 1994, ch. 108, § 17; 2013, ch. 59, § 15.

**The 2013 amendment**, effective June 14, 2013, changed terms to assign administration of the Post-Secondary Educational Institution Act to the higher education department; and in the first sentence, at the

beginning of the sentence, deleted "commission" and added "department".

**The 1994 amendment**, effective July 1, 1994, substituted "commission" for "board" near the beginning of the section and "means" for "shall mean" near the end of the section.

## 21-23-14. Prohibition.

The issuance of a license by the department does not constitute accreditation by it for any purpose. Any representation to the contrary is a misrepresentation for the purposes of Section 21-23-10 NMSA 1978 and is prohibited.

**History:** 1953 Comp., § 73-40-13, enacted by Laws 1975, ch. 148, § 14; 1994, ch. 108, § 18; 2013, ch. 59, § 16.

**The 2013 amendment**, effective June 14, 2013, changed terms to assign administration of the Post-Secondary Educational Institution Act to the higher education department; and in the first sentence, after "license by the", deleted "commission" and added "department".

**The 1994 amendment**, effective July 1, 1994, rewrote the first sentence, which read "The issuance of a permit or certificate of approval by the board shall not constitute approval or accreditation by it for any purpose"; and substituted "21-23-10 NMSA 1978" for "73-40-9 NMSA 1953" in the second sentence.

## 21-23-15. Post-secondary educational institutions; termination.

A. No post-secondary educational institution shall terminate its operation within the state until:

(1) the institution has made reasonable efforts with another public or private post-secondary educational institution that provides a comparable education to facilitate and provide for the transfer of the students, with a minimum loss of credit;

(2) the post-secondary educational institution has made contractual arrangements for the perpetual care, maintenance and accessibility of all records, transcripts, reports and evaluations of all students receiving credit from the institution during the period of its existence; and

(3) the post-secondary educational institution has met all rules of the department pertaining to the termination of operations by post-secondary educational institutions.

B. Before any post-secondary educational institution terminates its services or sells, transfers or disposes of substantially all of its assets, it shall submit to the department a summary of all actions taken pursuant to the requirements set forth in Subsection A of this section.

**History:** 1978 Comp., § 21-23-15, enacted by Laws 1979, ch. 355, § 1; 1994, ch. 108, § 19; 2013, ch. 59, § 17.

**The 2013 amendment**, effective June 14, 2013, changed terms to assign administration of the Post-Secondary Educational Institution Act to the higher education department; and in Paragraph (3) of Subsection A and in Subsection B, deleted "commission" and added "department".

**The 1994 amendment**, effective July 1, 1994, deleted "of program" from the end of the section heading, rewrote Subsection A and Paragraph A(1), added Paragraph A(3) and made a related stylistic change, and substituted "commission" for "board of educational finance" in Subsection B.

## 21-23-16. Disclosure agreements.

A. Every private post-secondary educational institution shall disclose to every prospective student prior to enrollment the total estimated cost of attendance for the prospective student's program, including:

(1) tuition and fees normally assessed a student carrying the same academic workload as determined by the private post-secondary educational institution, including costs for rental or purchase of any equipment, materials or supplies required of all students in the same program;

(2) an allowance for books, supplies, transportation and miscellaneous personal expenses, including a reasonable allowance for the documented rental or purchase of a personal computer, for a student attending the private post-secondary educational institution on at least a half-time basis, as determined by the institution;

(3) an allowance, as determined by the private post-secondary educational institution, for room and board costs incurred by the student that, for:

(a) a student without dependents residing in that institution's owned or operated housing, shall be a standard allowance determined by the institution based on the amount normally assessed most of its residents for room and board; and

(b) a student who lives in housing located on a military base or for which a basic allowance is provided under federal law, shall be an allowance based on the expenses reasonably incurred by such students for board but not for room;



(4) for a less than half-time student, as determined by the private post-secondary educational institution, tuition and fees and an allowance for only:

- (a) books, supplies and transportation, as determined by the institution; and
- (b) room and board costs, as determined in accordance with Paragraph (3) of this subsection;

(5) for a New Mexico student engaged in a program by correspondence within New Mexico, only tuition and fees and, if required, books and supplies, travel and room and board costs incurred specifically in fulfilling a required period of residential training;

(6) for an incarcerated student, only tuition and fees and, if required, books and supplies;

(7) for a student enrolled in an academic program in a program of study abroad approved for credit by the student's home private post-secondary educational institution, reasonable costs associated with such study, as determined by the private post-secondary educational institution at which the student is enrolled;

(8) for a student with a disability, an allowance, as determined by the private post-secondary educational institution, for those expenses related to the student's disability, including special services, personal assistance, transportation, equipment and supplies that are reasonably incurred and not provided for by other assisting agencies;

(9) for a New Mexico student receiving all or part of the student's instruction by means of telecommunications technology within New Mexico, no distinction shall be made with respect to the mode of instruction in determining costs; and

(10) at the option of the private post-secondary educational institution, for a student in a program requiring professional licensure or certification, the one-time cost of obtaining the first professional credentials, as determined by the institution.

B. Every private post-secondary educational institution shall disclose to every prospective student prior to enrollment:

(1) the length in semesters of the prospective student's program;

(2) the number of credit hours, or the equivalent information, required to complete the prospective student's program;

(3) the private post-secondary educational institution's cancellation and refund policy;

(4) the completion rates for both full-time and part-time students of the prospective student's program;

(5) the withdrawal rates of students pursuing the prospective student's program;

(6) the average combined loan debt for federal loans, institutional loans and private loans certified by the private post-secondary educational institution, for all students who completed the prospective student's program during the most recently completed award year;

(7) the placement rate for the prospective student's program, if the private post-secondary educational institution is required by its accrediting agency to calculate a placement rate for the prospective student's program or institution, or both, using the required methodology of the accrediting agency;

(8) whether the prospective student's program satisfies the applicable educational prerequisites for professional licensure or certification in the state; and

(9) the average earnings at ten years after entering the private post-secondary educational institution of former students of the institution who received federal financial aid, if available.

C. The disclosure information required pursuant to Subsections A and B of this section shall be transmitted to the department and prominently displayed:

(1) in a letter or an email message to the prospective student that does not contain:

(a) information about a program other than a program in which the prospective student has expressed interest; or

(b) any other substantive information; and

(2) on the publicly available website of each private post-secondary educational institution, if any.

D. The private post-secondary educational institution shall maintain records of the institution's efforts to provide the information described in Subsections A and B of this section to a prospective student for at least five years after the student enrolls at the institution.

**History:** Laws 2020, ch. 55, § 2. **Effective dates.** — Laws 2020, ch. 55, § 3 made Laws 2020, ch. 55, § 2 effective January 1, 2021.

## ARTICLE 23A

### American Indian Post-Secondary Education

Sec.	Sec.
21-23A-1. Short title.	21-23A-5. Reports.
21-23A-2. Definitions.	21-23A-6. American Indian post-secondary education fund created; grants; applications.
21-23A-3. Department rules; memoranda of understanding.	
21-23A-4. American Indian post-secondary education division duties.	

#### 21-23A-1. Short title.

Sections 2 through 7 [21-23A-1 through 21-23A-6 NMSA 1978] of this act may be cited as the "American Indian Post-Secondary Education Act".

**History:** Laws 2009, ch. 60, § 2. **Effective dates.** — Laws 2009, ch. 60 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

#### 21-23A-2. Definitions.

As used in the American Indian Post-Secondary Education Act:

- A. "bureau of Indian education school" means a school located in New Mexico that is under the control of the bureau of Indian education of the United States department of the interior;
- B. "department" means the higher education department;
- C. "division" means the American Indian post-secondary education division of the department;
- D. "fund" means the American Indian post-secondary education fund;
- E. "public post-secondary educational institution" means an institution of higher education delineated in Article 12, Section 11 of the constitution of New Mexico or a community college, branch community college or technical and vocational institute organized pursuant to Chapter 21, Article 13, 14 or 16 NMSA 1978;
- F. "secretary" means the secretary of higher education;
- G. "tribal college" means a tribally, federally or congressionally chartered post-secondary educational institution located within New Mexico that is accredited by the north central association of colleges and schools; and
- H. "tribe" means an Indian nation, tribe or pueblo located within New Mexico.

**History:** Laws 2009, ch. 60, § 3. **Effective dates.** — Laws 2009, ch. 60 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

#### 21-23A-3. Department rules; memoranda of understanding.

A. The department shall consult with tribes, bureau of Indian education schools and tribal colleges when adopting rules to carry out the provisions of the American Indian Post-Secondary Education Act.

B. The secretary may enter into memoranda of understanding with tribal colleges, bureau of Indian education schools and tribes for data collection and data sharing and for other matters related to implementation of the American Indian Post-Secondary Education Act.

**History:** Laws 2009, ch. 60, § 4. **Effective dates.** — Laws 2009, ch. 60 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.



## **21-23A-4. American Indian post-secondary education division duties.**

### **A. The division shall:**

- (1) develop and implement policies that positively affect the post-secondary educational success of American Indian students;
- (2) provide assistance to public post-secondary educational institutions and tribal colleges in the planning, development, implementation and evaluation of recruitment and retention strategies designed for American Indian college students;
- (3) seek funding to assist public educational institutions and tribal colleges as needed to develop support services to increase the enrollment, retention and graduation rates of American Indians at public post-secondary educational institutions and tribal colleges, including:
  - (a) academic support and transition programs; and
  - (b) institutional efforts to increase academic financial support;
- (4) develop a system for consistent data collection and sharing on the enrollment, retention and graduation rates of American Indian students at public post-secondary educational institutions and tribal colleges; and
- (5) conduct outreach to tribes concerning financial aid opportunities for American Indian students.

### **B. The director of the division shall serve as a liaison with the Indian education advisory council.**

**History:** Laws 2009, ch. 60, § 5.

**Effective dates.** — Laws 2009, ch. 60 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## **21-23A-5. Reports.**

A. Each public post-secondary educational institution shall submit an annual American Indian post-secondary education status report to the division. The department may enter into agreements with tribal colleges to provide the same annual status reports. The status reports shall be submitted in a form prescribed by the division and shall include the following information through which American Indian post-secondary educational performance is measured and aligned with the higher education strategic priorities:

- (1) student recruitment;
- (2) student retention;
- (3) student attrition;
- (4) remediation needs, by course type;
- (5) graduation rate and types and fields of degrees;
- (6) student financial aid data, including student demographic data; and
- (7) annual goals and objectives of American Indian education programs, including graduate-level participation by American Indians.

B. The division shall compile the data collected pursuant to Subsection A of this section and publish an annual state American Indian post-secondary education status report.

**History:** Laws 2009, ch. 60, § 6.

**Effective dates.** — Laws 2009, ch. 60 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## **21-23A-6. American Indian post-secondary education fund created; grants; applications.**

A. The "American Indian post-secondary education fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants, donations and income from investment of the fund. The fund shall be administered by the department, and money in the fund is appropriated to the department to carry out the purposes of the American Indian Post-Secondary

Education Act. Disbursements from the fund shall be by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of higher education or the secretary's authorized representative.

B. Grants may be awarded for special projects related to recruitment, retention and graduation of American Indian students, including student conferences, cultural awareness training for faculty and staff at public post-secondary educational institutions and tribal colleges, academic support and transition programs and other projects approved by the division.

C. Applications for grants shall be in the form prescribed by the division. The division, with the secretary's approval, shall promulgate rules on the grant application and award process, including:

- (1) who may apply for grants;
- (2) information required in the application process;
- (3) how applications will be evaluated and awarded;
- (4) accounting and financial reporting requirements for grantees;
- (5) reporting requirements on the use of a grant and the outcomes of the special project funded by the grant; and
- (6) any other information deemed necessary by the division.

**History:** Laws 2009, ch. 60, § 7. Laws 2009, ch. 60, § 23, was effective June 19, 2009, 90 days after the

**Effective dates.** — Laws 2009, ch. 60 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## ARTICLE 23B

### Interstate Distance Education

Sec.

21-23B-1. Short title.  
21-23B-2. Definitions.  
21-23B-3. Interstate distance education program; agreement.

Sec.

21-23B-4. Program participation by post-secondary educational institutions; qualifications.  
21-23B-5. Monitoring; complaint resolution; sanctions.  
21-23B-6. Rules; reporting.

#### 21-23B-1. Short title.

Sections 1 through 6 [21-23B-1 through 21-23B-6 NMSA 1978] of this act may be cited as the "Interstate Distance Education Act".

**History:** Laws 2015, ch. 23, § 1.

**Effective dates.** — Laws 2015, ch. 23 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.

#### 21-23B-2. Definitions.

As used in the Interstate Distance Education Act:

A. "accreditation" means the status of public recognition that an accrediting agency recognized by the United States department of education pursuant to Title 4 of the federal Higher Education Act of 1965 grants to an institution or educational program that meets the department's established requirements;

B. "complaint" means a formal written assertion that a provision of an agreement pursuant to Subsection B of Section 3 [21-23B-3 NMSA 1978] of the Interstate Distance Education Act is being or has been violated;

C. "department" means the higher education department;

D. "distance education" means instruction offered online or through correspondence or interactive video or other means enabling a student in one state to receive instruction from a higher education provider in another state;



E. "higher education" means education or training beyond secondary education;

F. "operate" means providing instruction, marketing, recruiting, tutoring, field experiences and other services for students in support of offering distance education;

G. "physical presence" means the ongoing occupation of a physical location in the state for, or the ongoing maintenance of an administrative office to support, the provision of higher education instruction;

H. "post-secondary educational institution" includes public post-secondary educational institutions and private post-secondary educational institutions;

I. "private post-secondary educational institution" means an educational institution that:

(1) operates in the state under the provisions of the Post-Secondary Educational Institution Act [Chapter 21, Article 23 NMSA 1978];

(2) has a physical presence in the state; and

(3) is not a public post-secondary educational institution;

J. "public post-secondary educational institution" means:

(1) a branch community college of a state educational institution established pursuant to Chapter 21, Article 13 NMSA 1978;

(2) a community college or technical and vocational institute established pursuant to Chapter 21, Article 16 NMSA 1978; and

(3) eastern New Mexico university, western New Mexico university, New Mexico highlands university, northern New Mexico college, the university of New Mexico, New Mexico state university or the New Mexico institute of mining and technology, New Mexico Military Institute; and

K. "state authorization reciprocity agreement" means an agreement, developed by the national council for state authorization reciprocity agreements, that provides uniform standards and parameters for the interstate provision of post-secondary distance education courses and programs.

**History:** Laws 2015, ch. 23, § 2.

**Cross references.** — For the federal Higher Education Act of 1965, see 20 U.S.C. § 1001 et seq.

**Effective dates.** — Laws 2015, ch. 23 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.

### 21-23B-3. Interstate distance education program; agreement.

A. The department shall establish a program for facilitating:

(1) the receipt of distance education by students in the state; and

(2) the provision of distance education by participating post-secondary educational institutions to students in other states.

B. In furtherance of the provisions of Subsection A of this section, the department may enter into:

(1) an agreement for the western interstate commission for higher education to administer and the state to participate in a state authorization reciprocity agreement; or

(2) a reciprocal agreement with another state for the:

(a) receipt by students in the state of distance education from the other state's institutions that provide higher education instruction and are approved for participation in the reciprocal agreement by the appropriate agency of the other state; and

(b) provision of distance education by participating post-secondary educational institutions to students in the other state.

C. The department may terminate an agreement entered into pursuant to Subsection B of this section pursuant to the provisions of that agreement or department rule.

**History:** Laws 2015, ch. 23, § 3.

**Effective dates.** — Laws 2015, ch. 23 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.

#### **21-23B-4. Program participation by post-secondary educational institutions; qualifications.**

A. The department shall provide an application form to allow post-secondary educational institutions to apply to participate in the interstate distance education program.

B. The department shall establish qualifications that an applicant shall demonstrate for acceptance as a participating post-secondary educational institution. At a minimum, the department shall require an applicant to provide documentation showing:

(1) compliance with the interregional guidelines for the evaluation of distance education programs adopted by the council of regional accrediting commissions;

(2) current accreditation; and

(3) for private post-secondary educational institutions, a financial responsibility composite score of one and five-tenths or greater as assigned by the United States department of education in its most recent fiscal year report.

C. An applicant accepted for participation in the interstate distance education program shall enter into a participation agreement with the department.

**History:** Laws 2015, ch. 23, § 4.

**Effective dates.** — Laws 2015, ch. 23 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.

#### **21-23B-5. Monitoring; complaint resolution; sanctions.**

A. The department shall regularly monitor the compliance of participating post-secondary educational institutions with the Interstate Distance Education Act.

B. Upon the receipt of a complaint about a participating post-secondary educational institution, the department shall timely:

(1) monitor the resolution process and resolution by the post-secondary educational institution and document the resolution; or

(2) investigate the complaint, conduct or coordinate a resolution process appropriate for responding to the complaint and document the resolution.

C. The department may sanction a participating post-secondary educational institution that:

(1) fails to resolve a complaint or comply with the department's efforts to respond to a complaint pursuant to Subsection B of this section; or

(2) violates a provision of the Interstate Distance Education Act or an agreement pursuant to Section 3 [21-23B-3 NMSA 1978] of that act.

D. Sanctions the department may impose include:

(1) requiring the payment of fees, fine or other monetary remedies; or

(2) the termination or nonrenewal of the participation agreement entered into pursuant to Subsection C of Section 4 [21-23B-4 NMSA 1978] of the Interstate Distance Education Act.

**History:** Laws 2015, ch. 23, § 5.

**Effective dates.** — Laws 2015, ch. 23 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.

#### **21-23B-6. Rules; reporting.**

A. The department shall publish rules for conducting the interstate distance education program.

B. By July 31, 2016 and each subsequent year, the department shall report to the legislative finance committee and the legislative education study committee on the interstate distance education program.

**History:** Laws 2015, ch. 23, § 6.

**Effective dates.** — Laws 2015, ch. 23 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.



## ARTICLE 24

### Out-of-State Proprietary Schools

Sec.

- 21-24-1. Short title.
- 21-24-2. Definitions.
- 21-24-3. Exceptions.
- 21-24-4. Publicizing of instruction.
- 21-24-5. Registration; surety bond.

Sec.

- 21-24-6. Rules and regulations.
- 21-24-7. Enforcement.
- 21-24-8. Judicial review.
- 21-24-9. Penalty.

#### 21-24-1. Short title.

Chapter 21, Article 24 NMSA 1978 may be cited as the "Out-of-State Proprietary School Act".

**History:** 1953 Comp., § 73-41-1, enacted by Laws 1971, ch. 304, § 1; 1994, ch. 108, § 20.

**The 1994 amendment**, effective July 1, 1994, substituted "Chapter 21, Article 24 NMSA 1978" for "This Act" at the beginning of the section.

#### 21-24-2. Definitions.

As used in the Out-of-State Proprietary School Act:

- A. "course" means any course, plan or program of instruction, conducted in person, by mail or by other methods;
- B. "student" means any person within this state who is above compulsory school age and eligible for one or more courses of instruction;
- C. "agent" means any person who solicits in person and for a fee the enrollment of a student in a course of instruction offered by a proprietary school;
- D. "proprietary school" means a nonpublic out-of-state school, academy or similar institution offering within New Mexico a course of instruction or training through correspondence or similar methods or offering within New Mexico a course of instruction or training to be conducted outside New Mexico, but does not include a private out-of-state post-secondary educational institution offering instruction or training within New Mexico, to any student within this state; and
- E. "commission" [department] means the commission on higher education [higher education department].

**History:** 1953 Comp., § 73-41-2, enacted by Laws 1971, ch. 304, § 2; 1994, ch. 108, § 21.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**The 1994 amendment**, effective July 1, 1994, substituted the language beginning "solicits" for "represents in any manner a course of instruction offered by correspondence or in behalf of a proprietary school" at the end of Subsection C; inserted "within New Mexico", deleted "or courses" following "course", and substituted the language beginning "similar" for "in person" in Subsection D; and added Subsection E and made a related stylistic change.

#### 21-24-3. Exceptions.

The Out-of-State Proprietary School Act does not apply to:

- A. courses recognized by the public education department for the purpose of complying with the Compulsory School Attendance Law [Chapter 22, Article 12 NMSA 1978];
- B. courses offered by an employer solely for the employer's employees;
- C. courses offered by a nonprofit religious institution relating primarily to religion; and
- D. courses offered under a participation agreement pursuant to the provisions of Subsection C of Section 4 [21-23B-4 NMSA 1978] of the Interstate Distance Education Act [21-23B-1 through 21-23B-6 NMSA 1978].

**History:** 1953 Comp., § 73-41-3, enacted by Laws 1971, ch. 304, § 3; 1994, ch. 108, § 22; 2015, ch. 23, § 8.

**The 2015 amendment**, effective June 19, 2015, exempted provisions of the Interstate Distance Education

Act from the Out-of-State Proprietary School Act; in Subsection A, after "by the", deleted "state board of" and added "public", and after "education", added "department"; in Subsection B, after "for", deleted "his" and added "the employer's"; and added Subsection D.

**The 1994 amendment**, effective July 1, 1994, substituted "solely for his" for "for in service training of his" in Subsection B, and rewrote Subsection C.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools §§ 12, 13.

### 21-24-4. Publicizing of instruction.

No agent shall:

A. make or cause to be made any statement or representation, oral, written or visual, in connection with the offering or publicizing of a course if the agent knows or reasonably should know the statement or representation to be false, deceptive, substantially inaccurate or misleading;

B. promise or guarantee employment utilizing information, training or skill purported to be provided or otherwise enhanced by a course, unless the promisor or guarantor offers the student or prospective student a bona fide contract of employment agreeing to employ the student or prospective student for a period of not less than ninety days in a business or other enterprise regularly conducted by him in which such information, training or skill is a normal condition of employment; or

C. do any act constituting part of the conduct or administration of a course, or the obtaining of students therefor, if the agent knows or reasonably should know that any phase or incident in the conduct or administration of the course is being carried on by the use of fraud, deception or other form of misrepresentation or by any agent soliciting students without a registration.

**History:** 1953 Comp., § 73-41-4, enacted by Laws 1971, ch. 304, § 4; 1994, ch. 108, § 23.

**Cross references.** — For misrepresenting permit as approval, see 21-24-5 NMSA 1978.

**The 1994 amendment**, effective July 1, 1994, substituted "should know" for "should have known" near the end of Subsection A.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 37 Am. Jur. 2d Fraud and Deceit § 77.

Validity, construction, and application of statutes or ordinances directed against false or fraudulent statements in advertisements, 89 A.L.R. 1004.

37 C.J.S. Fraud § 2.

### 21-24-5. Registration; surety bond.

A. No agent representing a proprietary school shall sell any course or solicit students in person or by mail, telephone or similar means in New Mexico for a consideration unless the institution has registered with the commission [department]. The commission [department] shall charge an annual registration fee of not less than five hundred dollars (\$500) for each proprietary school and an annual agent fee of not less than one hundred dollars (\$100) for each agent operating in New Mexico.

B. Registration shall be made on forms provided by the commission [department] and accompanied by the annual registration fee.

C. The registration shall include a surety bond acceptable to the commission [department] in an amount not less than ten thousand dollars (\$10,000) or more than twenty-five thousand dollars (\$25,000). The bond may be continuous and shall be conditioned to provide indemnification to any student suffering loss as a result of any fraud or misrepresentation used in procuring his enrollment and shall be supplied by the proprietary school. The surety may cancel the bond upon giving ninety days' notice in writing to the commission [department] and thereafter is relieved of liability for any breach of condition occurring after the effective date of the cancellation.

D. Registration shall not be permitted unless the applying proprietary school agrees to adhere to the commission [department] rules and regulations that provide for a tuition refund policy.

E. Upon ten days' notice, any registration may be suspended by the commission [department] pending a hearing by the commission [department] if the registrant solicits or enrolls students through fraud, deception or misrepresentation.

F. Registration shall be valid for one year, from July 1 through June 30. An application for renewal shall be accompanied by the fee and shall include a surety bond if a continuous bond has not been furnished.



G. The existence of a surety bond shall not be construed as a limitation or impairment of any right of recovery otherwise available, nor shall the amount of the bond be relevant in determining the amount of damages or other relief to which a plaintiff may be entitled.

H. No recovery shall be had by a proprietary school on any contract for or in connection with a course unless the proprietary school had registered at the time that its agent sold or negotiated the contract for the particular course.

I. Registration shall not constitute approval of any course, agent or proprietary school conducting or administering courses. Any representation to the contrary is a misrepresentation within the meaning of Section 21-24-4 NMSA 1978.

J. All fees collected from registration or renewal of registration shall be deposited with the state treasurer's office to the credit of the post-secondary educational institution fund and shall be spent by the commission [department] for the administration of the Out-of-State Proprietary School Act.

**History:** 1953 Comp., § 73-41-5, enacted by Laws 1971, ch. 304, § 5; 1975, ch. 107, § 1; 1994, ch. 108, § 24.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**Cross references.** — For post-secondary educational institution fund, see 21-23-8 NMSA 1978.

The 1994 amendment, effective July 1, 1994, rewrote this section to such an extent that a detailed comparison would be impracticable.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 4, 6, 7, 8, 22, 23, 42.

14A C.J.S. Colleges and Universities §§ 3, 6, 16.

## 21-24-6. Rules and regulations.

The commission [department] shall adopt rules and regulations for the administration and enforcement of the Out-of-State Proprietary School Act.

**History:** 1953 Comp., § 73-41-6, enacted by Laws 1971, ch. 304, § 6; 1975, ch. 107, § 2; 1994, ch. 108, § 25.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

The 1994 amendment, effective July 1, 1994, deleted "advisory committee" from the end of the section

heading, substituted "commission" for "board of educational finance" near the beginning of the section, and deleted "and may establish an advisory committee of owners or operators of proprietary schools and other persons with knowledge in the field of proprietary schools to advise it in its administration" following "Act" at the end of the section.

## 21-24-7. Enforcement.

The commission [department] or any state or local prosecuting officer may, by request or on his own motion, bring an appropriate action in any court of competent jurisdiction to enforce the provisions of the Out-of-State Proprietary School Act.

**History:** 1953 Comp., § 73-41-7, enacted by Laws 1971, ch. 304, § 7; 1975, ch. 107, § 3; 1994, ch. 108, § 26.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

The 1994 amendment, effective July 1, 1994, substituted "commission" for "board of educational finance" near the beginning of the section.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 1 Am. Jur. 2d Actions § 24.

16 C.J.S. Constitutional Law § 149.

## 21-24-8. Judicial review.

Any final determination of the commission [department] respecting the issuance, denial or revocation of a registration may be appealed to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**History:** 1953 Comp., § 73-41-8, enacted by Laws 1971, ch. 304, § 8; 1975, ch. 107, § 4; 1994, ch. 108, § 27; 1998, ch. 55, § 30; 1999, ch. 285, § 31.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

**The 1999 amendment,** effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1".

**The 1998 amendment,** effective September 1, 1998, inserted "pursuant to the provisions of Section 12-8A-1 NMSA 1978" near the end of the section.

**The 1994 amendment,** effective July 1, 1994, substituted "commission" for "board of educational finance" near the middle of the section.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 73 Am. Jur. 2d Statutes § 51.

## 21-24-9. Penalty.

Any person who violates any provision of Section 21-24-4 or 21-24-5 NMSA 1978 is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or imprisonment for not more than six months or both.

**History:** 1953 Comp., § 73-41-9, enacted by Laws 1971, ch. 304, § 9; 1975, ch. 107, § 5; 1994, ch. 108, § 28.

**The 1994 amendment,** effective July 1, 1994, substituted "Section 21-24-4 or 21-24-5 NMSA 1978" for "Sections 73-41-4 or 73-41-5 NMSA 1953 of the Out-of-State Proprietary School Act" near the middle of the section.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 73 Am. Jur. 2d Statutes § 294.  
36A C.J.S. Fines § 4.

## ARTICLE 25

### Nonproprietary Out-of-State Institutions

Sec.

21-25-1. Board of educational finance [higher education department] approval.

21-25-2. Definitions.

21-25-3. Approval criteria.

Sec.

21-25-4. Exceptions.

21-25-5. Certification to state superintendent of public instruction.

#### 21-25-1. Board of educational finance [higher education department] approval.

The board of educational finance [commission on higher education [higher education department]] shall be responsible for the approval of courses offered in New Mexico by nonproprietary out-of-state institutions.

**History:** 1953 Comp., § 73-41A-1, enacted by Laws 1977, ch. 4, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

#### 21-25-2. Definitions.

As used in this act [21-25-1 through 21-25-5 NMSA 1978]:

A. "nonproprietary out-of-state institution" means a public, out-of-state institution, school or similar academy offering a course or courses of instruction to any student within this state.

**History:** 1953 Comp., § 73-41A-2, enacted by Laws 1977, ch. 4, § 2.

**Compiler's notes.** — This section was enacted without a Subsection B.

#### 21-25-3. Approval criteria.

In arriving at its decisions relative to course approval, the board of educational finance [commission on higher education [higher education department]] shall establish criteria in consultation



with the academic vice presidents of the institutions enumerated in Article 12, Section 11 of the state constitution. In establishing these criteria, the following factors shall be considered:

- A. acceptability of the course at the main campus of the nonproprietary out-of-state institution;
- B. availability and accessibility of the course at a New Mexico institution;
- C. validity of the course content and length;
- D. availability of library and other teaching resources; and
- E. qualifications of the staff who will offer the course.

**History:** 1953 Comp., § 73-41A-3, enacted by Laws 1977, ch. 4, § 3.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A

Am. Jur. 2d Colleges and Universities § 17.

14A C.J.S. Colleges and Universities § 29.

### 21-25-4. Exceptions.

- A. Provisions of this act [21-25-1 through 21-25-5 NMSA 1978] shall not apply to correspondence courses offered through the mail by nonproprietary out-of-state institutions; and
- B. Courses offered on military bases for military personnel.

**History:** 1953 Comp., § 73-41A-4, enacted by Laws 1977, ch. 4, § 4.

### 21-25-5. Certification to state superintendent of public instruction.

The board of educational finance [commission on higher education [higher education department]] shall certify to the state superintendent of public instruction all courses approved and not approved according to the provisions of this act [21-25-1 through 21-25-5 NMSA 1978], within thirty days after board of educational finance [commission on higher education [higher education department]] action is taken. Within thirty days of receipt of this certification, the state superintendent of public instruction shall provide a list to each local school superintendent of all courses approved and not approved to be offered in this state by nonproprietary institutions covered in this act.

**History:** 1953 Comp., § 73-41A-5, enacted by Laws 1977, ch. 4, § 5.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A

Am. Jur. 2d Colleges and Universities § 6.

14A C.J.S. Colleges and Universities § 3.

## ARTICLE 26

### Osteopathic Interns

Sec.

21-26-1. Short title.

21-26-2. Legislative findings and purpose.

Sec.

21-26-3. Definitions.

21-26-4. Intern program; higher education department contract; regulations.

### 21-26-1. Short title.

This act [21-26-1 through 21-26-4 NMSA 1978] may be cited as the "Osteopathic Intern Act".

**History:** Laws 1983, ch. 195, § 1.

## 21-26-2. Legislative findings and purpose.

### A. The legislature finds that:

- (1) there is a need for more licensed osteopathic physicians in New Mexico to serve the medical needs of the citizens of the state;
- (2) most physicians continue to practice in the geographic area where they receive their training; and
- (3) in order to have licensed osteopathic physicians practice in New Mexico, there needs to be an internship program for interns who graduate as physicians from osteopathic medical schools and who must complete a one-year postdoctoral training program in order to apply for licensure in this state.

B. The purpose of the Osteopathic Intern Act is to develop an intern training program for osteopathic interns and to provide training funds to hospitals that offer students in New Mexico a quality postdoctoral training program in family practice as part of the requirements for licensure as osteopathic physicians in New Mexico.

**History:** Laws 1983, ch. 195, § 2.

## 21-26-3. Definitions.

As used in the Osteopathic Intern Act:

A. "board" ["commission" ["department"]] means the board of educational finance [commission on higher education [higher education department]];

B. "hospital" means a fully accredited nonprofit osteopathic teaching hospital in New Mexico that accepts newly graduated physicians for internships in family practice; and

C. "osteopathic intern" means a graduate of a college of osteopathic medicine approved by the American Osteopathic Association and who has been accepted by a hospital for postdoctoral training in family practice.

**History:** Laws 1983, ch. 195, § 3.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

## 21-26-4. Intern program; higher education department contract; regulations.

The higher education department shall:

A. in cooperation with the hospitals and the New Mexico medical board, develop an intern training program to provide postdoctoral training for osteopathic interns;

B. contract with hospitals to provide intern training programs; and

C. promulgate regulations to carry out the provisions of the Osteopathic Intern Act, including program requirements, distribution of training funds and matching fund and financial accountability requirements of hospitals receiving intern training funds; provided, however, for the purposes of this subsection, "matching funds" may include the provision of in-kind services. Regulations of the department shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

**History:** Laws 1983, ch. 195, § 4; 2021, ch. 54, § 5.

The 2021 amendment, effective June 18, 2021, removed a reference to the "board of osteopathic medical examiners" and replaced it with the "New Mexico medical board", as it relates to developing an intern training program, and removed a reference to the board of educational finance and replaced it with the higher education department; after "Intern program", deleted "board" and added "higher education department"; after "The", changed "board" to "higher education department"; in Subsection A, after "hospitals and the", added "New Mexico medical",

and after "board", deleted "of osteopathic medical examiners"; and in Subsection C, after "Regulations of the", changed "board" to "department".

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 32 to 34; 63A Am. Jur. 2d Public Funds §§ 56 to 58.

14A C.J.S. Colleges and Universities §§ 7, 31, 33; 81A C.J.S. States §§ 205, 211.



## ARTICLE 27

### Maintenance for Two-Year Colleges

Sec.	21-27-1. Short title.	Sec.	21-27-5. Distributions from the fund; approval by the board required.
21-27-2. Purpose of act.			
21-27-3. Definitions.			
21-27-4. Two-year college maintenance fund; created; use of the fund.			

#### 21-27-1. Short title.

Sections 1 through 5 [21-27-1 through 21-27-5 NMSA 1978] may be cited as the "Two-Year College Maintenance Act".

**History:** Laws 1983, ch. 316, § 1.

#### 21-27-2. Purpose of act.

The purpose of the Two-Year College Maintenance Act is to provide funding for the repair and long-term care and preservation of the buildings, grounds and equipment of two-year colleges and institutions.

**History:** Laws 1983, ch. 316, § 2.

#### 21-27-3. Definitions.

As used in the Two-Year College Maintenance Act:

- A. "board" ["commission" ["department"]] means the board of educational finance [commission on higher education [higher education department]] created pursuant to Section 21-1-26 NMSA 1978;
- B. "fund" means the two-year college maintenance fund; and
- C. "qualifying institution" means a statutorily created branch community college, a junior college or area vocational school or a two-year constitutionally created postsecondary state educational institution.

**History:** Laws 1983, ch. 316, § 3.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

#### 21-27-4. Two-year college maintenance fund; created; use of the fund.

A. The "two-year college maintenance fund" is created in the state treasury. The fund shall consist of such money as the legislature may from time to time appropriate. The fund shall be invested by the state treasurer as other funds are invested. Balances remaining in the fund at the end of each fiscal year shall not revert.

B. The fund shall be used to provide funding to qualifying institutions only for the following purposes:

- (1) major repair to buildings, including such items as roof repair, repair of floor coverings, repair of structural damage and replacement or repair of mechanical equipment;
- (2) remodeling or renovation of existing structures;
- (3) landscaping outside of buildings, including parking lots, to create more attractive, more efficient and safer settings;
- (4) lighting, signs and general design work calculated to make the buildings and grounds safer;

- (5) maintenance contracts on building equipment, mechanical equipment, structural equipment and any other equipment necessary for the operation of the institution;
- (6) purchase, installation and maintenance of equipment calculated to provide energy or water conservation;
- (7) construction of storage buildings and maintenance shop buildings; and
- (8) construction of or repair to access roads to a campus if required.

**History:** Laws 1983, ch. 316, § 4.

14A C.J.S. Colleges and Universities §§ 7, 10, 14; 81A C.J.S. States § 205.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Colleges and Universities §§ 32, 33; 63A Am. Jur. 2d Public Funds §§ 56 to 58.

### 21-27-5. Distributions from the fund; approval by the board required.

A. A qualifying institution shall make application to the board for distribution of its allocation, or any part thereof, only for any of the purposes enumerated in Section 4 [21-27-4 NMSA 1978] of the Two-Year College Maintenance Act.

B. No distribution shall be made to any qualifying institution until the board [commission [department]] has approved the distribution of a specific amount. The board [commission [department]] may reduce the amount of any distribution to any qualifying institution. In taking such action, the board [commission [department]] shall set forth its reasons for such action and report its actions and reasons to the responsible governing board of the institution.

**History:** Laws 1983, ch. 316, § 5.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

## ARTICLE 28

### University Research Park and Economic Development

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| <p>Sec.</p> <p>21-28-1. Short title.</p> <p>21-28-2. Research park; purpose.</p> <p>21-28-3. Definitions.</p> <p>21-28-4. Research park corporations; authorization; members; terms; meetings; bylaws.</p> <p>21-28-5. Powers of university as related to research parks.</p> <p>21-28-6. Powers of research park corporation.</p> <p>21-28-7. Limitations on application of laws.</p> <p>21-28-8. Issuance of revenue bonds.</p> <p>21-28-9. Status of bonds.</p> <p>21-28-10. Refunding bonds.</p> <p>21-28-11. Trust agreements authorized.</p> <p>21-28-12. Pledge of assets or revenues of research park corporation.</p> <p>21-28-13. All money received from sale of bonds deemed trust funds.</p> <p>21-28-14. Limitation of liability.</p> | <p>Sec.</p> <p>21-28-15. Rights of holders of bonds.</p> <p>21-28-16. Legal investments; tax exemption.</p> <p>21-28-17. Annual report and audit.</p> <p>21-28-18. Repealed.</p> <p>21-28-19. Gifts by persons, corporations, institutions and associations.</p> <p>21-28-20. Conflicts of interest.</p> <p>21-28-21. Dissolution of research park corporation.</p> <p>21-28-22. Agreement with the state.</p> <p>21-28-23. Work to conform to federal law when aided by federal appropriations.</p> <p>21-28-24. Contracts involving officers or employees of educational institutions and state agencies or political subdivisions.</p> <p>21-28-25. Transfer of technology developed by universities; officer or employee interest in private entity.</p> |
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#### 21-28-1. Short title.

Chapter 21, Article 28 NMSA 1978 may be cited as the "University Research Park and Economic Development Act".

**History:** Laws 1989, ch. 264, § 1; 2007, ch. 247, § 1.

**The 2007 amendment**, effective June 15, 2007, changed the statutory reference to the act and the title of the act to add "Economic Development".



## 21-28-2. Research park; purpose.

The purpose of the University Research Park and Economic Development Act is to:

- A. promote the public welfare and prosperity of the people of New Mexico;
- B. foster economic development within New Mexico;
- C. forge links between New Mexico's educational institutions, business and industrial communities and government through the development of research parks on university real property; or
- D. engage in other cooperative ventures of innovative technological significance that will advance education, science, research, conservation, health care or economic development within New Mexico.

**History:** Laws 1989, ch. 264, § 2; 1998, ch. 54, § 1; 2007, ch. 247, § 2.

**The 2007 amendment**, effective June 15, 2007, changed the title of the act.

**The 1998 amendment**, effective May 20, 1998, added the Subsection designations; in Subsection B, substituted

"New Mexico" for "the state by forging"; in Subsection C, inserted "forge", substituted "New Mexico's" for "the state's", and deleted "through" at the end; in Subsection D, inserted "engage in", substituted "that" for "which", inserted "science", "conservation, health care" and substituted "New Mexico" for "the state".

## 21-28-3. Definitions.

As used in the University Research Park and Economic Development Act:

- A. "bond" or "bonds" means any bond, note or other evidence of indebtedness;
- B. "regents" means:
  - (1) in the case of an educational institution named in Article 12, Section 11 of the constitution of New Mexico, the board of regents of the institution;
  - (2) in the case of a community college, the community college board; or
  - (3) in the case of a technical and vocational institute, the governing board of the technical and vocational institute district;
- C. "research park" means research and development facilities, research institutes, testing laboratories, buildings, offices, light manufacturing, utility facilities, health care facilities, related businesses, government installations and similar facilities, including land and projects for the development of real property; all necessary appurtenances; and rights and franchises acquired, constructed, managed and developed by a university or under its authority that are suitable or necessary to promote the social welfare of New Mexico through the advancement of education, science, research, conservation, health care, economic development and related purposes regardless of whether the activities conducted in those facilities are directly related to research;
- D. "research park corporation" means any corporation formed pursuant to the provisions of the University Research Park and Economic Development Act;
- E. "technological innovations" means research, development, prototype assembly, manufacture, patenting, licensing, marketing and sale of inventions, ideas, practices, applications, processes, machines, technology and related property rights of all kinds; and
- F. "university" means:
  - (1) a New Mexico educational institution named in Article 12, Section 11 of the constitution of New Mexico;
  - (2) a community college organized pursuant to the Community College Act [Chapter 21, Article 13 NMSA 1978]; or
  - (3) a technical and vocational institute organized pursuant to the Technical and Vocational Institute Act [Chapter 21, Article 16 NMSA 1978].

**History:** Laws 1989, ch. 264, § 3; 1997, ch. 185, § 1; 1998, ch. 54, § 2; 2007, ch. 247, § 3.

**The 2007 amendment**, effective June 15, 2007, changed the title of the act, includes buildings and projects for the development of real property in the definition of "research park"; provided that activities conducted in research parks need not be directly related to research; and eliminated area vocational schools in the definition of "university".

**The 1998 amendment**, effective May 20, 1998, in Subsection C, inserted "utility facilities, health care facilities", substituted "including" for "together with", deleted "including" following "land", deleted "of the state", inserted "conservation, health care"; in Paragraph F(4), substituted "Chapter 21, Article 17 NMSA 1978" for "the Area Vocational School Act" and made minor stylistic changes.

**The 1997 amendment**, effective June 17, 1997, in Subsection B, deleted "the board of regents of a university" following

"means" and added Paragraphs (1) through (4); and in Subsection F, added the Paragraph (1) designation, substituted

"named in" for "established pursuant to the provisions of" in Paragraph (1), and added Paragraphs (2) through (4).

#### **21-28-4. Research park corporations; authorization; members; terms; meetings; bylaws.**

A. Any university may form, pursuant to the provisions of the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] or the Business Corporation Act [Chapter 53, Articles 11 through 18 NMSA 1978], one or more research park corporations, separate and apart from the state and the university, to promote, develop and administer research parks or technological innovations for scientific, educational and economic development opportunities in accordance with bylaws adopted by the research park corporation or economic development initiatives that support the teaching, research or service mission of the university.

B. Each research park corporation shall be governed by, and all of its functions, powers and duties shall be exercised by, a board of directors appointed by the regents. Members of the board of directors may include the president of the university, the regents, officers and employees of the university and other persons selected by the regents.

C. The board of directors shall elect a chair and other officers as the board of directors deems necessary.

D. The board of directors shall adopt bylaws, in accordance with the provisions of the Nonprofit Corporation Act or the Business Corporation Act, as appropriate, governing the conduct of the research park corporation in the performance of its duties under the University Research Park and Economic Development Act.

**History:** Laws 1989, ch. 264, § 4; 2007, ch. 247, § 4.  
The 2007 amendment, effective June 15, 2007, permitted universities to form nonprofit corporations for

economic development initiatives that support the teaching, research or service mission of the university.

#### **21-28-5. Powers of university as related to research parks.**

A. The regents of each university shall have the power to implement and further the purposes of the University Research Park and Economic Development Act, including the power:

(1) to establish, acquire, develop, maintain and operate research parks, including all necessary or suitable buildings, facilities and improvements, and to acquire, purchase, construct, improve, remodel, add to, extend, maintain, equip and furnish research parks or any building or facility, including research and service facilities and areas intended for the common use of research park tenants;

(2) to form research park corporations to aid and assist the university to acquire, construct, finance, operate and manage research parks;

(3) to form research park corporations to engage in economic development activities that support the teaching, research and service mission of the university, including creating learning opportunities for the students of the university;

(4) to lease, sell, exchange or transfer to research park corporations personal property, money and all or part of the land and facilities included in a research park, on terms and conditions established by the regents that are fair, just and reasonable to the university, and to enter into any other contract or agreement with the research park corporation for the construction, financing, operation and management of the research park;

(5) to lease, either directly or through a research park corporation, to any person, firm, partnership, government entity or any other lawful entity recognized under the laws of the state, any part or all of the land, buildings and facilities of the research park under guidelines established by the regents;

(6) to allow a lessee, exchanger or purchaser of university land to acquire or construct necessary or suitable buildings, facilities and improvements upon university land; provided that any improvements acquired or constructed upon university land during the term of any lease of university land shall revert to and become the property of the university on termination of the lease or any renewal or extension;



(7) to construct buildings, facilities and improvements and to acquire, purchase, construct, improve, remodel, add to, extend, maintain, equip and furnish research parks or any building or facility, including research and service facilities and areas intended for common use of research park occupants;

(8) to finance all or part of the costs of the research park, including the purchase, construction, reconstruction, improvement, remodeling, addition to, extension, maintenance, equipment and furnishing;

(9) to conduct, sponsor, finance and contract in connection with technological innovations of all kinds; and

(10) to do anything else that the regents deem appropriate to further the purposes of the University Research Park and Economic Development Act either directly or indirectly.

B. The specification of powers in this section is not exclusive and shall not be construed to impair or negate any other power or authority enjoyed by the regents under the constitution or laws of this state.

**History:** Laws 1989, ch. 284, § 5; 2007, ch. 247, § 5.

The 2007 amendment, effective June 15, 2007, added Paragraph (8) of Subsection A.

## 21-28-6. Powers of research park corporation.

A research park corporation shall have all the powers necessary and convenient to carry out and effectuate the provisions of the University Research Park and Economic Development Act, including the power to:

- A. approve or disapprove proposals;
- B. sue and be sued in its corporate name;
- C. purchase, take, receive or otherwise acquire; own, hold, manage, develop, dispose of or use; and otherwise deal in and with property, including an interest in or ownership of intangible personal property, intellectual property or technological innovations;
- D. sell, convey, pledge, exchange, transfer, lease or otherwise dispose of its assets and properties for consideration upon terms and conditions that the corporation shall determine; provided that any sale, conveyance, pledge, exchange, transfer, lease or disposal of a real property interest by a research park corporation shall be made in accordance with the provisions of Section 13-6-2 NMSA 1978;
- E. make contracts, incur liabilities or borrow money at rates of interest that the research park corporation may determine;
- F. make and execute all contracts, agreements or instruments necessary or convenient in the exercise of the powers and functions of the corporation granted by the University Research Park and Economic Development Act;
- G. receive and administer grants, contracts and private gifts;
- H. invest and reinvest its funds;
- I. conduct its activities, carry on its operations, have offices and exercise the powers granted by the University Research Park and Economic Development Act;
- J. make and alter bylaws that may contain provisions indemnifying any person who is or was a director, officer, employee or agent of the corporation and that are consistent with the University Research Park and Economic Development Act, for the administration and regulation of the affairs of research park corporations;
- K. employ officers and employees that it deems necessary, set their compensation and prescribe their duties;
- L. enter into agreements with insurance carriers to insure against any loss in connection with its operations;
- M. authorize retirement programs and other benefits for salaried officers and employees of the research park corporation;
- N. employ fiscal consultants, attorneys and other consultants that may be required and to fix and pay their compensation; and

O. enter into license agreements and contracts, including those involving intellectual property and technological innovations such as patents, copyrights, franchises and trademarks.

**History:** Laws 1989, ch. 264, § 6; 1998, ch. 54, § 3; 2007, ch. 247, § 6.

**The 2007 amendment**, effective June 15, 2007, permitted a research park corporation to lease, manage and develop property.

**The 1998 amendment**, effective May 20, 1998, in the introductory language, deleted "research" following "disapprove"; in Subsection C, inserted "dispose of or", deleted "real property or personal" preceding "property" inserted "an interest in or ownership", and deleted "or any interest therein" at the end of the Subsection; in Subsection

D, deleted "all or any part of any of"; in Subsection F, substituted "the University Research Park Act" for "this"; rewrote Subsection J; in Subsection N, substituted "and employees as" for "that", and deleted "in its judgment" following "required"; in Subsection O, deleted "to acquire, hold and dispose of intellectual property and technological innovations and", inserted "including those", inserted "and", and deleted "and matters related thereto; and" following "trademarks"; deleted Subsection P; and made minor stylistic changes.

## 21-28-7. Limitations on application of laws.

A. A research park corporation shall not be deemed an agency, public body or other political subdivision of New Mexico, including for purposes of applying statutes and laws relating to personnel, procurement of goods and services, meetings of the board of directors, gross receipts tax, disposition or acquisition of property, capital outlays, per diem and mileage and inspection of records.

B. A research park corporation shall be deemed:

(1) an agency or other political subdivision of the state for purposes of applying statutes and laws relating to the furnishing of goods and services to the university that operates it and the risk management fund; and

(2) a public employer for the purposes of the Public Employee Bargaining Act [Chapter 10, Article 7E NMSA 1978] if it owns, operates or manages a health care facility or employs individuals who work at a health care facility.

C. A research park corporation, its officers, directors and employees shall be granted immunity from liability for any tort as provided in the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978]. A research park corporation may enter into agreements with insurance carriers to insure against a loss in connection with its operations even though the loss may be included among losses covered by the risk management fund of New Mexico.

**History:** Laws 1989, ch. 264, § 7; 1991, ch. 220, § 1; 1998, ch. 54, § 4; 2022, ch. 44, § 1.

**The 2022 amendment**, effective May 18, 2022, designated a research park corporation as a public employer if it owns, operates or manages a health care facility or employs individuals who work at a health care facility; and in Subsection B, added Paragraph B(2).

**The 1998 amendment**, effective May 20, 1998, deleted the introductory language; added the Subsection designations; in Subsection A, substituted "New Mexico" for "the state", and deleted "real or personal"; in Subsection B, inserted "furnishing of goods and services to the university

that operates it and the"; in Subsection C, deleted "also" following "may", and substituted "a" for "any"; and made minor stylistic changes.

**The 1991 amendment**, effective June 14, 1991, added "Except as provided in this section" at the beginning and inserted "including" in the first sentence; deleted "the members of the board of directors of a research park corporation officers, directors and employees of the research park corporation" preceding "shall be deemed" and inserted "a research park corporation, its officers, directors and employees" preceding "shall be granted" in the second sentence; and made minor stylistic changes.

## 21-28-8. Issuance of revenue bonds.

A research park corporation may issue negotiable revenue bonds or notes or both. The proceeds of the sale of bonds issued pursuant to the University Research Park and Economic Development Act shall be used to carry out the provisions of that act and to fund reserves for the research park corporation to pay interest on the bonds and to pay the necessary expenses of issuing the bonds, including bond counsel and fiscal adviser fees and other legal, consulting and printing fees and costs. All bonds may be issued in one or more series. The bonds of each issue shall be dated and bear interest as prescribed by the research park corporation. The bonds shall mature serially or otherwise not later than forty years from their date and may be redeemable before maturity at the option of the research park corporation at prices and under terms and conditions fixed by the research park corporation in its resolution or trust agreement providing for issuance of the bonds. The resolution or trust agreement shall also determine the form of the bonds, including the form of



any interest coupons to be attached thereto, and shall fix the denominations of the bonds and the place of the payment of the principal and interest thereon. The bonds shall be executed on behalf of the research park corporation as special obligations of the research park corporation payable only from the funds specified in the University Research Park and Economic Development Act and shall not be a debt of this state, any political subdivision of this state or any university, and neither this state nor any political subdivision nor university shall be liable for the debts of the research park corporation. The resolution or trust agreement may provide for registration of the bonds as to ownership and for successive conversion and reconversion from registered to bearer bonds and vice versa. The bonds may be registered in the principal office of the research park corporation. After the registration and delivery to the purchasers, the bonds are incontestable and constitute special obligations of the research park corporation, and the bonds and coupons are negotiable instruments under the laws of this state. The bonds may be sold at public or private sale by the research park corporation at prices and in accordance with procedures and terms the research park corporation determines to be advantageous and reasonably obtainable. The research park corporation may provide for replacement of any bond that may be mutilated or destroyed.

**History:** Laws 1989, ch. 264, § 8; 2007, ch. 247, § 7.

**The 2007 amendment**, effective June 15, 2007, changed the name of the act.

## 21-28-9. Status of bonds.

Bonds and other obligations issued under the provisions of the University Research Park and Economic Development Act shall be deemed issued on behalf of the university, but shall not be deemed to constitute a debt, liability, obligation of or a pledge of the faith and credit of this state or any political subdivision thereof or any university, but shall be payable solely from the revenue or assets of the research park corporation pledged for that payment. Each obligation issued on behalf of the research park corporation under the University Research Park and Economic Development Act shall contain on its face a statement to the effect that neither this state nor any political subdivision, university or research park corporation shall be obligated to pay the same or the interest thereon except from the revenues or assets pledged therefor and that neither the faith and credit nor the taxing power of this state, any political subdivision thereof or any university is pledged to the payment of the principal of or the interest on such obligation.

**History:** Laws 1989, ch. 264, § 9; 2007, ch. 247, § 8.

**The 2007 amendment**, effective June 15, 2007, changed the name of the act.

## 21-28-10. Refunding bonds.

The board of directors of a research park corporation may by resolution provide for the issuance of refunding bonds to refund any outstanding bonds issued under the University Research Park and Economic Development Act, together with redemption premiums, if any, and interest accrued or to accrue thereon. Provisions governing the issuance and sale of bonds under the University Research Park and Economic Development Act govern the issuance and sale of refunding bonds insofar as applicable. Refunding bonds may be exchanged for the outstanding bonds or may be sold and the proceeds used to retire the outstanding bonds. Pending the application of the proceeds of any refunding bonds, with any other available funds, to the payment of the principal, interest and any redemption premiums on the bonds being refunded, and if so provided or permitted in the resolution of the research park corporation authorizing the issuance of such refunding bonds, to the payment of any interest on refunding bonds and any expenses incurred in connection with refunding, the proceeds may be placed in escrow and invested in securities that are unconditionally guaranteed by the United States and that shall mature or be subject to redemption by the holders thereof, at the option of the holders, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended.

**History:** Laws 1989, ch. 264, § 10; 2007, ch. 247, § 9.

**The 2007 amendment**, effective June 15, 2007, changed the name of the act.

### **21-28-11. Trust agreements authorized.**

In the discretion of the research park corporation, any bonds issued under the provisions of the University Research Park and Economic Development Act may be secured by a trust agreement by and between the research park corporation and a corporate trustee, which may be a bank or trust company having trust powers within or without the state. The trust agreement or the resolution providing for the issuance of bonds may pledge or assign all or any part of the revenues or assets of the research park corporation. The trust agreement or resolution may contain provisions for protecting and enforcing the rights and remedies of the holders of any bonds as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the research park corporation in relation to the purposes to which bond proceeds may be applied, the disposition or pledging of the revenues or assets of the research park corporation and the custody, safeguarding and application of all money. It is lawful for any bank or trust company incorporated under the laws of the state that may act as depository of the proceeds of bond revenues or other money hereunder to furnish indemnifying bonds or to pledge securities that may be required by the research park corporation. Any trust agreement or resolution may set forth the rights and remedies of the holders of any bonds and of the trustee and may restrict the individual right of action by any holders. In addition, any trust agreement or resolution may contain other provisions as the research park corporation may deem reasonable and proper for the security of the holders of any bonds. All expenses incurred in carrying out the provisions of a trust agreement or resolution may be paid from the revenues or assets pledged or assigned to the payment of the principal of and the interest on bonds or from any other funds available to the research park corporation.

**History:** Laws 1989, ch. 264, § 11; 2007, ch. 247, § 10.

The 2007 amendment, effective June 15, 2007, changed the name of the act.

### **21-28-12. Pledge of assets or revenues of research park corporation.**

The pledge of any assets or revenues of the research park corporation to the payment of the principal of or the interest on any bonds shall be valid and binding from the time when the pledge is made, and any such assets or revenues shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the research park corporation, irrespective of whether such parties have notice thereof. Nothing in this section shall be construed to prohibit the research park corporation from selling any assets subject to any such pledge except to the extent that any such sale may be restricted by the trust agreement or resolution providing for the issuance of such bonds.

**History:** Laws 1989, ch. 264, § 12.

### **21-28-13. All money received from sale of bonds deemed trust funds.**

All money received by a research park corporation from bonds issued under the provisions of the University Research Park and Economic Development Act shall be deemed funds to be held in trust, applied as provided in that act or transferred to other research park corporations, nonprofit corporations or the university as the research park corporation deems appropriate. The resolution authorizing any obligations or the trust agreement securing the obligations may provide that any of the money covered by this section may be temporarily invested pending its disbursement. The resolution shall provide that any officer with whom, or any bank or trust company with which, the money is deposited shall act as trustee of the money and shall hold and apply the money for the purposes of the University Research Park and Economic Development Act, subject to provisions that rules under that act and the resolution or trust agreement may specify. Any such money described in this section received by a research park corporation may be invested as provided in the University Research Park and Economic Development Act.



**History:** Laws 1989, ch. 264, § 13; 1991, ch. 220, § 2; 2007, ch. 247, § 11.

The 2007 amendment, effective June 15, 2007, changed the name of the act.

The 1991 amendment, effective June 14, 1991, inserted "from sale of bonds" in the catchline; inserted "from

bonds issued" and substituted "funds to be held in trust" for "to be in trust" preceding "funds to be held" in the first sentence; inserted "covered by this section" in the second sentence; substituted "money received by a" for "money or any other money of the" in the final sentence; and made minor stylistic changes.

## 21-28-14. Limitation of liability.

The members of the board of directors of a research park corporation, while acting within the scope of their authority, and any person acting in their behalf, while acting within the scope of the person's authority, shall not be personally liable for the corporation's obligations.

**History:** Laws 1989, ch. 264, § 14; 1991, ch. 220, § 3.

The 1991 amendment, effective June 14, 1991, substituted "personally liable for the corporation's obligations"

for "subject to any personal liability resulting from carrying out the provisions of the University Research Park Act" at the end of the section.

## 21-28-15. Rights of holders of bonds.

Any holder of bonds issued under the provisions of the University Research Park and Economic Development Act or any coupons appertaining thereto, and the trustee under any trust agreement or resolution authorizing the issuance of those bonds, except as the rights given pursuant to that act may be restricted by a trust agreement or resolution, may, either at law or in equity, by suit, mandamus or other proceeding, protect and enforce any and all rights under the laws of this state or granted by that act or under the trust agreement or resolution or under any other contract executed by the research park corporation pursuant to that act, and may enforce and compel the performance of all duties required by that act or by the trust agreement or resolution to be performed by the research park corporation or by any officer thereof.

**History:** Laws 1989, ch. 264, § 15; 2007, ch. 247, § 12.

The 2007 amendment, effective June 15, 2007, changed the name of the act.

## 21-28-16. Legal investments; tax exemption.

All bonds issued by a research park corporation under the University Research Park and Economic Development Act are legal and authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, fiduciaries, trustees and guardians and for the sinking funds of political subdivisions, departments, institutions and agencies of this state. When accompanied by all unmatured coupons appurtenant to them, the bonds are sufficient security for all deposits of state funds and of all funds of any board in control of public money at the par value of the bonds. The bonds and the income from the bonds are free from taxation within this state, except estate taxes. The research park corporation in its discretion and by those means as it deems appropriate may waive the exemption from federal income taxation of interest on the bonds. The bonds subject to federal income taxation issued by the research park corporation shall be payable as to principal and interest with such frequency as may be required by the research park corporation.

**History:** Laws 1989, ch. 264, § 16; 1991, ch. 220, § 4; 2007, ch. 247, § 13.

The 2007 amendment, effective June 15, 2007, changed the name of the act.

The 1991 amendment, effective June 14, 1991, inserted "research park" preceding "corporation" in two places and substituted "estate taxes" for "inheritance and gift taxes" in the third sentence.

## 21-28-17. Annual report and audit.

A. A research park corporation shall, within ninety days following the close of each fiscal year, submit an annual report of its activities for the preceding year as required by the Nonprofit Corporation Act [Chapter 53, Article 8 NMSA 1978] or the Business Corporation Act [Chapter 53,

Articles 11 through 18 NMSA 1978] under which the research park is incorporated. The board of directors of the research park corporation shall annually contract with an independent certified public accountant, licensed by the state, to perform an examination and audit of the accounts and books of the research park corporation, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other records and papers relating to its financial standing, and the certified public accountant shall make a determination as to whether the research park corporation has complied with the provisions of the University Research Park and Economic Development Act. The person performing the audit shall furnish copies of the audit report to the regents of the university and the secretary of state, where they shall be placed on file and made available for inspection by the general public.

B. Subject to the provisions of any contract with bondholders or noteholders, a research park corporation shall prescribe a system of accounts.

C. The costs of audits and examinations performed pursuant to this section shall be paid by the research park corporation.

**History:** Laws 1989, ch. 264, § 17; 2007, ch. 247, § 14; 2013, ch. 75, § 13.

The 2013 amendment, effective July 1, 2013, required that the auditor furnish a copy of the audit of a research park corporation to the secretary of state; and in Subsection A, in the third sentence, after "university and the"

deleted "public regulation commission" and added "secretary of state".

The 2007 amendment, effective June 15, 2007, changed the name of the act and changed state corporation commission to public regulation commission.

## 21-28-18. Repealed.

**Repeals.** — Laws 1991, ch. 220, § 6 repealed 21-28-18 NMSA 1978, as enacted by Laws 1989, ch. 264, § 18, relating to investment of funds, effective June 14, 1991. For

provisions of former section, see the 1990 NMSA 1978 on *NMOneSource.com*.

## 21-28-19. Gifts by persons, corporations, institutions and associations.

A. Any person or domestic corporation or association may make contributions or gifts, grants, bequests, devises or loans to a research park corporation.

B. Any university or nonprofit corporation having funds available for research and development, regardless of the provisions of its charter, certificate of incorporation or other articles of organization including bylaws, may loan the funds to a research park corporation under such terms and conditions as may be mutually agreed upon for the purposes of a research park.

**History:** Laws 1989, ch. 264, § 19.

## 21-28-20. Conflicts of interest.

A. If any director, officer or employee of a research park corporation is interested either directly or indirectly or is an officer or employee of or has any ownership interest in any firm or legal entity interested directly or indirectly in any contract with the research park corporation, except for any agency, instrumentality, department or political subdivision of the state, such interest shall be disclosed to and shall be set forth in the minutes of the research park corporation that is a party to the contract. The director, officer or employee having that interest shall not participate on behalf of the research park corporation in the authorization of the contract.

B. No director, officer or employee of a research park corporation or state officer shall accept any gratuities in connection with the issuance of bonds under the University Research Park and Economic Development Act, nor shall that individual be reimbursed for expenses incident to the issuing of bonds except such expenses as are reimbursed as provided under the provisions of rules of the regents.

C. Nothing in this section shall prohibit an officer, director or employee of a financial institution from participating as a member of the board of directors of a research park corporation in



setting general policies of the research park corporation, nor shall any provision of this section be construed as prohibiting a financial institution of New Mexico from making loans guaranteed pursuant to the provisions of the University Research Park and Economic Development Act because an officer, director or employee of the financial institution serves as a member of the board of directors of the research park corporation.

D. Any person who violates the provisions of this section is guilty of a misdemeanor and shall be sentenced for a definite term of less than one year, a fine of one thousand dollars (\$1,000), or both.

**History:** Laws 1989, ch. 264, § 20; 2007, ch. 247, § 15.

**The 2007 amendment,** effective June 15, 2007, changed the name of the act.

## **21-28-21. Dissolution of research park corporation.**

On termination or dissolution of a research park corporation, all rights and properties of the research park corporation shall pass to and be vested in the university which formed the research park corporation, subject to the rights of any bondholders, lienholders, creditors or ownership interests in the research park corporation.

**History:** Laws 1989, ch. 264, § 21; 1991, ch. 220, § 5.

**The 1991 amendment,** effective June 14, 1991, substituted "creditors or ownership interests in the research

park corporation" for "and other creditors or any holder of equity interests in a research park corporation" at the end of the section.

## **21-28-22. Agreement with the state.**

The state does hereby pledge to and agree with the holders of any bonds or notes issued under the University Research Park and Economic Development Act that the state will not limit or alter the rights hereby vested in the research park corporation by that act to fulfill the terms of any agreement made with the holders thereof or in any way impair the rights and remedies of those holders until the bonds or notes, together with the interest thereon, with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceedings by or on behalf of those holders, are fully met and discharged. A research park corporation is authorized to include this pledge and agreement of the state in any agreement with the holders of the bonds or notes.

**History:** Laws 1989, ch. 264, § 22; 2007, ch. 247, § 16.

**The 2007 amendment,** effective June 15, 2007, changed the name of the act.

## **21-28-23. Work to conform to federal law when aided by federal appropriations.**

In the event of congress making appropriations for the conduct of work similar to that specified in the University Research Park and Economic Development Act, the work of the research park shall conform to the requirements imposed as the conditions for those federal appropriations in order that the work of the research park may be aided and extended by means of those federal appropriations for scientific, engineering and industrial research.

**History:** Laws 1989, ch. 264, § 23; 2007, ch. 247, § 17.

**The 2007 amendment,** effective June 15, 2007, changed the name of the act.

## **21-28-24. Contracts involving officers or employees of educational institutions and state agencies or political subdivisions.**

A research park corporation shall not enter into any contract involving services or property of a value in excess of twenty thousand dollars (\$20,000) with an employee of the university or with a business in which the employee has a controlling interest, except as provided in Section 21-28-25

NMSA 1978 if the employee has a controlling interest, unless the president of the university or the president's designee makes a determination, in writing, that the employee is able to provide services that are not readily available from another person or is able to provide services that are less expensive or of higher quality than is otherwise available.

**History:** Laws 1989, ch. 264, § 24; 2007, ch. 247, § 18.

The 2007 amendment, effective June 15, 2007, changed the statutory reference to Section 25 of the act.

## **21-28-25. Transfer of technology developed by universities; officer or employee interest in private entity.**

A. Notwithstanding any other provision of state law, an officer or employee of a university may, subject to Subsection B of this section, apply to the university which, under policies established by the regents as provided in Subsection E of this section, may grant permission to establish and maintain a substantial interest in a research park corporation or private entity which provides or receives equipment, material, supplies or services in connection with the university or a research park corporation in order to facilitate the transfer of technology developed by the officer or employee of the university from the university to commercial and industrial enterprises for economic development.

B. To receive the permission pursuant to Subsection A of this section, the officer or employee must receive the approval of the president or his designee of the university at which he is employed. The president of the university may grant approval to the officer or employee only if all of the following conditions are met:

- (1) the officer or employee provides a detailed description of his interest in the research park corporation or private entity to the president;
- (2) the nature of the proposed undertaking is fully described to the president;
- (3) the officer or employee demonstrates to the satisfaction of the president that the proposed undertaking may benefit the economy of this state;
- (4) the officer or employee demonstrates to the satisfaction of the president that the proposed undertaking will not adversely affect research, public service or instructional activities at the university; and
- (5) the officer's or employee's interest in the research park corporation or private entity or benefit from the interest will not adversely affect any substantial state interest.

C. The president of a university may authorize an officer or employee of the university to establish and maintain a substantial interest in a research park corporation or private entity if all of the following conditions are met:

- (1) the application to maintain the substantial interest is approved by the president of the university at which the officer or employee is employed;
- (2) the application contains a detailed description of the officer's or employee's interest in the research park corporation or private entity;
- (3) the application contains a detailed description of the proposed undertaking;
- (4) the application demonstrates to the satisfaction of the president of the university that the proposed undertaking will benefit the economy of this state;
- (5) the application demonstrates to the satisfaction of the president of the university that the proposed undertaking will not adversely affect research, public service or instructional activities at the university; and
- (6) the officer's or employee's interests in the research park corporation or private entity or benefit from the interest will not adversely affect any substantial state interest.

D. On recommendation of the regents, the president of the university at which the officer or employee is employed may require that the university or a research park corporation have a share in any royalties or shares of the research park corporation or other proceeds or equity positions from the proposed undertaking of the private entity.

E. The regents may establish policies for the implementation of this section.

**History:** Laws 1989, ch. 264, § 25.



## ARTICLE 29

### Western Interstate Commission on Higher Education Loans for Service

Sec.

21-29-1. Short title.

21-29-2. Definitions.

21-29-3. Student exchange program; terms of student loans; payback requirements.

Sec.

21-29-4. Commission [department] powers and duties; contracts.

21-29-5. Fund created; method of payment.

21-29-6. Cancellation.

#### 21-29-1. Short title.

This act [21-29-1 through 21-29-6 NMSA 1978] may be cited as the "WICHE Loan for Service Act".

**History:** Laws 1997, ch. 126, § 1.

**Cross references.** — For Teacher Loan for Service Act, see 21-22E-1 NMSA 1978 et seq.

For the Western Regional Cooperation in Higher Education Compact, see Chapter 11, Article 10 NMSA 1978.

**Effective dates.** — Laws 1997, ch. 126, § 9 makes the WICHE Loans for Service Act effective on July 1, 1997.

**Applicability.** — Laws 1997, ch. 126, § 8 makes the WICHE Loans for Service Act applicable to contracts entered into with students on or after the effective date of the act.

#### 21-29-2. Definitions.

As used in the WICHE Loan for Service Act:

A. "commission" [department] means the commission on higher education [higher education department]; and

B. "student" means a New Mexico resident who is a graduate of a New Mexico high school or has resided in New Mexico for three consecutive years immediately preceding application to the program and who attends or is about to attend a graduate or professional program of education through the auspices of the Compact for Western Regional Cooperation in Higher Education [11-10-1 NMSA 1978].

**History:** Laws 1997, ch. 126, § 2; 1998, ch. 110, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**The 1998 amendment,** effective May 20, 1998, in Subsection B, inserted "or has resided in New Mexico for three consecutive years immediately preceding application to the program" near the middle of the subsection.

#### 21-29-3. Student exchange program; terms of student loans; payback requirements.

A. Financial assistance by the state for the student exchange program of the western interstate commission for higher education shall be through a loan program established pursuant to this section.

B. A student may receive a loan of tuition assistance on the following terms:

(1) the loan shall not exceed an amount equivalent to the negotiated support fee for the graduate or professional program; and

(2) the loan shall bear interest at the rate of:

(a) eighteen percent per year if the student completes his education and no portion of the principal and interest is forgiven pursuant to Subsection F of this section; and

(b) seven percent per year in all other cases.

C. Loans made pursuant to the WICHE Loan for Service Act shall not accrue interest until:

(1) the commission [department] determines the loan recipient has terminated the recipient's professional education program prior to completion;

(2) the commission [department] determines the loan recipient has failed to fulfill the recipient's obligation to practice the recipient's profession in New Mexico; or

(3) the commission [department] cancels a contract between a student and the commission [department] pursuant to Section 21-29-6 NMSA 1978.

D. The loan shall be evidenced by a contract between the student and the commission [department] acting on behalf of the state. The contract shall provide for the payment by the state of a stated sum covering the cost of tuition assistance and shall be conditioned on the repayment of the loan to the state over a period established by the commission [department].

E. Loans made to a student who fails to complete his education shall become due immediately upon termination of his education. The commission [department] shall establish terms of repayment, alternate service or cancellation terms.

F. The contract shall provide that the commission [department] shall forgive a portion of the loan for each year that a loan recipient practices his profession in New Mexico. The loan shall be forgiven as follows:

(1) loan terms of one year shall require one year of practice for each year of the loan. Upon completion of service, one hundred percent of the loan shall be forgiven;

(2) loan terms of two years shall require one year of practice for each year of the loan. Upon completion of the first year of service, fifty percent of the loan shall be forgiven; upon completion of the second year of service, the remainder of the loan shall be forgiven;

(3) for loan terms of three years or more, forty percent of the loan shall be forgiven upon completion of the first year of service, thirty percent of the loan shall be forgiven upon completion of the second year of service and the remainder of the loan shall be forgiven upon completion of the third year of service; and

(4) the commission [department] may establish other forgiveness terms for professionals providing service in serious shortage areas.

G. Loan recipients shall serve a complete year in order to receive credit for that year. The minimum credit for a year shall be established by the commission [department].

H. If a student completes his professional education and does not return to New Mexico to practice his profession, the commission [department] shall assess a penalty of up to three times the principal due, plus eighteen percent interest, unless the commission [department] finds acceptable extenuating circumstances for why the student cannot serve. If the commission [department] does not find acceptable extenuating circumstances for the student's failure to carry out his declared intent to practice his profession in New Mexico, the commission [department] shall require immediate repayment of the loan plus the amount of any interest and penalty assessed pursuant to this subsection.

I. The commission [department] may provide by regulation for the repayment of student exchange program loans in annual or other periodic installments.

**History:** Laws 1997, ch. 126, § 3; 2005, ch. 323, § 6.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, see 9-25-4.1 NMSA 1978.

**The 2005 amendment**, effective June 17, 2005, added Subsections C(1) through (3) to provide that loans shall not accrue interest until the recipient has terminated the recipient's professional education prior to completion, the recipient has failed to fulfill the recipient's obligation to practice the recipient's profession in New Mexico or the

commission cancels a contract between a student and the commission; deleted former references to repayment of the loan "together with interest" and loan "principal and interest"; deleted the former provision in Subsection D which provided that the contract shall provide that immediately upon completion or termination of the student's education, all interest then accrued shall be capitalized; changed "principal plus accrued interest" to "loan"; and provided in Subsection H that if the commission does not find acceptable circumstances for a student's failure to serve, the commission shall require repayment of the loan plus the amount of any interest.

## 21-29-4. Commission [department] powers and duties; contracts.

A. The commission [department] may:

(1) arrange with other agencies for the performance of services required by the provisions of Section 3 [21-29-3 NMSA 1978] of the WICHE Loan for Service Act;

(2) sue in its own name for any balance due the state from a student on a contract;



(3) cancel a contract made between it and a student for a reasonable cause deemed sufficient by the commission [department]; and

(4) adopt regulations to implement the provisions of the WICHE Loan for Service Act.

B. The commission [department] shall make an annual report to the governor and the legislature prior to the regular session of its activities pursuant to the WICHE Loan for Service Act, including loans granted and paid back or fulfilled through the practice of a profession in New Mexico; a list of the schools or colleges attended by those receiving loans; and any other information the commission [department] deems pertinent.

C. The general form of the contract provided for in Section 3 of the WICHE Loan for Service Act shall be prepared and approved by the attorney general and signed by the student and a designee of the commission [department] on behalf of the state.

**History:** Laws 1997, ch. 126, § 4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1997, ch. 126, § 9 makes the WICHE Loans for Service Act effective on July 1, 1997.

## 21-29-5. Fund created; method of payment.

The "WICHE loan for service fund" is created in the state treasury. All money appropriated for loans to students participating in the student exchange program of the western interstate commission on higher education [higher education department] shall be credited to the fund. All payments of principal and interest on loans made pursuant to the WICHE Loan for Service Act shall be credited to the fund. All payments of money for loans shall be made upon vouchers signed by the designated representative of the commission [department] and warrants drawn by the secretary of finance and administration.

For the 1997-98 fiscal year, seventy thousand dollars (\$70,000) is appropriated from the nursing-loan-for-service fund to the commission on higher education [higher education department] from collections generated in excess of the amount received and budgeted for the 1997-98 fiscal year. This appropriation shall be used to support the operation and administration of the program, including paying support fees for students currently enrolled in the WICHE program.

**History:** Laws 1997, ch. 126, § 5.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1997, ch. 126, § 9 makes the WICHE Loans for Service Act effective on July 1, 1997.

## 21-29-6. Cancellation.

The commission [department] may cancel a contract with a student for reasonable cause deemed sufficient by the commission [department].

**History:** Laws 1997, ch. 126, § 6.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the commission on higher education as the higher education department, *see* 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 1997, ch. 126, § 9 makes the WICHE Loans for Service Act effective on July 1, 1997.

# ARTICLE 30

## University Athletic Facility Funding Act

- |   |  |
|---|--|
| Sec.  | Sec.   |
| 21-30-1. Short title.   | 21-30-5. Bonds tax exempt.   |
| 21-30-2. Definitions.   | 21-30-6. Authorization of surcharge and other fees; use of proceeds; transfer. |
| 21-30-3. Issuance of bonds.   |  |
| 21-30-4. Athletic facility revenue bonds; full authority to issue; bonds are legal investments. |  |

Sec. 21-30-7. Collection of athletic facility surcharge; remit-

tance to university.

21-30-8. Audits.

Sec.

21-30-9. Enforcement; penalties.

21-30-10. Liberal interpretation.

## 21-30-1. Short title.

Sections 2 through 11 [21-30-1 to 21-30-10 NMSA 1978] of this act may be cited as the "University Athletic Facility Funding Act".

**History:** Laws 2007, ch. 117, § 2.

**Emergency clauses.** — Laws 2007, ch. 117, § 12 contained an emergency clause and was approved March 30, 2007.

## 21-30-2. Definitions.

As used in the University Athletic Facility Funding Act:

A. "athletic facility revenues" means rentals, receipts, fees or other charges imposed by and paid to a university for the rights to use, operate or manage a university athletic facility by any person;

B. "athletic facility surcharge" means a surcharge to be included in each vendor contract on tickets, parking, souvenirs, concessions, programs, advertising, merchandise, corporate suites or boxes, broadcast revenues and all other products or services sold at or related to a university athletic facility or related to activities occurring at a university athletic facility;

C. "board" means the board of regents of a university;

D. "bonds" means athletic facility revenue bonds issued by a university to pay for some or all of the costs of designing, purchasing, constructing, remodeling, rehabilitating, renovating, improving, equipping and furnishing a university athletic facility;

E. "president" means the president of a university or a person designated by the president of a university;

F. "university" means a four-year post-secondary educational institution confirmed by Article 12, Section 11 of the constitution of New Mexico and the main campus of which is located in a class A county;

G. "university athletic facility" means an indoor or outdoor athletic facility, including buildings and related improvements, primarily designed and intended for university sporting events, but also available for non-university sporting events and university and community cultural, educational and entertainment events;

H. "vendor" means every person, corporation, partnership or other entity, including a division or department of a university, providing products or services sold at or related to a university athletic facility; and

I. "vendor contract" means a written arrangement between a university and a vendor pursuant to which the vendor provides products or services sold at or related to the university athletic facility.

**History:** Laws 2007, ch. 117, § 3.

**Emergency clauses.** — Laws 2007, ch. 117, § 12 contained an emergency clause and was approved March 30, 2007.

## 21-30-3. Issuance of bonds.

A. With the approval of the higher education department and the state board of finance, pursuant to a resolution of the board of regents, a university that has imposed an athletic facility surcharge may issue athletic facility revenue bonds to pay for some or all of the costs of designing, purchasing, constructing, remodeling, renovating, rehabilitating, improving, equipping or furnishing a university athletic facility that has a seating capacity of twelve thousand or more.



B. The bonds shall bear interest at a rate or rates as authorized in the Public Securities Act [6-14-1 through 6-14-3 NMSA 1978], and the first interest payment may be for any period authorized in the Public Securities Act.

C. The bonds shall be secured by athletic facility revenues and athletic facility surcharge receipts.

D. The university shall establish an "athletic facility bonding fund" for deposit of all athletic facility revenues and athletic facility surcharge proceeds. Money in the fund may be used to pay:

(1) payments of principal, interest or prior redemption premiums due in connection with, and any other charges pertaining to, the bonds, including payments into any sinking fund or reserve fund required by the bond resolution;

(2) costs of operating a university athletic facility during the life of the bonds, provided that no such costs shall be paid if there are current payments due pursuant to Paragraph (1) of this subsection;

(3) costs of constructing, renovating, equipping, maintaining or improving a university athletic facility, provided that no such costs shall be paid if there are current payments due pursuant to Paragraph (1) of this subsection; or

(4) costs of collecting or administering the athletic facility surcharge, provided that no such costs shall be paid if there are current payments due pursuant to Paragraph (1) of this subsection.

E. Bonds issued pursuant to the University Athletic Facility Funding Act shall be payable solely from the athletic facility bonding fund and do not create an obligation or indebtedness of the state within the meaning of any constitutional provision. A breach of any contractual obligation incurred pursuant to that act shall not impose a pecuniary liability or a charge upon the general credit or taxing power of the state, and the bonds are not general obligations for which the state's full faith and credit is pledged.

F. The state does hereby pledge that the athletic facility bonding fund shall be used only for the purposes specified in this section and pledged first to pay the debt service on the bonds. The state further pledges that any law authorizing the imposition of the athletic facility surcharge and the dedication of revenues to the fund shall not be amended or repealed or otherwise modified so as to impair the bonds to which the fund is dedicated as provided in this section. The university shall not repeal, amend or otherwise modify the bond resolution or the resolution imposing the athletic facility surcharge in such a manner that adversely affects or impairs the athletic facility surcharge or any bonds secured by a pledge of the athletic facility revenues and athletic facility surcharge receipts unless the bonds have been paid in full or provisions have been made for full payment.

**History:** Laws 2007, ch. 117, § 4.

**Emergency clauses.** — Laws 2007, ch. 117, § 12 contained an emergency clause and was approved March 30, 2007.

#### **21-30-4. Athletic facility revenue bonds; full authority to issue; bonds are legal investments.**

A. The University Athletic Facility Bonding Act shall, without reference to any other act of the legislature, be full authority for the issuance and sale of athletic facility revenue bonds, which bonds shall have all the qualities of investment securities under the Uniform Commercial Code [Chapter 55 NMSA 1978] and shall not be invalid for any irregularity or defect or be contestable in the hands of bona fide purchasers or holders of the bonds for value.

B. Athletic facility revenue bonds are legal investments for any person or board charged with the investment of any public funds and are acceptable as security for any deposit of public money.

**History:** Laws 2007, ch. 117, § 5.

**Emergency clause.** — Laws 2007, ch. 117, § 12 contained an emergency clause and was approved March 30, 2007.

### 21-30-5. Bonds tax exempt.

All athletic facility revenue bonds shall be exempt from taxation by the state or any of its political subdivisions.

**History:** Laws 2007, ch. 117, § 6.

**Emergency clauses.** — Laws 2007, ch. 117, § 12 contained an emergency clause and was approved March 30, 2007.

### 21-30-6. Authorization of surcharge and other fees; use of proceeds; transfer.

A. The board may establish by resolution an athletic facility surcharge of not less than five percent but not to exceed twenty-five percent of the revenues received by a vendor pursuant to each vendor contract entered into by the university.

B. The athletic facility surcharge shall be imposed only for the period necessary for payment of principal and interest on the bonds issued to accomplish the purpose for which the revenue is dedicated, but the period shall not exceed thirty years from the date of the resolution imposing the surcharge.

C. A university that has established an athletic facility surcharge shall include the surcharge in the terms of each vendor contract into which it enters.

D. A university may establish charges and fees deemed necessary by the board or the president for the use, operation or management of a university athletic facility by a person other than the university.

**History:** Laws 2007, ch. 117, § 7.

### 21-30-7. Collection of athletic facility surcharge; remittance to university.

A. Upon the sale of a product or service subject to the athletic facility surcharge, a vendor shall collect the athletic facility surcharge from the purchaser of that product or service on behalf of the university and shall act as a trustee for the surcharge receipts. A purchaser of a product or service subject to the athletic facility surcharge shall be charged separately for the athletic facility surcharge from the cost of the product or service, or the vendor shall institute accounting controls or procedures sufficient to identify the amount of the surcharge owed to a university for each sale, transaction or exchange subject to the surcharge. Receipts from the athletic facility surcharge shall be remitted by a vendor to the president no later than the tenth day of the month following the collection of the surcharge.

B. The president shall deposit university athletic facility revenues and athletic facility surcharge receipts into the athletic facility bonding fund and act as trustee of the revenue on behalf of bondholders pursuant to the University Athletic Facility Funding Act so long as any bonds remain outstanding.

**History:** Laws 2007, ch. 117, § 8.

**Emergency clauses.** — Laws 2007, ch. 117, § 12 contained an emergency clause and was approved March 30, 2007.

### 21-30-8. Audits.

The board shall provide by resolution a method to audit or otherwise ensure that vendors subject to the athletic facility surcharge collect and remit to the president the full amount of the surcharge receipts due to the university.

**History:** Laws 2007, ch. 117, § 9.

**Emergency clause.** — Laws 2007, ch. 117, § 12 contained an emergency clause and was approved March 30, 2007.



## 21-30-9. Enforcement; penalties.

A. An action to enforce the imposition and collection of an athletic facility surcharge by a vendor may be brought by a university.

B. A district court may issue an appropriate judgment, order or remedy to enforce the provisions of a vendor contract.

C. A judgment issued by a district court requiring athletic facility surcharge receipts to be paid to a university by a vendor shall also award interest at an annual rate of twelve percent on past due amounts, attorney fees and costs to a university.

**History:** Laws 2007, ch. 117, § 10.

**Emergency clause.** — Laws 2007, ch. 117, § 12 contained an emergency clause and was approved March 30, 2007.

## 21-30-10. Liberal interpretation.

The University Athletic Facility Funding Act shall be liberally construed to carry out its purpose.

**History:** Laws 2007, ch. 117, § 11.

**Emergency clause.** — Laws 2007, ch. 117, § 12 contained an emergency clause and was approved March 30, 2007.

# ARTICLE 31

## Student Athlete Endorsement

**Sec. 21-31-1. Short title.**

21-31-1. Short title.

21-31-2. Definitions.

**Sec.**

21-31-3. Student athlete compensation.

21-31-4. Professional representation.

## 21-31-1. Short title.

This act [21-31-1 to 21-31-4 NMSA 1978] may be cited as the "Student Athlete Endorsement Act".

**History:** Laws 2021, ch. 124, § 1.

**Effective dates.** — Laws 2021, ch. 124 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

**Applicability.** — Laws 2021, ch. 124, § 5 provided that the provisions of Laws 2021, ch. 124 apply to contracts entered into on and after July 1, 2021.

## 21-31-2. Definitions.

As used in the Student Athlete Endorsement Act:

A. "post-secondary educational institution" means an academic, vocational, technical, business, professional or other school, college or university or other organization or person offering or purporting to offer courses, instruction, training or education from a physical site in New Mexico, through distance education, correspondence or in person;

B. "student athlete" means an individual who engages in an intercollegiate sport; and

C. "third party" means an individual or entity other than a post-secondary educational institution, athletic association or athletic conference.

**History:** Laws 2021, ch. 124, § 2.

**Effective dates.** — Laws 2021, ch. 124 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

**Applicability.** — Laws 2021, ch. 124, § 5 provided that the provisions of Laws 2021, ch. 124 apply to contracts entered into on and after July 1, 2021.

### 21-31-3. Student athlete compensation.

A. A post-secondary educational institution shall not:

(1) uphold any rule, requirement, standard or other limitation that prevents a student athlete of that institution from fully participating in athletics without penalty:

(a) for receiving food, shelter, medical expenses or insurance from a third party; or

(b) for earning compensation from a third party as a result of the use of the student athlete's name, image, likeness or athletic reputation;

(2) prohibit or discourage a student athlete from wearing footwear of the student athlete's choice during official, mandatory team activities so long as the footwear does not have reflective fabric or lights or pose a health risk to a student athlete;

(3) prevent a student athlete from receiving third-party compensation for using the student athlete's name, image, likeness or athletic reputation when the student athlete is not engaged in official, mandatory team activities; or

(4) arrange third-party compensation for the use of a student athlete's name, image, likeness or athletic reputation or use such deals as inducements to recruit prospective student athletes.

B. Earning compensation from the use of a student athlete's name, image, likeness or athletic reputation shall not affect a student athlete's grant-in-aid or stipend eligibility, amount, duration or renewal. For the purposes of this section, a grant-in-aid or stipend shall not be revoked or reduced as a result of a student athlete earning compensation pursuant to this section.

C. A third party shall not offer a student athlete a contract to provide compensation to the student athlete for use of the student athlete's name, image, likeness or athletic reputation that requires a student athlete to advertise for the sponsor in person during official, mandatory team activities without the approval of the student athlete's post-secondary educational institution.

**History:** Laws 2021, ch. 124, § 3.

**Effective dates.** — Laws 2021, ch. 124 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

**Applicability.** — Laws 2021, ch. 124, § 5 provided that the provisions of Laws 2021, ch. 124 apply to contracts entered into on and after July 1, 2021.

### 21-31-4. Professional representation.

A post-secondary educational institution shall not interfere with or prevent a student athlete from fully participating in athletics for obtaining representation unaffiliated with a post-secondary educational institution or its partners in relation to contracts or legal matters. An entity or individual that represents a post-secondary educational institution or has represented that post-secondary educational institution in the previous four years shall not represent a student athlete who is attending that post-secondary educational institution in any business agreement.

**History:** Laws 2021, ch. 124, § 4.

**Effective dates.** — Laws 2021, ch. 124 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

**Applicability.** — Laws 2021, ch. 124, § 5 provided that the provisions of Laws 2021, ch. 124 apply to contracts entered into on and after July 1, 2021.



# CHAPTER 22

## Public Schools

### Art.

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**22-1-1. Public School Code.**

Chapter 22 NMSA 1978 [except Article 5A] may be cited as the "Public School Code".

**History:** 1953 Comp., § 77-1-1, enacted by Laws 1967, ch. 16, § 1; 1977, ch. 246, § 59; 2003, ch. 153, § 1.

**Cross references.** — For constitutional provisions relating to education, see N.M. Const., art. XII, § 1 et seq.

For legislative school study committee, see 2-10-1 NMSA 1978 et seq.

**Compiler's notes.** — Laws 2003, ch. 143, § 3 would have repealed Article 1 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of this article of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution, which was approved at a special election held September 23, 2003. However,

the repeal of Article 1 did not take effect, as prior to the July 1, 2004 effective date of the repeal of this article, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

**The 2003 amendment**, effective April 4, 2003, substituted "22 NMSA 1978" for "77 NMSA 1953" following "Chapter" at the beginning of the section.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools §§ 1 to 294.



Use of public school premises for religious purposes during nonschool time, 79 A.L.R.2d 1148.

Public payment of tuition, scholarship, or the like, as respects sectarian school, 81 A.L.R.2d 1309.

Use of school property for other than public school or religious purposes, 94 A.L.R.2d 1274.

De facto segregation of races in public schools, 11 A.L.R.3d 780.

Liability of school or school personnel in connection with suicide of student, 17 A.L.R.5th 179.

Circumstances warranting judicial determination or declaration of unitary status with regard to schools operating under court-ordered or court-supervised desegregation plans and the effects of such declarations, 94 A.L.R. Fed. 667.

Constitutionality of regulation or policy governing prayer, meditation, or "moment of silence" in public schools, 110 A.L.R. Fed. 211.

78 C.J.S. Schools and School Districts § 3 et seq.; 78A C.J.S. Schools and School Districts § 478 et seq.

### **22-1-1.1. Legislative findings and purpose.**

A. The legislature finds that, although New Mexico has been in the forefront of educational reforms in many areas, additional improvements are necessary to enhance and upgrade the delivery of quality education in New Mexico.

B. The legislature further finds that enhancement of the educational system in New Mexico requires a renewed emphasis on the primary grades, recognizing especially the importance of the first grade to a child's future educational career.

C. The legislature further finds that teachers and administrators play a key role in any reform efforts and acknowledges their importance in the educational process.

D. The legislature further finds that the smorgasbord curriculum offered in many schools fails to provide students with the basic educational background necessary to provide them with indispensable life skills.

E. The legislature further finds that discipline in the schools is essential to provide an atmosphere conducive to effective learning.

F. It is the purpose of this reform legislation, among other things, to stress the importance of substantive academic subjects, provide for a greater emphasis on the primary grades, upgrade curriculum and graduation requirements, systematically evaluate instructional improvement and student progress, increase parental involvement in the public schools and recognize that teachers should be treated like other professionals.

**History:** Laws 1986, ch. 33, § 1.

### **22-1-1.2. Legislative findings and purpose.**

A. The legislature finds that no education system can be sufficient for the education of all children unless it is founded on the sound principle that every child can learn and succeed and that the system must meet the needs of all children by recognizing that student success for every child is the fundamental goal.

B. The legislature finds further that the key to student success in New Mexico is to have a multicultural education system that:

(1) attracts and retains quality and diverse teachers to teach New Mexico's multicultural student population;

(2) holds teachers, students, schools, school districts and the state accountable;

(3) integrates the cultural strengths of its diverse student population into the curriculum with high expectations for all students;

(4) recognizes that cultural diversity in the state presents special challenges for policy-makers, administrators, teachers and students;

(5) provides students with a rigorous and relevant high school curriculum that prepares them to succeed in college and the workplace; and

(6) elevates the importance of public education in the state by clarifying the governance structure at different levels.

C. The legislature finds further that the teacher shortage in this country has affected the ability of New Mexico to compete for the best teachers and that, unless the state and school districts find ways to mentor beginning teachers, intervene with teachers while they still show promise, improve the job satisfaction of quality teachers and elevate the teaching profession by shifting to

a professional educator licensing and salary system, public schools will be unable to recruit and retain the highest quality teachers in the teaching profession in New Mexico.

D. The legislature finds further that a well-designed, well-implemented and well-maintained assessment and accountability system is the linchpin of public school reform and must ensure that:

(1) students who do not meet or exceed expectations will be given individual attention and assistance through extended learning programs and individualized tutoring;

(2) students have accurate, useful information about their options and the adequacy of their preparation for post-secondary education, training or employment in order to set and achieve high goals;

(3) teachers who do not meet performance standards must improve their skills or they will not continue to be employed as teachers;

(4) public schools make progress toward educational excellence; and

(5) school districts and the state are prepared to actively intervene and improve failing public schools.

E. The legislature finds further that improving children's reading and writing abilities and literacy throughout their years in school must remain a priority of the state.

F. The legislature finds further that the public school governance structure needs to change to provide accountability from the bottom up instead of from the top down. Each school principal, with the help of school councils made up of parents and teachers, must be the instructional leader in the public school, motivating and holding accountable both teachers and students. Each local superintendent must function as the school district's chief executive officer and have responsibility for the day-to-day operations of the school district, including personnel and student disciplinary decisions.

G. It is the purpose of the 2003 public school reform legislation as augmented by this 2007 legislation to provide the framework to implement the legislative findings to ensure student success in New Mexico.

**History:** 1978 Comp., § 22-1-1.2, enacted by Laws 2003, ch. 153, § 2; 2007, ch. 307, § 1; 2007, ch. 308, § 1; 2015, ch. 58, § 1.

**The 2015 amendment,** effective June 19, 2015, removed references to adequate yearly progress; and in

Subsection D, Paragraph (4), after "make", deleted "adequately yearly".

**The 2007 amendment,** added Paragraph (5) of Subsection B and Paragraph (2) of Subsection D. Laws 2007, ch. 307, § 1 enacted identical amendments to this section.

## 22-1-2. Definitions.

As used in the Public School Code:

A. "academic proficiency" means mastery of the subject-matter knowledge and skills specified in state academic content and performance standards for a student's grade level;

B. "charter school" means a school authorized by a chartering authority to operate as a public school;

C. "commission" means the public education commission;

D. "department" means the public education department;

E. "home school" means the operation by the parent of a school-age person of a home study program of instruction that provides a basic academic educational program, including reading, language arts, mathematics, social studies and science;

F. "instructional support provider" means a person who is employed to support the instructional program of a school district, including educational assistant, school counselor, social worker, school nurse, speech-language pathologist, psychologist, physical therapist, occupational therapist, recreational therapist, marriage and family therapist, interpreter for the deaf and diagnostician;

G. "licensed school employee" means teachers, school administrators and instructional support providers;

H. "local school board" means the policy-setting body of a school district;

I. "local superintendent" means the chief executive officer of a school district;

J. "parent" includes a guardian or other person having custody and control of a school-age person;

K. "private school" means a school, other than a home school, that offers on-site programs of instruction and that is not under the control, supervision or management of a local school board;



L. "public school" means that part of a school district that is a single attendance center in which instruction is offered by one or more teachers and is discernible as a building or group of buildings generally recognized as either an elementary, middle, junior high or high school or any combination of those and includes a charter school;

M. "school" means a supervised program of instruction designed to educate a student in a particular place, manner and subject area;

N. "school administrator" means a person licensed to administer in a school district and includes school principals, central district administrators and charter school head administrators;

O. "school-age person" means a person who is at least five years of age prior to 12:01 a.m. on September 1 of the school year, who has not received a high school diploma or its equivalent and who has not reached the person's twenty-second birthday on the first day of the school year and meets other criteria provided in the Public School Finance Act [Chapter 22, Article 8 NMSA 1978];

P. "school building" means a public school, an administration building and related school structures or facilities, including teacher housing, that is owned, acquired or constructed by the school district as necessary to carry out the functions of the school district;

Q. "school bus private owner" means a person, other than a school district, the department, the state or any other political subdivision of the state, that owns a school bus;

R. "school district" means an area of land established as a political subdivision of the state for the administration of public schools and segregated geographically for taxation and bonding purposes;

S. "school employee" includes licensed and nonlicensed employees of a school district;

T. "school principal" means the chief instructional leader and administrative head of a public school;

U. "school year" means the total number of contract days offered by public schools in a school district during a period of twelve consecutive months;

V. "secretary" means the secretary of public education;

W. "state agency" or "state institution" means the New Mexico military institute, New Mexico school for the blind and visually impaired, New Mexico school for the deaf, New Mexico boys' school, girls' welfare home, New Mexico youth diagnostic and development center, Sequoyah adolescent treatment center, Carrie Tingley crippled children's hospital, New Mexico behavioral health institute at Las Vegas and any other state agency responsible for educating resident children;

X. "state educational institution" means an institution enumerated in Article 12, Section 11 of the constitution of New Mexico;

Y. "substitute teacher" means a person who holds a certificate to substitute for a teacher in the classroom;

Z. "teacher" means a person who holds a level one, two or three-A license and whose primary duty is classroom instruction or the supervision, below the school principal level, of an instructional program or whose duties include curriculum development, peer intervention, peer coaching or mentoring or serving as a resource teacher for other teachers;

AA. "certified school instructor" means a licensed school employee; and

BB. "certified school employee" or "certified school personnel" means a licensed school employee;

**History:** 1978 Comp., § 22-1-2, enacted by Laws 2003, ch. 153, § 3; 2004, ch. 27, § 13; 2005, ch. 313, § 3; 2005, ch. 315, § 1; 2007, ch. 309, § 1; 2009, ch. 217, § 1; 2010, ch. 116, § 1; 2015, ch. 58, § 2; 2015, ch. 108, § 1; 2019, ch. 206, § 1; 2019, ch. 207, § 1.

**Repeals.** — Laws 2004, ch. 27, § 29 repealed Laws 2003, ch. 143, § 2, which would have repealed this section.

**Cross references.** — For the public education commission and public education department, see 9-24-1 NMSA 1978.

**The 2019 amendment,** effective June 14, 2019, revised the definitions of "school-age person" and "certified school instructor" as used in the Public School Code; in Subsection O, after "equivalent", deleted "A maximum

age of twenty-one shall be used for a person who is classified as special education membership as defined in Section 22-8-21 NMSA 1978 or as a resident of a state institution" and added "and who has not reached the person's twenty-second birthday on the first day of the school year and meets other criteria provided in the Public School Finance Act"; and in Subsection AA, after "means a", deleted "teacher or instructional support provider" and added "licensed school employee".

Laws 2019, ch. 206, § 1 and Laws 2019, ch. 207, § 1, both effective June 14, 2019, enacted identical amendments to this section. The section is set out as amended by Laws 2019, ch. 207, § 1: See 12-1-8 NMSA 1978.



**2015 Amendments.** — Laws 2015, ch. 108, § 1, effective July 1, 2015, added a new Subsection B, which defined "charter school"; and in Subsection N, after "principals", deleted "and", and after "district administrators", added "and charter school head administrators".

Laws 2015, ch. 58, § 2, effective June 19, 2015, deleted Subsection B, relating to "adequate yearly progress", and redesignated the succeeding subsections accordingly.

**The 2010 amendment,** effective May 19, 2010, deleted former Subsection E, which defined "forty-day report" to mean the report of qualified student membership and students eligible to be qualified students that are enrolled in private school or home school for the first forty days of school.

**Temporary provisions.** — Laws 2010, ch. 116, § 9 provided that references in the Public School Code pertaining to the fortieth-day or forty-day report of public school membership or enrollment shall be deemed to be references to the first reporting date, which is the second Wednesday in October; references pertaining to the eightieth-day or eighty-day report of public school membership or enrollment shall be deemed to be references to the second reporting date, which is the second Wednesday in December; and references pertaining to the one-hundred twentieth-day or one-hundred twenty-day report of public school membership or enrollment shall be deemed to be references to the third reporting date, which is the second Wednesday in February.

As the public schools transition from former reporting dates to new reporting dates, the public education

department may use any combination of former and new reporting dates as necessary to develop membership and cost projections and budgets for the 2010-2011 school year.

**The 2009 amendment,** effective June 19, 2009, in Subsection G, after "recreational therapist", added "marriage and family therapist".

**The 2007 amendment,** effective June 15, 2007, added Subsection A.

**The 2005 amendment,** effective April 7, 2005, changed the statutory reference in Subsection O from Section 22-8-2 NMSA 1978 to Section 22-8-21 NMSA 1978; changed the name of the New Mexico school for the visually handicapped to the New Mexico school for the blind and visually impaired in Subsection W; and provided in Subsection Z that a teacher is a person whose duties include curriculum development, peer intervention, peer coaching or mentoring or serving as a resource teacher for other teachers.

**The 2004 amendment,** effective May 19, 2004, amended Subsection A to change state board to department; deleted the definition of "commercial advertiser" in Subsection B and substituted in its place a definition of "commission; amended Subsection C to change state department of public education to public education department; deleted "librarian" from the definition of "instructional support provider" in Subsection F; inserted new Subsection V for the definition of "secretary" and redesignated Subsections V to CC as Subsections W to BB.

### 22-1-2.1. Home school; requirements.

Any person operating or intending to operate a home school shall:

- A. submit a home school registration form made available by the department and posted on the department's web site to notify the department within thirty days of the establishment of the home school and to notify the department on or before August 1 of each subsequent year of operation of the home school;
- B. maintain records of student disease immunization or a waiver of that requirement; and
- C. provide instruction by a person possessing at least a high school diploma or its equivalent.

**History: 1978 Comp., § 22-1-2.1, enacted by Laws 1985, ch. 21, § 2; 1993, ch. 62, § 2; 1993, ch. 226, § 1; 2001, ch. 62, § 1; 2014, ch. 12, § 3.**

**The 2014 amendment,** effective July 1, 2014, required that home school registration forms be submitted on or before August 1; and in Subsection A, deleted "within thirty days of its establishment" and added "submit a home school registration form made available by the department and posted on the department's web site to", after "web site to notify the", deleted "state superintendent" and added "department within thirty days", after "establishment of the home school", deleted "within thirty days of its establishment", after "home school and", added "to", after "and to notify the", deleted "state superintendent in writing" and added "department", after "on or before", deleted "April 1" and added "August 1", after "year of operation of the", added "home", and after "operation of

the home school", deleted "district from which the home school is drawing students".

**The 2001 amendment,** effective June 15, 2001, in Subsection A, inserted "within thirty days of its establishment" at the beginning of the section, inserted "state" preceding both instances of "superintendent", deleted "of schools of the school district in which the person is a resident" preceding "of the establishment of a home school", inserted "in writing" following the second instance of "superintendent", inserted "of the school district from which the home school is drawing students" at the end of the subsection; in Subsection B, deleted the requirement to maintain records of student attendance, deleted the requirement that records be given to the superintendent, and inserted "or a waiver of that requirement"; and deleted Subsection D, concerning achievement test requirements.

**The 1993 amendment,** rewrote Subsection C.

### 22-1-3. Definitions; public schools; classifications.

As used in the Public School Code:

- A. "elementary school" means a public school providing instruction for grades kindergarten through eight, unless there is a junior high school program approved by the state board [department], in which case it means a public school providing instruction for grades kindergarten through six;



B. "secondary school" means a public school providing instruction for grades nine through twelve, unless there is a junior high school program approved by the state board [department], in which case it means a public school providing instruction for grades seven through twelve;

C. "junior high school" means a public school providing a junior high school program approved by the state board [department] for grades seven through nine, or for grades seven and eight; and

D. "high school" means a public school providing instruction for any of the grades nine through twelve, unless there is a junior high school program approved by the state board [department] for grades seven through nine, in which case it means a public school providing instruction for any of the grades ten through twelve.

**History:** 1953 Comp., § 77-1-3, enacted by Laws 1967, ch. 16, § 3; 1977, ch. 2, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed

references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

## **22-1-4. Free public schools; exceptions; withdrawing and enrolling; open enrollment.**

A. Except as provided by Section 24-5-2 NMSA 1978, and except as provided in Subsection H of this section, a free public school education shall be available to any school-age person who is a resident of this state and has not received a high school diploma or its equivalent.

B. A free public school education in those courses already offered to persons pursuant to the provisions of Subsection A of this section shall be available to any person who is a resident of this state and has received a high school diploma or its equivalent if there is available space in such courses.

C. A person entitled to a free public school education pursuant to the provisions of this section may enroll or re-enroll in a public school at any time and, unless required to attend school pursuant to the Attendance for Success Act [22-12A-1 to 22-12A-14 NMSA 1978], may withdraw from a public school at any time.

D. In adopting and promulgating rules concerning the enrollment of students transferring from a home school or private school to the public schools, the local school board shall provide that the grade level at which the transferring student is placed is appropriate to the age of the student or to the student's score on a student achievement test administered according to the statewide assessment and accountability system.

E. A local school board shall adopt and promulgate rules governing enrollment and re-enrollment at public schools other than charter schools within the school district. These rules shall include:

(1) definition of the school district boundary and the boundaries of attendance areas for each public school;

(2) for each public school, definition of the boundaries of areas outside the school district boundary or within the school district but outside the public school's attendance area and within a distance of the public school that would not be served by a school bus route as determined pursuant to Section 22-16-4 NMSA 1978 if enrolled, which areas shall be designated as "walk zones";

(3) priorities for enrollment of students as follows:

(a) first, students residing within the school district, or who will be residing within the school district if the student is a child in a military family who will be attending public school in the school district during the upcoming school year as provided in Subsection H of this section, and within the attendance area of a public school and students who had resided in the attendance area prior to a parent who is an active duty member of the armed forces of the United States or member of the national guard being deployed and whose deployment has required the student to relocate outside the attendance area for custodial care;

- (b) second, students who previously attended the public school; and
- (c) third, all other applicants;
- (4) establishment of maximum allowable class size if smaller than that permitted by law; and

(5) rules pertaining to grounds for denial of enrollment or re-enrollment at schools within the school district and the school district's hearing and appeals process for such a denial. Grounds for denial of enrollment or re-enrollment shall be limited to:

(a) a student's expulsion from any school district or private school in this state or any other state during the preceding twelve months; or

(b) a student's behavior in another school district or private school in this state or any other state during the preceding twelve months that is detrimental to the welfare or safety of other students or school employees.

F. In adopting and promulgating rules governing enrollment and re-enrollment at public schools other than charter schools within the school district, a local school board may establish additional enrollment preferences for rules admitting students in accordance with the second and third priorities of enrollment set forth in Subparagraphs (b) and (c) of Paragraph (3) of Subsection E of this section. The additional enrollment preferences may include:

- (1) after-school child care for students;
- (2) child care for siblings of students attending the public school;
- (3) children of employees employed at the public school;
- (4) extreme hardship;
- (5) location of a student's previous school;
- (6) siblings of students already attending the public school; and
- (7) student safety.

G. As long as the maximum allowable class size established by law or by rule of a local school board, whichever is lower, is not met or exceeded in a public school by enrollment of first- and second-priority persons, the public school shall enroll other persons applying in the priorities stated in the school district rules adopted pursuant to Subsections E and F of this section. If the maximum would be exceeded by enrollment of an applicant in the second and third priorities, the public school shall establish a waiting list. As classroom space becomes available, persons highest on the waiting list within the highest priority on the list shall be notified and given the opportunity to enroll.

H. Every school district and charter school shall allow military families that will be relocating to a military installation in New Mexico pursuant to an official military order to enroll their children in public school prior to their actual physical presence in the school district. A parent may submit the student's name for any lottery-selected charter school, magnet school or other public school program for which the student qualifies. The school district or charter school shall accept electronic applications for enrollment, including enrollment in a specific school or program with the school district or charter school. The school district or charter school shall provide the applicant with materials regarding academic courses, electives, sports and other relevant information regarding the public school in which the student wants to be enrolled. The public school shall pre-register the student in anticipation of the student's enrollment. A student's parent:

- (1) shall provide proof of residence in the school district within forty-five days after the published arrival date provided on official military documentation; and
- (2) may use any of the following addresses related to the family's military move:
  - (a) a temporary on-base billeting facility;
  - (b) off-base military housing; or
  - (c) a purchased or leased residence.

**History:** 1953 Comp., § 77-1-4, enacted by Laws 1975, ch. 338, § 1; 1978, ch. 211, § 7; 1979, ch. 16, § 1; 1997, ch. 127, § 2; 1998, ch. 62, § 1; 2000, ch. 15, § 1; 2000, ch. 82, § 1; 2001, ch. 239, § 1; 2001, ch. 244, § 1; 2003, ch. 153, § 4; 2011, ch. 21, § 1; 2015, ch. 58, § 3; 2021, ch. 76, § 1.

**Cross references.** — For constitutional provision relating to uniform system of free public schools, see N.M. Const., art. XII, § 1.

For compulsory school attendance, see N.M. Const., art. XII, § 5 and 22-12-1 NMSA 1978 et seq.

**The 2021 amendment**, effective June 18, 2021, prioritized enrollment for a student identified as a child in a military family who will be attending public school in the school district during the upcoming school year, and required school districts and charter schools to allow military families to enroll school-age children prior to their physical presence in the state; in Subsection A, after



"Section 24-5-2 NMSA 1978," added "and except as provided in Subsection H of this section"; in Subsection E, Subparagraph E(3)(a), after "within the school district", added "or who will be residing within the school district if the student is a child in a military family who will be attending public school in the school district during the upcoming school year as provided in Subsection H of this section", in Subparagraph E(3)(b), after "students", deleted "enrolled in a school rated as 'F' for two of the prior four years pursuant to the A-B-C-D-F Schools Rating Act", deleted former subparagraph designation "(c)" and the language "third, students" and redesignated former Subparagraph E(3)(d) as Subparagraph E(3)(c), in Subparagraph E(3)(c), added "third"; in Subsection F, after "in accordance with the", added "second and", after "third", deleted "and fourth", after "Subparagraphs", added "(b) and", and after "(c)", deleted "and (d)"; in Subsection G, after "in the second", deleted "through fourth priority" and added "and third priorities", and added Subsection H.

**Applicability.** — Laws 2021, ch. 76, § 2 provided that the provisions of Laws 2021, ch. 76, § 1 apply to the 2021-2022 and subsequent school years.

**The 2015 amendment,** effective June 19, 2015, provided a letter rating for a reference to a school that needs improvement or a school subject to corrective action; in Subsection E, Paragraph (3)(b), after "enrolled in a school", deleted "ranked as a school that needs improvement or a school subject to corrective action" and added "rated as 'F' for two of the prior four years pursuant to the A-B-C-D-F Schools Rating Act".

**The 2011 amendment,** effective June 17 2011, required local school boards to adopt rules that assign first enrollment priority to students who lived in the attendance area before a parent on active military duty was deployed and who was required to move outside the attendance area for custodial care because of the deployment.

## 22-1-5. Recompiled.

**Recompilations.** — Laws 1986, ch. 33, § 10 recompiled 22-1-5 NMSA 1978, relating to school employees,

## 22-1-6. Repealed.

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-1-6 NMSA 1978, as enacted by Laws 1989, ch. 308, § 1, relating to requirements of annual school district accountability

## 22-1-6.1. Repealed.

**Repeals.** — Laws 2004, ch. 27, § 29 repealed Section 22-1-6.1 NMSA 1978, as enacted by Laws 2003, ch. 18, § 1, relating to high school graduation rates, effective May 19,

## 22-1-7. Recompiled.

**Recompilations.** — Laws 2003, ch. 153, § 54 recompiled and amended 22-1-7 NMSA 1978 as 22-10A-33 NMSA 1978, effective April 4, 2003.

## 22-1-8. Recompiled.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-1-8 NMSA 1978, as 22-21-2 NMSA 1978, effective April 4, 2003.

**The 2003 amendment,** effective April 4, 2003, substituted "assessment and accountability system" for "and local school district testing programs as determined by the state superintendent or both" at the end of Subsection D; substituted "students" for "persons" following "first," near the beginning of Subsection E(3)(a); rewrote former Subsections E(3)(b) and E(3)(c) to create present Subsections E(3)(b), E(3)(c) and E(3)(d); in Subsection F deleted "second and" preceding "third" near the middle, inserted "and fourth" following "third" near the middle, deleted "(b) and" following "Subparagraphs" near the end and inserted "and (d)" following "(c)" near the end; and in Subsection G substituted "first- and second-priority" for "first-priority" near the beginning and substituted "through fourth" for "or third" following "in the second" near the middle.

**The 2001 amendment,** effective June 15, 2001, inserted "school" preceding "district" throughout the section; added Paragraph E(5) and Subsection F, renumbering the remaining Subsections accordingly; in Subsection G, substituted "Subsections E and F" for "Subsection E" and inserted "public" preceding "school" in the second sentence.

**The 2000 amendment,** effective March 7, 2000, made the provisions of this act applicable to only non-charter, public schools.

**The 1998 amendment,** effective May 20, 1998, added "open enrollment" to the end of the section heading; substituted "pursuant to provisions of" for "under" preceding "Subsection A" in Subsections B and C; in Subsection D, substituted "In adopting and promulgating regulations" for "Local school boards shall promulgate regulations concerning the enrollment and re-enrollment of all persons in adopting and promulgating discriminatory regulations"; and added Subsection E.

**The 1997 amendment,** effective June 20, 1997, added the second sentence in Subsection D.

reporting drug and alcohol use, and release from liability, as 22-5-4.4 NMSA 1978, effective May 21, 1986.

report, effective April 4, 2003. For provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

2004. For provisions of former section, see the 2003 NMSA 1978 on *NMOneSource.com*.

Laws 2017, ch. 65, § 4 repealed 22-10A-33 NMSA 1978, effective June 16, 2017. For provisions of former section, see the 2016 NMSA 1978 on *NMOneSource.com*.

### 22-1-9. High school diploma; resident military dependents.

A. A New Mexico resident high school student who is required to move out of state because the student's parent is a member of the New Mexico national guard or a branch of the armed forces of the United States and the parent is transferred to an out-of-state location may receive a New Mexico high school diploma under the following conditions:

- (1) the student was a New Mexico resident and was regularly enrolled in a New Mexico high school prior to the parent being transferred to an out-of-state location;
- (2) the student's parent notified the school district of the move and that the parent and student were retaining their New Mexico residency;
- (3) the student transferred to and immediately enrolled in a high school at the new location and received high school credits that meet or exceed New Mexico's requirements for graduation; and
- (4) the student has not graduated from high school or received a diploma, high school equivalency credential or any other certification of high school completion or its equivalent.

B. A student who meets the conditions of Subsection A of this section may request the New Mexico school district from which the student transferred to grant a high school diploma. The student shall include with the request for a New Mexico high school diploma:

- (1) certification by the parent, and the student if over the age of eighteen, that the parent and student maintained their New Mexico residency;
- (2) a transcript from the high school the student attended and a description of the course units to be transferred; and
- (3) any other information the school district requires to review the request.

C. The school district shall review the student's high school transcript from the school the student transferred to and determine if the courses and grades meet or exceed New Mexico's requirements for graduation. If the transcript meets New Mexico standards, the school district shall grant the student a high school diploma.

**History:** Laws 2007, ch. 74, § 1; 2015, ch. 122, § 7.

The 2015 amendment, effective July 1, 2015, replaced the term "general education development certificate" with "high school equivalency credential" in the provision relating to high school diplomas for resident military

dependents; and in Paragraph (4) of Subsection A, after "received a diploma", deleted "general educational development certificate" and added "high school equivalency credential".

#### 22-1-9.1. New Mexico diploma of excellence; state seal for bilingual and biliterate graduates.

A. The state seal of bilingualism-biliteracy on a New Mexico diploma of excellence certifies that the recipient is proficient for meaningful use in college, a career or to meet a local community language need in a world language other than English. The graduate's high school transcript shall also indicate that the graduate received the state seal on the graduate's New Mexico diploma of excellence.

B. The department shall adopt rules to establish the criteria for students to earn a seal of bilingualism-biliteracy, to include:

- (1) the number of units of credit in a language other than English, including content courses taught in a language other than English, English language arts or English as a second language for English language learners;
- (2) passage of state assessments in a world language other than English or English language arts for English language learners;
- (3) in the case of tribal languages, certification of tribal language proficiency in consultation with individual tribes and adherence to processes and criteria defined by that tribe as appropriate for determining proficiency in its language;
- (4) demonstrated proficiency in one or more languages other than English through one of the following methods:
  - (a) score three or higher on an advanced placement examination for a language other than English;



(b) score four or higher on an international baccalaureate examination for a higher-level language other than English course;

(c) score proficient on a national assessment of language proficiency in a language other than English; or

(d) provide presentations, interviews, essays, portfolios and other alternative processes that demonstrate proficiency in a language other than English.

C. In establishing the criteria for awarding the state seal of bilingualism-biliteracy, the department shall establish and consult with a task force of stakeholders that represent language experts, including:

(1) Indian nations, tribes and pueblos;

(2) teachers of world languages;

(3) endorsed teachers of bilingual multicultural education;

(4) directors of bilingual education;

(5) statewide organizations representing language educators, bilingual education, dual language education and teachers of English as a second language;

(6) university professors of world languages, heritage languages, Indian languages and bilingual education; and

(7) representatives of the state bilingual advisory council, the Indian education advisory council and the Hispanic education advisory council.

**History:** Laws 2014, ch. 46, § 1.

**Effective dates.** — Laws 2014, ch. 46 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 21, 2014, 90 days after the adjournment of the legislature.

**Cross references.** — For the Indian education advisory council, *see* 22-23A-6 NMSA 1978.

For the Hispanic education advisory council, *see* 22-23B-5 NMSA 1978.

## 22-1-9.2. Department-issued diplomas.

The department shall authorize a diploma program that results in a diploma award by the department for adults who have not graduated from high school but who want a program that:

A. documents their educational attainment through college and career readiness standards;

B. assesses high school-level skills in applied life and work contexts; and

C. prepares them to enter college or the workforce, upgrade their skills, advance to a better job or move from one field of work to another.

**History:** Laws 2019, ch. 185, § 1.

**Effective dates.** — Laws 2019, ch. 185 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## 22-1-10. Waiver of requirements; temporary provision.

The legislature finds that funding constraints require school districts to have financial flexibility to meet decreased state support. For the 2016-2017 through 2018-2019 school years, the secretary may waive requirements of the Public School Code and rules promulgated in accordance with that code pertaining to individual class load, teaching load, length of school day, staffing patterns, subject areas and purchases of instructional materials. The department shall monitor such waivers, and the secretary shall report to the legislative education study committee and the legislative finance committee on any issues or actions of a school district that appear to adversely affect student learning.

**History:** Laws 2010, ch. 68, § 1; 2012, ch. 51, § 1; 2013, ch. 187, § 1; 2013, ch. 203, § 1; 2016, ch. 22, § 1.

The 2016 amendment, effective May 18, 2016, allowed the secretary of the public education department to waive certain requirements of the Public School Code for the 2016-2017 through 2018-2019 school year to meet funding constraints; in the first sentence, after "flexibility

to meet", deleted "increased" and added "decreased", after "state", deleted "educational requirements" and added "support"; in the second sentence, after "For the", deleted "2013-2014" and added "2016-2017 through 2018-2019", and after "school", deleted "year" and added "years".

**2013 Amendments.** — Laws 2013, ch. 203, § 1, effective June 14, 2013, provided flexibility to school districts

to meet state fiscal solvency requirements; in the second sentence, after "2012-2013", added "2013-2014".

Laws 2013, ch. 187, § 1, effective June 14, 2013, in the first sentence, after "legislature finds that", added "funding constraints require", after "school districts", deleted "need" and added "to have financial", before "state", added "increased" and after "state", deleted "fiscal solvency" added "educational"; and in the second sentence, changed "2012-2013" to "2013-2014 and 2014-2015".

The 2012 amendment, effective May 16, 2012, permitted the secretary to waive statutory and regulatory requirements for the school year 2012-2013; and in the second sentence, after "For the", deleted "2009-2010 through 2011-2012" and added "2012-2013"; and after "school", deleted "years" and added "year".

## 22-1-11. Educational data system.

### A. As used in this section:

- (1) "council" means the data system council;
- (2) "data system" means the unified pre-kindergarten through post-graduate education accountability data system;
- (3) "data system partners" means the public education department and the higher education department;
- (4) "educational agencies" means other public agencies and institutions that provide educational services for resident school-age persons and children in state-funded private pre-kindergarten programs; and
- (5) "pre-kindergarten through post-graduate system" means an integrated, seamless pre-kindergarten through post-graduate system of education.

### B. The data system partners, in consultation with the council, shall establish a data system, the purpose of which is to:

- (1) collect, integrate and report longitudinal student-level and educator data required to implement federally or state-required education performance accountability measures;
- (2) conduct research and evaluation regarding federal, state and local education and training programs at all levels; and
- (3) audit and ensure compliance of those programs with applicable federal or state requirements.

### C. The components of the data system shall include the use of a common student identifier for the pre-kindergarten through post-graduate system and an educator identifier, both of which may include additional identifiers, with the ability to match educator data to student data and educator data to data from schools, post-secondary education programs and other educational agencies.

### D. The data system partners shall convene a "data system council" made up of the following members:

- (1) the secretary of public education or the secretary's designee;
- (2) the secretary of higher education or the secretary's designee;
- (3) the secretary of children, youth and families or the secretary's designee;
- (4) the secretary of workforce solutions or the secretary's designee;
- (5) the secretary of economic development or the secretary's designee;
- (6) the secretary of information technology or the secretary's designee;
- (7) the secretary of human services or the secretary's designee;
- (8) the secretary of health or the secretary's designee;
- (9) the director of the office of education accountability or the director's designee;
- (10) the director of the public school facilities authority or the director's designee;
- (11) a representative from the office of the governor;
- (12) the presidents or their designees of one research university, one four-year comprehensive university, two branch colleges and two independent community colleges; provided that the presidents shall be selected by the data system partners in collaboration with organizations that represent the presidents of those institutions;
- (13) at least six public school superintendents or their designees; provided that the appointments by the data system partners shall be made so that small, medium and large school districts are equally represented on the council at all times;
- (14) at least three charter school administrators or their designees appointed by the data system partners;



(15) the director of the legislative education study committee or the director's designee; and

(16) the director of the legislative finance committee or the director's designee.

E. The council shall:

(1) meet at least four times each calendar year;

(2) create a management plan that assigns authority and responsibility for the operation of the data system among the educational agencies whose data will be included in the data system;

(3) assist the educational agencies whose data will be included in the data system in developing interagency agreements to:

(a) enable data to be shared across and between the educational agencies;

(b) define appropriate uses of data;

(c) assure researcher access to data;

(d) assure the security of the data system;

(e) ensure that the educational system agencies represented on the council, the legislative education study committee, the legislative finance committee and other users, as appropriate, have access to the data system; and

(f) ensure the privacy of any person whose personally identifiable information is contained in the data system;

(4) develop a strategic plan for the data system; and

(5) create policies that ensure users have prompt and reasonable access to reports generated from the data system, including:

(a) identification of categories of data system users based on security level;

(b) descriptions of the reports that the data system is capable of generating on demand; and

(c) definitions of the most timely process by which users may retrieve other reports without compromising the security of the data system or the privacy of any person whose personally identifiable information is contained in the data system.

F. The data system strategic plan shall include:

(1) the development of policy and practical goals, including time lines and budget goals, that are to be met through the implementation of the data system; and

(2) the training and professional development that the data system partners will provide to users who will be analyzing, accessing or entering data into the data system.

G. The confidentiality of personally identifiable student and educator data shall be safeguarded consistent with the requirements of state and federal law. To the extent permitted by the data system partners in conformance with state and federal law, public entities participating in the data system may:

(1) disclose or redisclose data for educational purposes and longitudinal comparisons, analyses or studies, including those authorized by law;

(2) enter into agreements with other organizations for research studies to improve instruction for the benefit of local educational agencies, public schools and post-secondary educational institutions, subject to safeguards to ensure that the research organization uses the student records only for the authorized study purposes; and

(3) disclose education records to a student's former secondary school or school district upon request solely for purposes of evaluation or accountability for its programs.

H. Nothing in this section precludes the data system partners, in consultation with school districts, charter schools and public post-secondary educational institutions, from collecting and distributing aggregate data about students or educators or data about an individual student or educator without personally identifiable information.

I. The data system partners, in consultation with school districts, charter schools and public post-secondary educational institutions, shall jointly adopt rules to carry out the provisions of this section, including security administration requirements and the provision of training for data entry personnel at all levels.

J. By December 31 of each year, the data system partners shall submit a data system status report to the legislature and to the governor. Prior to submission and publication of the report

referred to in Subsection K of this section, the data system partners shall distribute a draft of the report to school districts, charter schools and all public post-secondary educational institutions to allow comment on the draft report.

K. The data system partners, in consultation with school districts, charter schools and public post-secondary educational institutions, shall develop and adopt the content and a format for the report, including the ability of the data system to:

- (1) connect student records from pre-kindergarten through post-graduate education;
- (2) connect public school educator data to student data;
- (3) match individual public school students' test records from year to year to measure academic growth, including student-level college and career readiness test scores;
- (4) report the number and percentage of untested public school students by school district and by school and by major ethnic group, special education status, poverty status and gender;
- (5) report high school longitudinal graduation and dropout data, including information that distinguishes between dropouts or students whose whereabouts are unknown and students who have transferred to other schools, including private schools or home schools, other school districts or other states;
- (6) provide post-secondary remediation data, including assessment scores on exams used to determine the need for remediation;
- (7) provide post-secondary remedial course enrollment history, including the number and type of credit and noncredit remedial courses being taken;
- (8) report post-secondary retention data that indicate whether students are returning the second fall term after being enrolled as full-time first-time degree-seeking students;
- (9) report to New Mexico public high schools on their students who enroll in a public post-secondary educational institution within three years of graduating or leaving the high school regarding freshman-year outcomes;
- (10) provide post-secondary student completion status, including information that indicates if students are making annual progress toward their degrees;
- (11) include data regarding students who have earned a high school equivalency credential in reporting post-secondary outcomes;
- (12) report data collected for the educator accountability reporting system;
- (13) report pre-kindergarten through post-graduate student-level enrollment data, demographic information and program participation information;
- (14) report pre-kindergarten through post-graduate student-level transcript information, including information on courses completed, grades earned and cumulative grade point average;
- (15) connect performance with financial information;
- (16) establish and maintain a state data audit system to assess the quality, validity and reliability of data; and
- (17) provide any other student-level and educator data necessary to assess the performance of the pre-kindergarten through post-graduate system.

**History:** Laws 2010, ch. 112, § 1; 2015, ch. 122, § 8.

**Cross references.** — For the public education department, see 9-24-4 NMSA 1978.

For the higher education department, see 9-25-4 NMSA 1978.

For the secretary of public education, see 9-24-5 NMSA 1978.

For the secretary of higher education, see 9-25-5 NMSA 1978.

For the secretary of children youth and families, see 9-2A-6 NMSA 1978.

For the secretary of workforce solutions, see 9-26-5 NMSA 1978.

For the secretary of economic development, see 9-15-5 NMSA 1978.

For the secretary of information technology, see 9-27-5 NMSA 1978.

For the secretary of human services, see 9-8-5 NMSA 1978.

For the secretary of health, see 9-7-5 NMSA 1978.

For the office of education accountability, see 9-6-15 NMSA 1978.

For the public school facilities authority, see 22-24-9 NMSA 1978.

For the legislative education study committee, see 2-10-1 NMSA 1978.

For the legislative finance committee, see 2-5-1 NMSA 1978.

**The 2015 amendment**, effective July 1, 2015, replaced the term "general education development certificate" with "high school equivalency credential" in the provision relating to the content of the educational data system data report; in Subsection J, after "Subsection K", added "of this section"; and in Paragraph (11) of Subsection K, deleted "general educational development certificate" and added "high school equivalency credential".



## 22-1-12. Career technical education pilot project.

A. A "career technical education pilot project" is created as a seven-year pilot project administered by the department to fund high-quality career technical education programs and monitor their effect on student outcomes, including achievement scores, academic growth, remediation rates and graduation rates. The department shall consult with the higher education department and the workforce solutions department as it develops its measures to determine what constitutes a high-quality career technical education program and what students should know and be able to demonstrate to an employer or to succeed in a post-secondary career technical education program. School districts and charter schools may apply to participate in the pilot project on forms provided by the department. The department may provide grants to school districts and charter schools to:

- (1) establish career technical education programs as part of the pilot project; and
- (2) provide professional development and training to career technical education teachers in the pilot project.

B. At a minimum, the career technical education programs funded by the department as part of the pilot project shall:

- (1) include rigorous content aligned with academic standards and relevant career technical content that align secondary and post-secondary education;
- (2) incorporate permeable pathways through post-secondary education;
- (3) include potential for dual credit courses;
- (4) require competency in science, technology, engineering and mathematics;
- (5) require training in soft skills and social skills;
- (6) lead to an industry-recognized credential at the post-secondary level or to an associate's or bachelor's degree;
- (7) establish partnerships among the local school district or charter school, post-secondary institutions and local business and industry; and
- (8) provide the data necessary to the department and the participating public schools to evaluate each program and the pilot project.

C. The department shall provide professional development to existing career technical education teachers and training to new teachers in career technical education that:

- (1) addresses project-based learning;
- (2) includes the basics of pedagogy;
- (3) promotes integration of career technical curricula with core content areas;
- (4) includes training in instruction for employability and soft skills;
- (5) includes training in social-emotional learning and trauma-informed instruction; and
- (6) addresses department standards and benchmarks for career technical education.

D. The department shall promulgate rules for the administration of the pilot project, the collection and analysis of student, program and instructor data and required reporting by participating public schools.

E. The department shall provide annual and final reports to the legislature through the legislative education study committee and the governor on the efficacy of the pilot project.

**History:** Laws 2019, ch. 61, § 1.

**Effective dates.** — Laws 2019, ch. 61 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## 22-1-13. Career technical education fund created.

The "career technical education fund" is created as a nonreverting fund in the state treasury until the end of the pilot project. The fund consists of appropriations, gifts, grants and donations. The department shall administer the fund and money in the fund is appropriated to the department to carry out the career technical education pilot project. The fund shall be administered by the department and money in the fund is appropriated to the department to provide grants to school districts and charter schools participating in the pilot project. Expenditures from the fund shall be

on warrants of the secretary of finance and administration on vouchers signed by the secretary of public education or the secretary's designated representative.

**History:** Laws 2019, ch. 61, § 2.

**Effective dates.** — Laws 2019, ch. 61 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## **22-1-14. Dental examination requirement; opting out; education; outreach.**

A. As of July 1, 2021, a student shall not enroll in school unless the student has provided, in accordance with protocols established by the department:

(1) satisfactory evidence of having undergone a dental examination that meets standards established pursuant to department rules; or

(2) a form, signed by the student's parent or guardian, that states that the parent understands the risks associated when a student does not undergo a dental examination prior to school enrollment and that the parent or guardian nevertheless opts not to obtain a dental examination for the student.

B. Department rules shall specify that students shall obtain dental examinations required pursuant to Subsection A of this section at their own expense or at the expense of any dental health coverage they have.

C. By July 1, 2020, the secretary shall:

(1) adopt and promulgate rules to prescribe the requirements for dental examination pursuant to this section; and

(2) provide extensive education statewide for parents and guardians explaining the requirements for dental examination and providing information regarding where they may receive referrals to dental health care professionals statewide who are authorized to perform dental examinations in accordance with those rules.

D. Beginning July 1, 2022, the department shall collect data regarding student compliance with the provisions of Subsection A of this section and make an annual written report of that data to the legislative finance committee and the legislative health and human services committee.

**History:** Laws 2019, ch. 107, § 14.

**Effective dates.** — Laws 2019, ch. 107, § 19 made Laws 2019, ch. 107, § 14 effective June 14, 2019.

## **ARTICLE 2**

### **Public Education Department and Commission**

Sec.

22-2-1. Secretary and department; general powers.

22-2-2. Department; general duties.

22-2-2.1. Additional department duties; waiver of certain requirements.

22-2-2.2. Commission; duties.

22-2-2.3. Department; additional duties; closing a school; consultations with tribal leaders and members and families of students.

22-2-3. Repealed.

22-2-4. Repealed.

22-2-5. Repealed.

22-2-6. Repealed.

22-2-6.1. Recompiled.

22-2-6.2. Recompiled.

22-2-6.3. Recompiled.

22-2-6.4. Recompiled.

22-2-6.5. Recompiled.

22-2-6.6. Recompiled.

22-2-6.7. Recompiled.

22-2-6.8. Recompiled.

Sec.

22-2-6.9. Recompiled.

22-2-6.10. Recompiled.

22-2-6.11. Recompiled.

22-2-6.12. Recompiled.

22-2-7. Repealed.

22-2-8. School standards.

22-2-8.1. School year; length of school day; minimum.

22-2-8.2. Recompiled.

22-2-8.3. Repealed.

22-2-8.4. Recompiled.

22-2-8.5. Repealed.

22-2-8.6. Recompiled.

22-2-8.7. Recompiled.

22-2-8.8. High school equivalency credential.

22-2-8.9. Repealed.

22-2-8.10. Repealed.

22-2-8.11. High school curricula and end-of-course tests; alignment.

22-2-8.12. Repealed.

22-2-8.13. Standardized statewide grading system.



Sec.  
 22-2-8.14. Student identification numbers used on transcripts and general educational development certificates [high school equivalency credentials].  
 22-2-9. United States [and New Mexico] flag[s]; display regulations.  
 22-2-10. Educational research reports.  
 22-2-11. Repealed.  
 22-2-12. Repealed.  
 22-2-13. Repealed.

Sec.  
 22-2-14. Local school boards; public schools; suspension; procedures.  
 22-2-15. Repealed.  
 22-2-16. Reports.  
 22-2-17. Repealed.  
 22-2-18. Repealed.  
 22-2-19. Recompiled.  
 22-2-20. Repealed.  
 22-2-21. Repealed.  
 22-2-22. Recompiled.

## 22-2-1. Secretary and department; general powers.

A. The secretary is the governing authority and shall have control, management and direction of all public schools, except as otherwise provided by law.

B. The department may:

- (1) adopt, promulgate and enforce rules to exercise its authority and the authority of the secretary;
- (2) enter into contracts to carry out its duties;
- (3) apply to the district court for an injunction, writ of mandamus or other appropriate relief to enforce the provisions of the Public School Code [Chapter 22 [except Article 5A] NMSA 1978] or rules promulgated pursuant to the Public School Code; and
- (4) waive provisions of the Public School Code as authorized by law.

**History:** 1978 Comp., § 22-2-1, enacted by Laws 1990 (1st S.S.), ch. 9, § 10; 1992, ch. 77, § 1; 1993, ch. 226, § 2; 2003, ch. 143, § 2; 2004, ch. 27, § 14.

**Repeals and reenactments.** — Laws 1990 (1st S.S.), ch. 9, § 10 repealed former 22-2-1 NMSA 1978, as amended by Laws 1990, ch. 52, § 1, and enacted a new section, effective June 18, 1990.

**Cross references.** — For constitutional provision relating to state board of education, see N.M. Const., art. XII, § 6. For the public education department and commission, see 9-24-5, 9-24-10 and 9-24-15 NMSA 1978.

**The 2004 amendment,** effective May 19, 2004, amended Subsection A to change "state board" to "secretary", amended Subsection B to change "state board" to "department", added a new Subparagraph (2) providing for the power of the department to enter into contracts and redesignated former Subsections C and D as Paragraphs (3) and (4) of Subsection B.

**The 1993 amendment,** effective July 1, 1993, deleted former Subsection D, pertaining to approval by the state board of a local school board's request to waive provisions of the Public School Code relating to length of school day, staffing patterns, subject areas or the purchase of instructional materials; redesignated former Subsection E as Subsection D; and rewrote present Subsection D, which formerly authorized the state board to waive provisions of the Public School Code relating to staffing patterns, class and teaching leads, subject areas, curriculum, testing, instructional time or the purchase of instructional materials.

**The 1992 amendment,** effective May 20, 1992, inserted "or the purchase of instructional materials" in the first sentence of Subsection D and near the middle of Subsection E; and made minor stylistic changes throughout the section.

### ANNOTATIONS

**Authority of secretary of public education to revoke teachers' licenses.** — Article XII, Section 6 of the New Mexico Constitution, the Uniform Licensing Act, Sections 61-1-1 et seq. NMSA 1978, the Public Education Department Act, Chapter 9, Article 24 NMSA 1978, the Public School Code, Chapter 22 NMSA 1978, and the

School Personnel Act, Chapter 22, Article 10A NMSA 1978, do not preclude the secretary of public education from having exclusive authority to make the final decision to revoke a teacher's license. *Skowronski v. N.M. Pub. Educ. Dep't*, 2013-NMCA-034, 298 P.3d 469, cert. granted, 2013-NMCERT-003.

**Secretary's authority to disregard hearing officer's credibility determination.** — Where plaintiff was charged with engaging in inappropriate and improper sexual behavior with a fourteen-year-old victim at a charter school; a hearing officer found that the charges against plaintiff had not been proven by a preponderance of the evidence and recommended that the disciplinary action against plaintiff be dismissed; the secretary of public education reviewed the record before the hearing officer, adopted some of the hearing officer's recommendations and rejected others, and concluded that a preponderance of the evidence warranted revocation and revoked plaintiff's license to teach; the essential difference between the hearing officer's view of the case and that of the secretary was how they viewed the credibility of plaintiff and the victim and the believability of their testimony; the regulations of the public education department provided that the hearing officer had the duty to make proposed findings and conclusions; the secretary was not an appellate reviewer of the hearing officer's findings and conclusions, the secretary had the authority, after reviewing the record, to modify the hearing officer's findings and conclusions; and the secretary was ultimately responsible for issuing a final decision; and after reviewing the record, the secretary made independent findings of fact that were supported by references to the hearing transcript, the secretary did not exceed the secretary's authority by making the secretary's own credibility or fact-based determinations. *Skowronski v. N.M. Pub. Educ. Dep't*, 2013-NMCA-034, 298 P.3d 469, cert. granted, 2013-NMCERT-003.

**Revocation of teacher's license did not violate due process.** — Where plaintiff was charged with engaging in inappropriate and improper sexual behavior with a fourteen-year-old victim at a charter school; a hearing officer found that the charges against plaintiff had not been proven by a preponderance of the evidence, based



in part on the credibility of the witnesses, and recommended that the disciplinary action against plaintiff be dismissed; the secretary of public education reviewed the record and concluded that a preponderance of the evidence warranted revocation; the secretary's conclusions were supported by the record and were based on the secretary's analysis of the facts presented by the witnesses, the contradictions in the facts, and the victim's written statement, plaintiff was not denied due process by the fact that the secretary failed to observe the witnesses' demeanor or by the secretary's failure to defer to the hearing officer's proposed findings of fact. *Skowronski v. N.M. Pub. Educ. Dep't*, 2013-NMCA-034, 298 P.3d 469, cert. granted, 2013-NMCERT-003.

**Revocation of teacher's license was supported by substantial evidence.** — Where plaintiff was charged with engaging in inappropriate and improper sexual behavior with a fourteen-year-old victim; the victim was considering attending the charter school; the owners and operators of the school, who were the godparents of the victim, hosted an event in their home; the victim and plaintiff stayed overnight and slept in the living room where the alleged contact occurred when the victim and plaintiff were alone, the decision of the secretary of public education to revoke plaintiff's teacher's license was supported by substantial evidence. *Skowronski v. N.M. Pub. Educ. Dep't*, 2013-NMCA-034, 298 P.3d 469, cert. granted, 2013-NMCERT-003.

**State board has powers implied from statute.** — The authority of the state board in the rule- or regulation-making context is not limited to those powers expressly granted by statute, but includes all powers that may be fairly implied therefrom. *Redman v. Board of Regents*, 1984-NMCA-117, 102 N.M. 234, 693 P.2d 1266, cert. denied, 102 N.M. 225, 693 P.2d 591 (1985).

**Board may determine action not "good cause" for firing.** — It is within the province of the state board to decide that a private affair between consenting adults, an assistant principal and a school secretary, is not "good and just cause" to fire an employee. *Board of Educ. v. Jennings*, 1982-NMCA-135, 98 N.M. 602, 651 P.2d 1037.

**Legislative power as to duties of state board.** — The authority granted the state board for the "control, management and direction of all public schools" under N.M. Const., art. XII, § 6 must be specifically defined by the legislature and the legislature may divest the state board of duties previously defined. N.M. Const., art. XII, § 6 does not, in itself, vest the state board with any particular duties and the legislature is empowered to determine the scope of the board's authority. 1977 Op. Att'y Gen. No. 77-06.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity of local or state denial of public school courses or activities to private or parochial school students, 43 A.L.R.4th 776.

## 22-2-2. Department; general duties.

The department shall:

A. properly and uniformly enforce the provisions of the Public School Code [Chapter 22 [except Article 5A] NMSA 1978];

B. determine policy for the operation of all public schools and vocational education programs in the state, including vocational programs that are part of a juvenile construction industries initiative for juveniles who are committed to the custody of the children, youth and families department;

C. supervise all schools and school officials coming under its jurisdiction, including taking over the control and management of a public school or school district that has failed to meet requirements of law or department rules or standards, and, until such time as requirements of law, standards or rules have been met and compliance is ensured, the powers and duties of the local school board and local superintendent shall be suspended;

D. prescribe courses of instruction to be taught in all public schools in the state, requirements for graduation and standards for all public schools, for private schools seeking state accreditation and for the educational programs conducted in state institutions other than the New Mexico military institute;

E. provide technical assistance to local school boards and school districts;

F. assess and evaluate public schools for accreditation purposes to determine the adequacy of student gain in standards-required subject matter, adequacy of student activities, functional feasibility of public school and school district organization, adequacy of staff preparation and other matters bearing upon the education of the students;

G. assess and evaluate all state institutions and those private schools that desire state accreditation;

H. enforce requirements for home schools. Upon finding that a home school is not in compliance with law, the department may order that a student attend a public school or a private school;

I. require periodic reports on forms prescribed by it from all public schools and attendance reports from private schools;

J. determine the qualifications for and issue licenses to teachers, instructional support providers and school administrators according to law and according to a system of classification adopted and promulgated by rules of the department;



K. deny, suspend or revoke a license according to law for incompetency, moral turpitude or any other good and just cause;

L. approve or disapprove all rules promulgated by an association or organization attempting to regulate a public school activity and invalidate any rule in conflict with any rule promulgated by the department. The department shall require an association or organization attempting to regulate a public school activity to comply with the provisions of the Open Meetings Act [Chapter 10, Article 15 NMSA 1978] and be subject to the inspection provisions of the Public Records Act [Chapter 14, Article 3 NMSA 1978]. The department may require performance and financial audits of an association or organization attempting to regulate a public school activity. The department shall have no power or control over the rules or the bylaws governing the administration of the internal organization of the association or organization;

M. review decisions made by the governing board or officials of an organization or association regulating a public school activity, and any decision of the department shall be final in respect thereto;

N. require a public school under its jurisdiction that sponsors athletic programs involving sports to mandate that the participating student obtain catastrophic health and accident insurance coverage, such coverage to be offered through the school and issued by an insurance company duly licensed pursuant to the laws of New Mexico;

O. establish and maintain regional centers, at its discretion, for conducting cooperative services between public schools and school districts within and among those regions and for facilitating regulation and evaluation of school programs;

P. approve education curricula and programs offered in all two-year public post-secondary educational institutions, except those in Chapter 21, Article 12 NMSA 1978, that lead to alternative licenses for degreed persons pursuant to Section 22-10A-8 NMSA 1978 or licensure for educational assistants;

Q. withhold program approval from a college of education or teacher preparation program that fails to offer a course on teaching reading that:

(1) is based upon current scientifically based reading research;

(2) aligns with department-adopted reading standards;

(3) includes strategies and assessment measures to ensure that beginning teachers are proficient in teaching reading; and

(4) was designed after seeking input from experts in the education field;

R. annually, prior to December 1, prepare and publish a report on public and private education in the state and distribute the report to the governor and the legislature;

S. solicit input from local school boards and school districts in the formulation and implementation of department rules; and

T. report to the legislature or any of its committees as requested and report findings of any educational research study made with public money to the legislature through its appropriate interim or standing committees.

**History:** 1953 Comp., § 77-2-2, enacted by Laws 1967, ch. 16, § 5; 1969, ch. 180, § 2; 1971, ch. 263, § 2; 1975, ch. 332, § 2; 1978, ch. 211, § 8; 1979, ch. 51, § 1; 1984, ch. 39, § 1; 1985, ch. 21, § 3; 1987, ch. 77, § 1; 1993, ch. 226, § 3; 1996, ch. 65, § 1; 1997, ch. 19, § 1; 1999, ch. 279, § 1; 2000, ch. 74, § 1; 2001, ch. 286, § 1; 2001, ch. 299, § 5; 2003, ch. 143, § 2; 2003, ch. 153, § 5; 2003, ch. 394, § 2; 2004, ch. 27, § 15.

**Cross references.** — For power to create and consolidate school districts, see 22-4-2 and 22-4-3 NMSA 1978.

For duty to administer federal grants in aid of education, see 22-9-7 to 22-9-16 NMSA 1978.

For power to prescribe subjects taught in public schools generally, see 22-13-1 NMSA 1978.

For duties with respect to Instructional Material Law, see 22-15-1 NMSA 1978 et seq.

For approval of buildings erected near highways, see 22-20-2 NMSA 1978.

For duties pertaining to Variable School Calendar Act, see 22-22-1 NMSA 1978 et seq.

For duties pertaining to education and testing with respect to sickle cell trait and sickle cell anemia, see 24-3-1 NMSA 1978.

**Repeals and reenactments.** — Laws 2004, ch. 27, § 15 repealed former 22-2-2 NMSA 1978 and enacted the section above, effective May 19, 2004.

Laws 2004, ch. 27, § 29 repealed Laws 2003, ch. 143, § 3, effective May 19, 2004.

**The 2003 amendment,** in Subsection G, deleted "a certificate to any person teaching, assisting teachers, supervising an instructional program, counseling, providing special instructional services or administering in public schools" and inserted new language; in Subsection H, added "deny", deleted "certificate held by a certified school instructor or certified school administrator" and inserted "licenses to teachers, instructional support providers and school administrators" and changed "immorality" to



"moral turpitude"; deleted Subsection M and redesignated the succeeding subsections accordingly; split former Subsection X into two subsections and deleted "provided, however, that no plan shall require mandatory attendance by any member of a local school board"; in former Subsection AA (now Subsection Z), deleted "public school educators" and inserted "school employees"; in Paragraph (2), deleted "including an evaluation component that will be used by the department of education in approving local school district professional development plans; and" and inserted new subparagraphs (a) through (e); and in former Subsection CC (now Subsection BB), added "scientifically based reading".

**The 2001 amendment**, effective June 15, 2001, added Subsections BB and CC.

**The 2000 amendment**, effective July 1, 2000, added "including vocational programs that are part of a juvenile construction industries initiative for juveniles who are committed to the custody of the children, youth and families department" at the end of Subsection B.

**The 1999 amendment**, effective June 18, 1999, substituted references to "rule" or "rules" for "regulation" or "regulations" throughout the section, and added Subsection AA.

**The 1997 amendment**, effective June 20, 1997, substituted "adopt and promulgate regulations" for "promulgate and publish regulations" in Subsection M and added the second sentence in Subsection R.

**The 1996 amendment**, effective May 15, 1996, added "other than New Mexico military institute" at the end of Subsection J.

**The 1993 amendment**, effective July 1, 1993, added the language beginning "and adopt regulations" at the end of Subsection D; inserted "all state institutions and" in Subsection F; deleted "under the authority of the secretary of health and environment" at the end of Subsection J; inserted "or disapprove" near the beginning and inserted the present second sentence of Subsection R; deleted "public" following "department of" in Subsection V; and made minor stylistic changes throughout the section.

#### ANNOTATIONS

**School boards are immune from suit in federal court.** — Local school boards are arms of the state system of education as provided in the New Mexico constitution and local school boards and school board members in their individual and official capacities are immune under the Eleventh Amendment from suit in federal courts. *Martinez v. Board of Educ. of the Taos Municipal Sch. Dist.*, 748 F.2d 1393 (10th Cir. 1984), *overruled by Duke v. Grady Mun. Sch.*, 127 F.3d 972 (10th Cir. 1997).

**Authority of secretary of public education to revoke teachers' licenses.** — Article XII, Section 6 of the New Mexico Constitution, the Uniform Licensing Act, Sections 61-1-1 et seq. NMSA 1978, the Public Education Department Act, Chapter 9, Article 24 NMSA 1978, the Public School Code, Chapter 22 NMSA 1978, and the School Personnel Act, Chapter 22, Article 10A NMSA 1978, do not preclude the secretary of public education from having exclusive authority to make the final decision to revoke a teacher's license. *Skowronski v. N.M. Pub. Educ. Dep't*, 2013-NMCA-034, 298 P.3d 469, cert. granted, 2013-NMCERT-003.

**Board may determine action not "good cause" for firing.** — It is within the province of the state board to decide that a private affair between consenting adults, an assistant principal and a school secretary, is not "good and just cause" to fire an employee. *Board of Educ. v. Jennings*, 1982-NMCA-135, 98 N.M. 602, 651 P.2d 1037.

**Board decision will be upheld unless unreasonable.**

— Deciding whether or not an administrator is fit to perform his duties is a question of policy, and the appellate court will not alter the state board's decision unless the court is convinced it is unreasonable, not supported by substantial evidence or not in accordance with law. *Board of Educ. v. Jennings*, 1982-NMCA-135, 98 N.M. 602, 651 P.2d 1037.

**Law reviews.** — For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1967).

For comment, "Compulsory School Attendance - Who Directs the Education of a Child? State v. Edgington," see 14 N.M.L. Rev. 453 (1984).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity of statute or other regulations as to the use, or teaching, of foreign languages in schools, 7 A.L.R. 1695, 29 A.L.R. 1452.

Extent of legislative power with respect to curriculum, 39 A.L.R. 477, 53 A.L.R. 832.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

Tort liability of public schools and institutions of higher learning for educational malpractice, 1 A.L.R.4th 1139.

Validity of state regulation of curriculum and instruction in private and parochial schools, 18 A.L.R.4th 649.

Validity of local or state denial of public school courses or activities to private or parochial school students, 43 A.L.R.4th 776.

AIDS infection as affecting right to attend public school, 60 A.L.R.4th 15.

Validity, construction, and effect of provision releasing school from liability for injuries to students caused by interscholastic and other extracurricular activities, 85 A.L.R.4th 344.

78 C.J.S. Schools and School Districts § 81 et seq.

## 22-2-2.1. Additional department duties; waiver of certain requirements.

A. The department shall approve all reasonable requests to waive the following for all public schools that exceed educational standards as determined by the department:

- (1) accreditation review requirements as provided in Section 22-2-2 NMSA 1978;
- (2) the length of the school day requirement as provided in Section 22-2-8.1 NMSA 1978;
- (3) the individual class load requirement as provided in Section 22-10A-20 NMSA 1978;
- (4) the subject area requirement as provided in Section 22-13-1 NMSA 1978; and
- (5) purchase of instructional material from the department-approved multiple list requirement as provided in Section 22-15-8 NMSA 1978.

B. Upon receiving a waiver request from a school that exceeds educational standards and in addition to the requirements set forth in Subsection A of this section, the department may waive:

- (1) the graduation requirement as provided in Section 22-13-1.1 NMSA 1978;
- (2) evaluation standards for school personnel; and



(3) other requirements of the Public School Code [Chapter 22 [except Article 5A] NMSA 1978] that impede innovation in education if the waiver request is supported by the teachers at the requesting school and the requesting school's local school board.

C. Waivers granted pursuant to this section shall begin in the school year following that in which a public school exceeds educational standards and may remain in effect as long as the school continues to exceed educational standards.

D. The department shall only waive requirements that do not conflict with the federal No Child Left Behind Act of 2001 or rules adopted pursuant to that act.

**History:** Laws 2003, ch. 104, § 1; 2003, ch. 143, § 2; 2004, ch. 27, § 16.

**Cross references.** — For the federal No Child Left Behind Act of 2001, see Title 20 of the U.S.C., P.L. 107-110.

**The 2004 amendment,** effective May 19, 2004, in Subsection A, changed "state board" to "department"; in

Paragraphs (3) and (4) of Subsection A, changed statutory references; in Paragraph (5) of Subsection A, changed "state-board-approved" to "department-approved"; in Paragraph (1) of Subsection B, changed the statutory reference; and in Subsection D, changed state board to department.

## 22-2-2.2. Commission; duties.

A. The commission shall work with the department to develop the five-year strategic plan for public elementary and secondary education in the state. The strategic plan shall be updated at least biennially. The commission shall solicit the input of persons who have an interest in public school policy, including local school boards, school districts and school employees; home schooling associations; parent-teacher associations; educational organizations; the commission on higher education; colleges, universities and vocational schools; state agencies responsible for educating resident children; juvenile justice agencies; work force development providers; and business organizations.

B. In addition to the duty provided in Subsection A of this section, the commission shall:

(1) solicit input from local school boards, school districts and the public on policy and governance issues and report its findings and recommendations to the secretary and the legislature; and

(2) recommend to the secretary conduct and process guidelines and training curricula for local school boards.

**History:** Laws 2004, ch. 27, § 17.

## 22-2-2.3. Department; additional duties; closing a school; consultations with tribal leaders and members and families of students.

A. Whenever the department is contemplating closing a public school on tribal land for any reason, it shall consult with tribal leaders and members and families of students attending the public school.

B. Consultation shall include, among other actions, meetings in which the department explains:

(1) the reasons for closing the public school;

(2) the reasons why the department has not or cannot provide additional resources to keep the public school open;

(3) locations of other public schools in the vicinity to which students will be sent and the plan to transport students to those schools;

(4) how the public school receiving new students will consult with tribal leaders and members and families of students attending the public school related to:

(a) culturally and linguistically responsive school policies;

(b) rigorous and culturally meaningful curricula and instructional materials;

(c) sensitivity to the tribe's calendar of religious and other tribal obligations when making the school calendar; and

(d) professional development for school personnel at the public school to ensure that the best practices used in teaching, mentoring, counseling and administration are culturally and linguistically responsive to students;

- (5) how the educational outcomes for the Indian students will be improved by attending another public school;
- (6) plans for the public school buildings that will be left empty by the closure; and
- (7) any other matters the department believes provide an adequate explanation of the reasons for closing the public school on tribal lands.

**History:** Laws 2019, ch. 174, § 1.

**Effective dates.** — Laws 2019, ch. 174 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

### 22-2-3. Repealed.

**Repeals.** — Laws 2004, ch. 27, § 29 repealed 22-2-3 NMSA 1978, as enacted by Laws 1967, ch. 16, § 6, relating to compensation, effective May 19, 2004. For provisions

of former section, see the 2003 NMSA 1978 on *NMOneSource.com*.

### 22-2-4. Repealed.

**Repeals.** — Laws 2004, ch. 27, § 29 repealed 22-2-4 NMSA 1978, as enacted by Laws 1967, ch. 16, § 7, relating to officers and meetings, effective May 19, 2004. For

provisions of former section, see the 2003 NMSA 1978 on *NMOneSource.com*.

### 22-2-5. Repealed.

**Repeals.** — Laws 2004, ch. 27, § 29 repealed 22-2-5 NMSA 1978, as enacted by Laws 1967, ch. 16, § 8, relating to delegation of administrative functions, effective

May 19, 2004. For provisions of former section, see the 2003 NMSA 1978 on *NMOneSource.com*.

### 22-2-6. Repealed.

**Repeals.** — Laws 2004, ch. 27, § 29 repealed 22-2-6 NMSA 1978, as enacted by Laws 1967, ch. 16, § 9, relating to department duties, effective May 19, 2004. For

provisions of former section, see the 2003 NMSA 1978 on *NMOneSource.com*.

### 22-2-6.1. Recompiled.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-2-6.1 NMSA 1978 as 22-29-1 NMSA 1978, effective April 4, 2003.

### 22-2-6.2. Recompiled.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-2-6.2 NMSA 1978 as 22-29-2 NMSA 1978, effective April 4, 2003.

### 22-2-6.3. Recompiled.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-2-6.3 NMSA 1978 as 22-29-3 NMSA 1978, effective April 4, 2003.

### 22-2-6.4. Recompiled.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-2-6.4 NMSA 1978 as 22-29-4 NMSA 1978, effective April 4, 2003.



### **22-2-6.5. Recompiled.**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-2-6.5 NMSA 1978 as 22-29-5 NMSA 1978, effective April 4, 2003.

### **22-2-6.6. Recompiled.**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-2-6.6 NMSA 1978 as 22-29-6 NMSA 1978, effective April 4, 2003.

### **22-2-6.7. Recompiled.**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-2-6.7 NMSA 1978, as 22-29-7 NMSA 1978, effective April 4, 2003.

### **22-2-6.8. Recompiled.**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-2-6.8 NMSA 1978 as 22-29-8 NMSA 1978, effective April 4, 2003.

### **22-2-6.9. Recompiled.**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-2-6.9 NMSA 1978 as 22-29-9 NMSA 1978, effective April 4, 2003.

### **22-2-6.10. Recompiled.**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-2-6.10 NMSA 1978 as 22-29-10 NMSA 1978, effective April 4, 2003.

### **22-2-6.11. Recompiled.**

**Recompilations.** — Laws 2003, ch. 153, § 60 recompiled and amended 22-2-6.11 NMSA 1978 as 22-13-1.3 NMSA 1978, effective April 4, 2003.

### **22-2-6.12. Recompiled.**

**Recompilations.** — Laws 2003, ch. 153, § 30 recompiled and amended 22-2-6.12 NMSA 1978 as 22-8-43 NMSA 1978, effective April 4, 2003.

### **22-2-7. Repealed.**

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-2-7 NMSA 1978, as enacted by Laws 1967, ch. 16, § 10, relating to surety bonds for state superintendent and

designated employees of the department of education, effective April 4, 2003. For provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

### **22-2-8. School standards.**

The state board [department] shall prescribe standards for all public schools in the state. A copy of these standards shall be furnished by the department to each local school board, local superintendent and school principal. The standards shall include standards for the following areas:

- A. curriculum, including academic content and performance standards;
- B. organization and administration of education;
- C. the keeping of records, including financial records prescribed by the department;
- D. membership accounting;
- E. teacher preparation;
- F. the physical condition of public school buildings and grounds; and
- G. educational facilities of public schools, including laboratories and libraries.

**History:** 1953 Comp., § 77-2-8, enacted by Laws 1967, ch. 16, § 11; 2003, ch. 143, § 2; 2003, ch. 153, § 7.

**Repeals.** — Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3, which would have repealed this section.

**Cross references.** — For student achievement, see 22-2C-1 NMSA 1978.

For references to the former board of public education, see 9-24-15 NMSA 1978.

**The 2003 amendment,** effective April 4, 2003, substituted "School" for "Educational" at the beginning of the section heading; inserted "local superintendent and school principal" following "local school board" near the middle

of the first paragraph; added "including academic content and performance standards" at the end of Subsection A; and in Subsection C substituted "including" for "other than" near the middle and substituted "department" for "chief" at the end.

#### ANNOTATIONS

**School board may allocate attendance within district.** — So long as the statutory and constitutional minimum educational standards are satisfied, the local school board may allocate attendance within the district. 1979 Op. Att'y Gen. No. 79-36.

### 22-2-8.1. School year; length of school day; minimum.

A. Except as otherwise provided in this section, regular students shall be in school-directed programs, exclusive of lunch, for a minimum of the following:

(1) kindergarten, for half-day programs, two and one-half hours per day or four hundred fifty hours per year or, for full-day programs, five and one-half hours per day or nine hundred ninety hours per year;

(2) grades one through six, five and one-half hours per day or nine hundred ninety hours per year; and

(3) grades seven through twelve, six hours per day or one thousand eighty hours per year.

B. Up to thirty-three hours of the full-day kindergarten program may be used for home visits by the teacher or for parent-teacher conferences. Up to twenty-two hours of grades one through six programs may be used for home visits by the teacher or for parent-teacher conferences. Up to twelve hours of grades seven through twelve programs may be used to consult with parents to develop next step plans for students and for parent-teacher conferences.

C. Nothing in this section precludes a local school board from setting a school year or the length of school days in excess of the minimum requirements established by Subsection A of this section.

D. The secretary may waive the minimum length of school days in those school districts where such minimums would create undue hardships as defined by the department as long as the school year is adjusted to ensure that students in those school districts receive the same total instructional time as other students in the state.

E. Notwithstanding any other provision of this section, provided that instruction occurs simultaneously, time when breakfast is served or consumed pursuant to a state or federal program shall be deemed to be time in a school-directed program and is part of the instructional day.

**History:** 1978 Comp., § 22-2-8.1, enacted by Laws 1986, ch. 33, § 2; 1993, ch. 226, § 4; 2000, ch. 107, § 1; 2003, ch. 72, § 1; 2009, ch. 276, § 1; 2011, ch. 35, § 1; 2011, ch. 154, § 1.

**Repeals.** — Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3, which would have repealed this section.

**Cross references.** — For student achievement, see 22-2C-1 NMSA 1978 et seq.

For full-time kindergarten, see 22-13-3.2 NMSA 1978.

**2011 Multiple Amendments.** — Laws 2011, ch. 35, § 1 and Laws 2011, ch. 154, § 1 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2011, ch. 154, § 1, as the last act signed

by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2011, ch. 35, § 1 and Laws 2011, ch. 154, § 1 are described below. To view the session laws in their entirety, see the 2011 session laws on [NMOneSource.com](http://NMOneSource.com).

Laws 2011, ch. 154, § 1, effective June 17, 2011, changed the measure of a school year from days to hours.

Laws 2011, ch. 35, § 1, effective June 17, 2011, permitted school breakfast service during instructional time.

**The 2009 amendment,** effective June 19, 2009, added Subsection A; in Paragraph (1) of Subsection B, after the first occurrence of "hours per day", deleted "or four hundred fifty hours per year" and after second occurrence, deleted "or nine hundred ninety hours per year";



in Paragraph (2) of Subsection B, after "hours per day", deleted "or nine hundred ninety hours per year"; in Paragraph (3) of Subsection B, after "hours per day", deleted "or one thousand eighty hours per year"; added Subsection C, in Subsection D, at the beginning of the first and second sentences, added "Up to" in the second sentence, before "programs", changed "five" to the word "six"; and added the last sentence; in Subsection E, after "school board from setting", added "a school year or the" and added the reference to Subsection B; and in Subsection F, after "minimum length", added "or number" and after "hardships as defined by the", deleted "state board" and added the remainder of the sentence.

## 22-2-8.2. Recompiled.

**Recompilations.** — Laws 2003, ch. 153, § 51 recompiled and amended 22-2-8.2 NMSA 1978 as 22-10A-20 NMSA 1978, effective April 4, 2003.

## 22-2-8.3. Repealed.

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-2-8.3 NMSA 1978, as enacted by Laws 1986, ch. 33, § 4, relating to subject and minimum instructional areas requirements and accreditation, effective April 4, 2003. For provisions

**Applicability.** — Laws 2009, ch. 276, § 3 provided that the provisions of Laws 2009, ch. 276, §§ 1 and 2 apply to the 2010-2011 and subsequent school years.

**The 2003 amendment**, effective June 20, 2003, added "Except as otherwise provided in this section," at the beginning of Subsection A; and added present Subsection B and redesignated the subsequent subsections accordingly.

**The 2000 amendment**, effective May 17, 2000, rewrote Subsection A(1) which read "Kindergarten, two and one-half hours per day or four hundred and fifty hours per year."

**The 1993 amendment**, effective July 1, 1993, deleted former Subsection D, which read "The provisions of this section shall be effective with the 1987-88 school year" and made minor stylistic changes in Subsection A.

## 22-2-8.4. Recompiled.

**Recompilations.** — Laws 2003, ch. 153, § 58 recompiled and amended 22-2-8.4 NMSA 1978 as 22-13-1.1 NMSA 1978, effective April 4, 2003.

## 22-2-8.5. Repealed.

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-2-8.5 NMSA 1978, as enacted by Laws 1986, ch. 33, § 6, relating to additional statewide testing, effective April 4, 2003. For

of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, *see* 22-13-1 NMSA 1978.

## 22-2-8.6. Recompiled.

**Recompilations.** — Laws 2003, ch. 153, § 15 recompiled and amended 22-2-8.6 NMSA 1978 as 22-2C-6 NMSA 1978, effective April 4, 2003.

## 22-2-8.7. Recompiled.

**Recompilations.** — Laws 2003, ch. 153, § 37 recompiled and amended 22-2-8.7 NMSA 1978 as 22-10A-6 NMSA 1978, effective April 4, 2003.

provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*.

## 22-2-8.8. High school equivalency credential.

The department shall issue a high school equivalency credential to any candidate who is at least sixteen years of age and who has successfully completed the high school equivalency credential tests.

**History:** Laws 1999, ch. 193, § 1; 2014, ch. 31, § 1; 2015, ch. 122, § 9.

**Cross references.** — For student achievement, *see* 22-2C-1 NMSA 1978.

**The 2015 amendment**, effective July 1, 2015, changed "high school equivalency tests" to "high school equivalency credential tests".

**The 2014 amendment**, effective March 7, 2014, replaced "general educational development certificate" with

"high school equivalency credential"; in the catchline, changed "general educational development certificates" to "high school equivalency credential"; after "The department", deleted "of education", after "shall issue a", deleted "general educational development certificate" and added "high school equivalency credential", and after "successfully completed the", deleted "general educational development" and added "high school equivalency".

**Temporary provisions.** — Laws 2014, ch. 31, § 2, effective March 7, 2014, provided:

A. All references in law to a "general education diploma", a "general equivalency diploma", a "general education development certificate", a "certificate of general equivalency", a "graduate equivalent diploma", a "GED

certificate", a "high school equivalency diploma", a "certificate of equivalency" and an "equivalency diploma" shall be deemed to be references to a "high school equivalency credential".

B. All references in law to a "high school diploma or equivalent" shall be deemed to be references to a "high school diploma or high school equivalency credential".

C. All references in law to a "high school equivalency education" shall be deemed to be references to a "high school equivalency credential education".

D. All references in law to a "general educational development test" shall be deemed to be references to a "high school equivalency credential test".

## 22-2-8.9. Repealed.

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-2-8.9 NMSA 1978, as enacted by Laws 2001, ch. 165, § 1, relating to reading enhancement for public school students

not reading at grade level, effective April 4, 2003. For provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

## 22-2-8.10. Repealed.

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-2-8.10 NMSA 1978, as enacted by Laws 2001, ch. 287, § 1, relating to the statewide mentorship program for

certain beginning teachers, effective April 4, 2003. For provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

## 22-2-8.11. High school curricula and end-of-course tests; alignment.

High school curricula and end-of-course tests shall be aligned with the placement tests administered by two- and four-year public educational institutions in New Mexico.

The department of education [public education department] shall collaborate with the commission on higher education in aligning high school curricula and end-of-course tests with the placement tests.

**History:** Laws 2003, ch. 37, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed

references to the public education department. See 9-24-15 NMSA 1978.

**Cross references.** — For student achievement, see 22-2C-1 NMSA 1978.

**Compiler's notes.** — Laws 2003 ch. 37, § 1, and Laws 2003, ch. 71, § 1 enacted identical new sections, effective on June 20, 2003. Both were compiled as 22-2-8.11 NMSA 1978.

## 22-2-8.12. Repealed.

**Repeals.** — Laws 2004, ch. 27, § 29 repealed 22-2-8.12 NMSA 1978, as enacted by Laws 2003, ch. 159, § 1

effective July 1, 2004. For provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

## 22-2-8.13. Standardized statewide grading system.

The department shall adopt and promulgate rules to establish a standardized alphabetic or numeric grading system based on the 4.0 scale or one hundred percent scale to be used by public schools, including charter schools, for grades three through twelve that is aligned with the New Mexico academic content standards and benchmarks and performance standards. A public school shall include the results of standards-based assessments in the standardized grading system and may augment the standardized grading system with a narrative or other method that measures a student's academic, social, behavioral or other skills.

**History:** Laws 2007, ch. 255, § 1; 2011, ch. 54, § 1.

**The 2011 amendment,** effective June 17, 2011, added public school grades three and four and charter school

grades three through twelve to the required standardized alphabetic or numeric grading system.



## 22-2-8.14. Student identification numbers used on transcripts and general educational development certificates [high school equivalency credentials].

The state identification number issued for each public school student pursuant to Section 22-2C-11 NMSA 1978 shall be included on each student's transcripts and on general educational development certificates [high school equivalency credentials] issued by the department.

**History:** Laws 2009, ch. 205, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2014, ch. 31, § 2, effective March 7, 2014, provided that all references in law to a "general education diploma", a "general equivalency diploma", a "general education development certificate", a "certificate of general equivalency", a "graduate equivalent diploma", a "GED

certificate", a "high school equivalency diploma", a "certificate of equivalency" and an "equivalency diploma" shall be deemed to be references to a "high school equivalency credential".

**Effective dates.** — Laws 2009, ch. 205 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## 22-2-9. United States [and New Mexico] flag[s]; display regulations.

The flag of the United States and the flag of the State of New Mexico shall be displayed in each classroom and on or within all public school buildings of this state according to the regulations adopted by the state board [department].

**History:** 1953 Comp., § 77-2-9, enacted by Laws 1967, ch. 16, § 12; 1979, ch. 18, § 1; 1989, ch. 37, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**The 1989 amendment,** effective June 16, 1989, inserted "and the flag of the State of New Mexico" and substituted "in each classroom and on or within all" for "on or within".

### ANNOTATIONS

**Law reviews.** — For comment, "Official Symbols: Use and Abuse," see 1 N.M. L. Rev. 352 (1971).

## 22-2-10. Educational research reports.

The findings of any educational research study made with public money shall be reported to the legislature or any of its committees upon request of the legislature or any of its committees. The legislature or any of its committees may require quarterly or more frequent progress reports concerning any such research.

**History:** 1953 Comp., § 77-2-10, enacted by Laws 1967, ch. 16, § 13.

## 22-2-11. Repealed.

**Repeals.** — Laws 2003, ch. 151, § 9 repeals 22-2-11 NMSA 1978, as enacted by Laws 1975 (1st S.S.), ch. 8, § 1, relating to the creation of the Indian education division,

effective June 20, 2003. For provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

## 22-2-12. Repealed.

**Repeals.** — Laws 2003, ch. 151, § 9 repealed 22-2-12 NMSA 1978, as enacted by Laws 1975 (1st S.S.), ch. 8, § 2, relating to the appointment of a division head for Indian

education, effective June 20, 2003. For provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

## 22-2-13. Repealed.

**Repeals.** — Laws 2003, ch. 151, § 9 repealed 22-2-13 NMSA 1978, as enacted by Laws 1975 (1st S.S.), ch. 8, § 3, relating to the duties and responsibilities of the

Indian education division, effective June 20, 2003. For provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

## 22-2-14. Local school boards; public schools; suspension; procedures.

A. Money budgeted by a school district shall be spent first to attain and maintain the requirements for a school district as prescribed by law and by standards and rules as prescribed by the department. The department shall give written notification to a local school board, local superintendent and school principal, as applicable, of any failure to meet requirements by any part of the school district under the control of the local school board. The notice shall specify the deficiency. Instructional units or administrative functions may be disapproved for such deficiencies. The department shall disapprove instructional units or administrative functions that it determines to be detrimental to the educational process.

B. Within thirty days after receipt of the notice of failure to meet requirements, the local school board, local superintendent and school principal, as applicable, shall:

(1) comply with the specific and attendant requirements in order to remove the cause for disapproval; or

(2) submit plans satisfactory to the department to meet requirements and remove the cause for disapproval.

C. The secretary, after consultation with the commission, shall suspend from authority and responsibility a local school board, local superintendent or school principal that has had notice of disapproval and fails to comply with procedures of Subsection B of this section. The department shall act in lieu of the suspended local school board, local superintendent or school principal until the department removes the suspension.

D. To suspend a local school board, local superintendent or school principal, the secretary shall deliver to the local school board an alternative order of suspension, stating the cause for the suspension and the effective date and time the suspension will begin. The alternative order shall also contain notice of a time, date and place for a public hearing, prior to the beginning of suspension, to be held by the department, at which the local school board, local superintendent or school principal may appear and show cause why the suspension should not be put into effect. Within five days after the hearing, the secretary shall make permanent, modify or withdraw the alternative order.

E. The secretary may suspend a local school board, local superintendent or school principal when the local school board, local superintendent or school principal has been notified of disapproval and when the department has sufficient reason to believe that the educational process in the school district or public school has been severely impaired or halted as a result of deficiencies so severe as to warrant disapproved status before a public hearing can be held.

F. The department, while acting in lieu of a suspended local school board, local superintendent or school principal, shall execute all the legal authority of the local school board, local superintendent or school principal and assume all the responsibilities of the local school board, local superintendent or school principal.

G. The provisions of this section shall be invoked at any time the secretary, after consultation with the commission, finds the school district or public school has failed to attain and maintain the requirements of law or department standards and rules.

H. The commission shall consult with the secretary and may recommend alternative actions for the secretary's consideration.

I. A local school board, local superintendent or school principal aggrieved by a decision of the secretary may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**History:** 1953 Comp., § 77-6-10, enacted by Laws 1967, ch. 16, § 64; 1969, ch. 180, § 7; 1972, ch. 89, § 1; reenacted by 1978, ch. 129, § 1; 1979, ch. 52, § 1; 1988, ch. 64, § 12; 2003, ch. 153, § 8; 2004, ch. 27, § 18.

**Cross references.** — For courses of instruction generally, see 22-13-1 NMSA 1978 et seq.

**The 2004 amendment,** effective May 19, 2004, amended Subsections B, C, D, E and F to change "state superintendent" and "state board" to "department" and added a new Subsection H.

**The 2003 amendment,** effective April 4, 2003, substituted "Local school boards; public schools; suspension" for "Education requirements; enforcement" at the beginning

of the catchline; in Subsection A substituted "rules" for "regulations" following "standards and" near the beginning and inserted "local superintendent and school principal, as applicable" following "local school board" near the middle; inserted "local superintendent and school principal, as applicable" following "local school board" near the end of Subsection B; in Subsection C inserted "local superintendent or school principal" following "local school board" near the middle and inserted "local superintendent or school principal" following "local school board," near the end; in Subsection D inserted "local superintendent or school principal" following "local school board" near the beginning and near the middle, and



substituted "the suspension should not be put into effect" for "it should not be suspended" following "show cause why" near the end; in Subsection E inserted "local superintendent or school principal" following "local school board" once near the beginning and once near the middle, and inserted "or public school" following "school district" near the middle; in Subsection F inserted "local superintendent or school principal" following "local school board" near the beginning and near the middle and at the end, and substituted "the local school" for "that" following "responsibilities of" near the end; and in Subsection G inserted "or public school" following "school district" near

the middle and substituted "rules" for "regulations" at the end.

**The 1988 amendment**, effective May 18, 1988, deleted former Subsection C which read "A copy of all disapproval notices shall be sent to the director" and redesignated succeeding subsections accordingly; deleted "and director" following "state superintendent" in the second sentence in present Subsection C and in Subsection F; inserted "school" preceding "district" in present Subsection E; substituted "local school board" for "local board of education" in present Subsection F; and made minor stylistic changes throughout the section.

## 22-2-15. Repealed.

**Repeals.** — Laws 2004, ch. 27, § 29, repealed 22-2-15 NMSA 1978, as enacted by Laws 1969, ch. 180, § 8, relating to hearings, suspension continuance and

discontinuance and appeals, effective May 19, 2004. For provisions of former section, *see* the 2003 NMSA 1978 on *NMOneSource.com*.

## 22-2-16. Reports.

The state superintendent [secretary] shall report all actions taken under provisions of Sections 22-2-14 and 22-2-15 [repealed] NMSA 1978 to the legislative school study committee. The state superintendent and director shall report all actions taken under provisions of Section 22-8-30 NMSA 1978 to the legislative school study committee [legislative education study committee].

**History: 1953 Comp., § 77-6-10.2, enacted by Laws 1969, ch. 180, § 9; reenacted by 1978, ch. 129, § 3.**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1979, ch. 267, § 1 changed the name of the "legislative school study committee" to the "legislative education study committee".

**Compiler's notes.** — Laws 2004, ch. 27, § 29 repealed 22-2-25 NMSA 1978 effective May 19, 2004.

**Cross references.** — For references to former state superintendent to the secretary of education, *see* 9-24-15 NMSA 1978.

## 22-2-17. Repealed.

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-2-17 NMSA 1978, as enacted by Laws 1993, ch. 168, § 1, relating to legislative findings that a high percentage of students continue to drop out of school prior to earning a

high school diploma, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*.

## 22-2-18. Repealed.

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-2-18 NMSA 1978, as enacted by Laws 1993, ch. 168, § 2, relating to development of a program to provide alternative

opportunities to at-risk students, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*.

## 22-2-19. Recompiled.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiles former 22-2-19 NMSA 1978, as 22-13-3.2 NMSA 1978, effective April 4, 2003.

## 22-2-20. Repealed.

**Repeals.** — Laws 2017, ch. 19, § 2 repealed 22-2-20 NMSA 1978, as enacted by Laws 2003, ch. 130, § 1, relating to kindergarten plus, pilot project, eligibility,

application, reporting and evaluation, fund creation, effective March 17, 2017. For provisions of former section, *see* the 2016 NMSA 1978 on *NMOneSource.com*.

## 22-2-21. Repealed.

**Repeals.** — Laws 2019, ch. 181, § 6 repealed 22-2-21 NMSA 1978, as enacted by Laws 2011, ch. 50, § 1, relating to bullying and cyberbullying prevention program,

effective July 1, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

**22-2-22. Recompiled.**

**Compiler's notes.** — Laws 2014, ch. 74, § 1 was erroneously compiled as 22-2-22 NMSA 1978 and has been recompiled as 22-16-12 NMSA 1978 by the compiler.

**ARTICLE 2A****Tutor-Scholars Program**

(Repealed by Laws 1991, ch. 126, § 9.)

**22-2A-1. Repealed.**

**Repeals.** — Laws 1991, ch. 126, § 9 repealed 22-2A-1 NMSA 1978, as enacted by Laws 1991, ch. 126, § 1, relating to tutors-scholars program, effective June 30, 1994.

For provisions of former sections, see the 1990 NMSA 1978 on *NMOneSource.com*.

**22-2A-2. Repealed.**

**Repeals.** — Laws 1991, ch. 126, § 9 repealed 22-2A-2 NMSA 1978, as enacted by Laws 1991, ch. 126, § 2, relating to tutors-scholars program, effective June 30, 1994.

For provisions of former sections, see the 1990 NMSA 1978 on *NMOneSource.com*.

**22-2A-3. Repealed.**

**Repeals.** — Laws 1991, ch. 126, § 9 repealed 22-2A-3 NMSA 1978, as enacted by Laws 1991, ch. 126, § 3, relating to tutors-scholars program, effective June 30, 1994.

For provisions of former sections, see the 1990 NMSA 1978 on *NMOneSource.com*.

**22-2A-4. Repealed.**

**Repeals.** — Laws 1991, ch. 126, § 9 repealed 22-2A-4 NMSA 1978, as enacted by Laws 1991, ch. 126, § 4, relating to tutors-scholars program, effective June 30, 1994.

For provisions of former sections, see the 1990 NMSA 1978 on *NMOneSource.com*.

**22-2A-5. Repealed.**

**Repeals.** — Laws 1991, ch. 126, § 9 repealed 22-2A-5 NMSA 1978, as enacted by Laws 1991, ch. 126, § 5, relating to tutors-scholars program, effective June 30, 1994.

For provisions of former sections, see the 1990 NMSA 1978 on *NMOneSource.com*.

**22-2A-6. Repealed.**

**Repeals.** — Laws 1991, ch. 126, § 9 repealed 22-2A-6 NMSA 1978, as enacted by Laws 1991, ch. 126, § 6, relating to tutors-scholars program, effective June 30, 1994.

For provisions of former sections, see the 1990 NMSA 1978 on *NMOneSource.com*.

**22-2A-7. Repealed.**

**Repeals.** — Laws 1991, ch. 126, § 9 repealed 22-2A-7 NMSA 1978, as enacted by Laws 1991, ch. 126, § 7, relating to tutors-scholars program, effective June 30, 1994.

For provisions of former sections, see the 1990 NMSA 1978 on *NMOneSource.com*.

**22-2A-8. Repealed.**

**Repeals.** — Laws 1991, ch. 126, § 9 repealed 22-2A-8 NMSA 1978, as enacted by Laws 1991, ch. 126, § 8, relating to tutors-scholars program, effective June 30, 1994.

For provisions of former sections, see the 1990 NMSA 1978 on *NMOneSource.com*.



**ARTICLE 2B****Regional Cooperative Education**

Sec.	Sec.
22-2B-1. Short title.	22-2B-5. Regional education coordinating councils; duties.
22-2B-2. Definitions.	22-2B-6. Repealed.
22-2B-3. Regional education cooperatives authorized.	22-2B-7. Culturally and linguistically diverse student populations; professional development for school personnel.
22-2B-4. Regional education coordinating councils created; membership.	

**22-2B-1. Short title.**

Chapter 22, Article 2B NMSA 1978 may be cited as the "Regional Cooperative Education Act".

**History:** Laws 1993, ch. 232, § 1; 2001, ch. 293, § 3.

The 2001 amendment, effective June 15, 2001, substituted "Chapter 22, Article 2B NMSA 1978" for "Sections 1 through 6 of this act".

**22-2B-2. Definitions.**

As used in the Regional Cooperative Education Act:

- A. "council" means a regional education coordinating council; and
- B. "cooperative" means a regional education cooperative.

**History:** Laws 1993, ch. 232, § 2; 2001, ch. 293, § 4.

The 2001 amendment, effective June 15, 2001, deleted Subsection C which formerly read "fund" means an educational cooperative fund".

**22-2B-3. Regional education cooperatives authorized.**

A. The department may authorize the existence and operation of "regional education cooperatives". Upon authorization by the department, local school boards may join with other local school boards or other state-supported educational institutions to form cooperatives to provide education-related services. Cooperatives shall be deemed individual state agencies administratively attached to the department; provided that:

(1) pursuant to the rules of the department, cooperatives may own, and have control and management over, buildings and land independent of the director of the facilities management division of the general services department;

(2) cooperatives shall not submit budgets to the department of finance and administration but shall submit them to the department. The department shall, by rule, determine the provisions of the Public School Finance Act [Chapter 22, Article 8 NMSA 1978] relating to budgets and expenditures that are applicable to cooperatives; and

(3) pursuant to the rules of the department, the secretary may, after considering the factors specified in Section 22-8-38 NMSA 1978, designate a cooperative council as a board of finance with which all funds appropriated or distributed to it shall be deposited. If such a designation is not made or if such a designation is suspended by the secretary, the money appropriated or to be distributed to a cooperative shall be deposited with the state treasurer. Unexpended or unencumbered balances in the account of a cooperative shall not revert.

B. The department shall, by rule, establish minimum criteria for the establishment and operation of cooperatives. The department shall also establish procedures for oversight of cooperatives to ensure compliance with department rule. Cooperatives shall be exempt from the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978].

C. With council approval, a cooperative may provide revenue-generating education-related services to nonmembers, so long as those services do not detract from the cooperative's ability to fulfill its responsibilities to its members.

D. With council approval, a cooperative may apply for and receive public and private grants as well as gifts, donations, bequests and devises and use them to further the purposes and goals of the cooperative.

E. Each cooperative shall cooperate with the department as required by federal-state plans or department rules in the effectuation and administration of its educational programs. Each cooperative shall submit reports to the department at such times and in such form as required by department rule. Reports shall include an evaluation of the effectiveness of the technical assistance and other services provided to members of the cooperative and any nonmember public and private entities to which the cooperative provided educational services. The reports and evaluations submitted pursuant to this subsection shall be made available upon request to the legislative education study committee and the legislative finance committee.

**History:** Laws 1993, ch. 232, § 3; 2001, ch. 293, § 5; 2009, ch. 64, § 1; 2013, ch. 115, § 22.

**Cross references.** — For references to the former state board, *see* 9-24-15 NMSA 1978.

For the legislative finance committee, *see* 2-5-1 NMSA 1978.

For the legislative education study committee, *see* 2-10-1 NMSA 1978.

**The 2013 amendment**, effective June 14, 2013, changed the name of the property control division of the general services department to the facilities management division; and in Paragraph (1) of Subsection A, deleted "property control" and added "facilities management" before "division".

**The 2009 amendment**, effective July 1, 2009, in Subsections A and B, changed "state board" to "department"; in Paragraph (3) of Subsection A, changed "state superintendent" to "secretary"; deleted former Subsection C, which provided for the development of a statewide long-range plan for educational and technical assistance activities in public and charter schools served by cooperatives; and added Subsections C, D and E.

**The 2001 amendment**, effective June 15, 2001, in Subsection A, deleted "to qualified school-age residents of participating educational entities" from the end of the second sentence, added "provided that" at the end of the third sentence, and added Paragraphs (1) through (3); substituted "rule" for "regulation" twice in Subsection B; and added Subsection C.

## 22-2B-4. Regional education coordinating councils created; membership.

A. Subject to regulations adopted by the state board [department], each cooperative shall be governed by a regional education coordinating council.

B. Councils shall be composed of the superintendents or chief administrative officers of each local school district or state-supported educational institution participating in the cooperative.

C. Members of each council shall elect a chairman from its members. Meetings shall be held at the call of the chairman. A meeting of a majority of the members of the council constitutes a quorum for the purpose of conducting business.

**History:** Laws 1993, ch. 232, § 4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all

references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Cross references.** — For references to the former state board, *see* 9-24-15 NMSA 1978.

## 22-2B-5. Regional education coordinating councils; duties.

A. Each council shall oversee the function and operation of a cooperative. At the direction of the council, the cooperative shall provide:

- (1) education-related services to members of the cooperative;
- (2) technical assistance and staff development opportunities to members of the cooperative;
- (3) cooperative purchasing capabilities and fiscal management opportunities to members of the cooperative;
- (4) such additional services to members of the cooperative as may be determined by the council to be appropriate; and
- (5) revenue-generating education-related services to nonmembers when the council determines that the provision of such services will not interfere with the cooperative's ability to fulfill its responsibilities to its members.



**B. Pursuant to rule of the department, each council shall:**

- (1) adopt a budget and administrative guidelines as necessary to carry out the purposes of the cooperative; and
- (2) hire an executive director and necessary additional staff.

**History:** Laws 1993, ch. 232, § 5; 2009, ch. 64, § 2.

**Cross references.** — For references to the former state board, see 9-24-15 NMSA 1978.

**The 2009 amendment,** effective July 1, 2009, in Subsection A, changed "all entities participating in" to

"members of"; added Paragraph (5) of Subsection A; and in Subsection B, changed "regulation" and added "rule", and changed "state board" to "department".

## **22-2B-6. Repealed.**

**Repeals.** — Laws 2001, ch. 293, § 7 repealed 22-2B-6 NMSA 1978, as enacted by Laws 1993, ch. 232, § 6, relating to the creation of educational cooperative funds,

effective June 15, 2001. For provisions of former section, see the 2000 NMSA 1978 on *NMOneSource.com*.

## **22-2B-7. Culturally and linguistically diverse student populations; professional development for school personnel.**

A. All cooperatives that want to provide technical assistance and professional development for teachers, educational assistants and other instructional support staff in the educational needs of culturally and linguistically diverse students shall join together and submit one application to the department for funding. The group of participating cooperatives shall assign one cooperative to provide coordination, financial accounting and disbursement of funding received from the department to all participating cooperatives.

B. With council approval, each cooperative may provide or contract for technical assistance and professional development for teachers, educational assistants and other instructional support staff that are focused on the educational needs of culturally and linguistically diverse students.

C. Technical assistance and professional development programs shall be aligned with state academic content standards, benchmarks and performance standards for bilingual multicultural education and shall meet school district and charter school educational plans related to bilingual multicultural education, Indian education and Hispanic education.

D. Professional development programs shall be centered on the following:

- (1) research-based bilingual multicultural education and language revitalization programs and implications for instruction;
- (2) best practices in teaching English as a second language, English language development, bilingual multicultural education and language revitalization programs;
- (3) classroom assessments that support academic and language development;
- (4) principles of first and second language acquisition, including language revitalization, differentiated language instruction and sheltered content instruction; and
- (5) effective practices of program implementation and program evaluation.

E. With council approval, a cooperative may offer professional development to school personnel in school districts and charter schools that are not members of the cooperative and may charge a course fee, which shall not be more than the actual per-participant cost of attendance at the professional development program.

F. Each participating cooperative shall provide direct technical assistance, in addition to professional development, that results in improved culturally and linguistically responsive education in public schools. The participating cooperatives shall work closely with appropriate service providers to build and support cooperative, school district and charter school internal capacity of their staff and their members' staff to ensure long-term, local, sustained support to teachers and other school personnel who work with culturally and linguistically diverse students.

**History:** Laws 2019, ch. 200, § 1.

**Effective dates.** — Laws 2019, ch. 200 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## ARTICLE 2C

### Assessment and Accountability

Sec.

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#### 22-2C-1. Short title.

Chapter 22, Article 2C NMSA 1978 may be cited as the "Assessment and Accountability Act".

**History:** 1978 Comp., § 22-2A-1, enacted by Laws 2003, ch. 153, § 10; 2007, ch. 307, § 2; 2007, ch. 308, § 2; 2007, ch. 309, § 2.

**Compiler's notes.** — Laws 2003, ch. 153, §§ 10 to 20 were enacted as 22-2A-1 to 22-2A-11 NMSA 1978, but were relocated due to the existing Article 2A.

**The 2007 amendments,** effective June 15, 2007, changed the statutory reference to the act,

Laws 2007, ch. 307, § 2, Laws 2007, ch. 308, § 2 and Laws 2007, ch. 309, § 2 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 309, § 2. See 12-1-8 NMSA 1978.

#### 22-2C-2. Purposes.

The purposes of the Assessment and Accountability Act are to comply with federal accountability requirements; to provide the means whereby parents, students, public schools and the public can assess the progress of students in learning and schools in teaching required academic content; and to institute a system in which public schools, school districts and the department are held accountable for ensuring student success.

**History:** 1978 Comp., § 22-2A-2, enacted by Laws 2003, ch. 153, § 11.

**Compiler's notes.** — Laws 2003, ch. 153, §§ 10 to 20 were enacted as 22-2A-1 to 22-2A-11 NMSA 1978, but were relocated due to the existing Article 2A.

**Emergency clauses.** — Laws 2003, ch. 153, § 74 contained an emergency clause and was approved April 4, 2003.

#### 22-2C-3. Academic content and performance standards; department powers and duties.

A. The department shall adopt academic content and performance standards for grades one through twelve in the following areas:

- (1) mathematics;
- (2) reading and language arts;
- (3) science; and
- (4) social studies.

B. The department may adopt content and performance standards in other subject areas.

C. Academic content and performance standards shall be sufficiently academically challenging to meet or exceed any applicable federal requirements.

D. The department shall measure the performance of every public school in New Mexico.



**History:** 1978 Comp., § 22-2A-3, enacted by Laws 2003, ch. 153, § 12; 2015, ch. 58, § 5.

**Compiler's notes.** — Laws 2003, ch. 153, §§ 10 to 20 were enacted as 22-2A-1 to 22-2A-11 NMSA 1978, but were relocated due to the existing Article 2A.

**The 2015 amendment,** effective June 19, 2015, removed references to adequate yearly progress and replaced

references to the state board with the public education department; in the catchline, after "standards," changed "state board" to "department"; in Subsections A and B, changed "state board" to "department"; in Subsection C, after "exceed", added "any applicable"; in Subsection D, after "New Mexico", deleted the remainder of the subsection relating to adequate yearly progress.

## **22-2C-4. Statewide assessment and accountability system; indicators; required assessments; alternative assessments; limits on alternatives to English language reading assessments.**

A. The department shall establish a statewide assessment and accountability system that is aligned with the state academic content and performance standards.

B. The academic assessment program shall test student achievement as follows:

(1) for grades three through eight and for grade eleven, standards-based assessments in mathematics, reading and language arts;

(2) for grades three through eight, a standards-based writing assessment with the writing assessment scoring criteria applied to the extended response writing portions of the language arts standards-based assessments; and

(3) for one of grades three through five and six through eight and for grade eleven, standards-based assessments in science by the 2007-2008 school year.

C. The department shall involve appropriate licensed school employees in the development of the standards-based assessments.

D. Before August 5 of each year, the department shall provide student scores on all standards-based assessments taken during the prior school year and required in Subsection B of this section to students' respective school districts in order to make test score data available to assist school district staff with appropriate grade-level and other placement for the current school year.

E. All students shall participate in the academic assessment program. The department shall adopt standards for reasonable accommodations in standards-based assessments for students with disabilities and limited English proficiency, including when and how accommodations may be applied. The legislative education study committee shall review the standards prior to adoption by the department.

F. Students who have been determined to be limited English proficient may be allowed to take the standards-based assessment in their primary language. A student who has attended school for three consecutive years in the United States shall participate in the English language reading assessment unless granted a waiver by the department based on criteria established by the department. An English language reading assessment waiver may be granted only for a maximum of two additional years and only on a case-by-case basis.

**History:** 1978 Comp., § 22-2A-4, enacted by Laws 2003, ch. 153, § 13; 2004, ch. 31, § 1; 2005, ch. 315, § 2; 2007 ch. 306, § 1; 2007, ch. 307, § 3; 2007, ch. 308, § 3; 2015, ch. 58, § 6.

**Compiler's notes.** — Laws 2003, ch. 153, §§ 10 to 20 were enacted as 22-2A-1 to 22-2A-11 NMSA 1978, but were relocated due to the existing Article 2A.

**The 2015 amendment,** effective June 19, 2015, removed references to adequate yearly progress and removed the requirement to test student achievement in social studies for certain grades; in Subsection A, after "content and performance standards", deleted the remainder of the subsection relating to adequate yearly progress; in Subsection B, after "assessment program", deleted "for adequate yearly progress"; and in Subsection B, Paragraph (1), after "language arts", deleted "and social studies".

**The 2007 amendment,** effective July 1, 2007, in Subsection B, changed "grades three through nine" to

"grades three through eight"; in Subsections A, B, C and E, changed "standards-based academic performance tests" to "standards-based assessments"; and in Subsection D, changed "academic testing" to "standards based assessments".

**The 2005 amendment,** effective April 7, 2005, deleted former Subsection B(1) which provided that the assessment program shall test achievement for grades kindergarten through two by diagnostic and standards based tests on reading that include phonemic awareness, phonics and comprehension by the 2003-2004 school year.

**The 2004 amendment,** effective May 19, 2004, revised Paragraph (3) of Subsection B to change the grades from "four, six, eight and eleven" to grades "three to nine" and to add after "writing" and before "tests", "assessment with the writing assessment scoring criteria applied to the extended response writing portions of the language arts criterion-referenced".

### 22-2C-4.1. Statewide college and workplace readiness assessment system.

A. The department shall establish a readiness assessment system to measure the readiness of every New Mexico high school student for success in higher education or a career no later than the 2008-2009 school year. The department shall ensure that the readiness assessment system is aligned with state academic content and performance standards, college placement tests and entry-level career skill requirements. The readiness assessment system shall include, for grade eleven, in the fall, one or more of the following components chosen by the student:

- (1) a college placement assessment;
- (2) a workforce readiness assessment; or
- (3) an alternative demonstration of competency using standards-based indicators.

B. Students shall participate in the readiness assessment system at no cost to the student.

C. Reports of assessment results shall be provided to students and parents in writing whenever possible but, if necessary, orally in the language best understood by each student and parent.

D. The department shall adopt standards for reasonable accommodations in the administration of readiness assessments for students with disabilities and limited English proficiency, including when and how accommodations may be applied.

E. In developing, selecting or approving the high school or college readiness assessments for school district or charter school use, the department may adopt commercially available standards-based assessments or approve a school district's or charter school's short-cycle assessments that meet the requirements of this section. The department shall involve appropriate licensed school employees in the development or selection of readiness assessments.

**History:** Laws 2007, ch. 307, § 4; 2007, ch. 308, § 4; 2008, ch. 21, § 1; 2016, ch. 56, § 1.

The 2016 amendment, effective May 18, 2016, eliminated higher education or career readiness assessment system requirements for students in grades nine and ten; in Subsection A, in the introductory paragraph, after "include," deleted "the following components:", deleted Paragraphs (1) and (2), the paragraph designation "(3)", and the word "in" and added "for", and redesignated former Subparagraphs (a) through (c) of Paragraph (3) as new Paragraphs (1) through (3) of Subsection A; in Subsection B, deleted "All", and after "Students", deleted "at the specified grade level"; and in Subsection C, deleted "The

department shall ensure that results of performance on readiness assessments administered in grades nine and ten are reported to students, parents and public schools no later than four weeks following the date on which the assessments are administered, in a form that is easily understandable and useful in the next-step planning process."

The 2008 amendment, effective May 14, 2008, required a short-cycle diagnostic assessment in the ninth grade, a short-cycle diagnostic assessment in the tenth grade that serves as an early indicator of college readiness, and a college placement assessment, a workforce readiness assessment or a demonstration of competency in the eleventh grade.

### 22-2C-5. Measuring and categorizing students' academic performance.

The department shall adopt the process and methodology for measuring students' academic performance. Academic performance shall be categorized by school and by the following subgroups:

- A. ethnicity;
- B. race;
- C. limited English proficiency;
- D. students with disabilities; and
- E. poverty.

**History:** 1978 Comp., § 22-2A-5, enacted by Laws 2003, ch. 153, § 14; 2007, ch. 309, § 3; 2015, ch. 58, § 7.

**Compiler's notes.** — Laws 2003, ch. 153, §§ 10 to 20 were enacted as 22-2A-1 to 22-2A-11 NMSA 1978, but were relocated due to the existing Article 2A.

The 2015 amendment, effective June 19, 2015, removed references to adequate yearly progress; deleted the former catchline, "Student achievement ratings; calculations of adequate yearly progress" and added the current language; in the introductory paragraph, after

"methodology for", deleted "calculating adequate yearly progress. The statewide standards-based assessments used to assess adequate yearly progress shall be valid and reliable and shall conform with nationally recognized professional and technical standards" and added "measuring students' academic performance", and after "performance shall be", deleted "measured" and added "categorized".

The 2007 amendment, effective June 15, 2007, changed "performance tests" to "assessments".



**22-2C-6. Remediation programs; promotion policies; restrictions.**

A. Remediation programs, academic improvement programs and promotion policies shall be aligned with school-district-determined assessment results and requirements of the state assessment and accountability program.

B. Local school boards shall approve school-district-developed remediation programs and academic improvement programs to provide special instructional assistance to students in grades one through eight who do not demonstrate academic proficiency. The cost of remediation programs and academic improvement programs shall be borne by the school district. Remediation programs and academic improvement programs shall be incorporated into the school district's educational plan for student success and filed with the department.

C. The cost of summer and extended day remediation programs and academic improvement programs offered in grades nine through twelve shall be borne by the parent; however, where parents are determined to be indigent according to guidelines established by the department, the school district shall bear those costs.

D. Diagnosis of weaknesses identified by a student's academic achievement may serve as criteria in assessing the need for remedial programs or retention.

E. A parent shall be notified no later than the end of the second grading period that the parent's child is not academically proficient, and a conference consisting of the parent and the teacher shall be held to discuss possible remediation programs available to assist the student in becoming academically proficient. Specific academic deficiencies and remediation strategies shall be explained to the student's parent and a written intervention plan developed containing time lines, academic expectations and the measurements to be used to verify that a student has overcome academic deficiencies. Remediation programs and academic improvement programs include tutoring, extended day or week programs, summer programs and other research-based interventions and models for student improvement.

F. At the end of grades one through seven, three options are available, dependent on a student's academic proficiency:

- (1) the student is academically proficient and shall enter the next higher grade;
- (2) the student is not academically proficient and shall participate in the required level of remediation. Upon certification by the school district that the student is academically proficient, the student shall enter the next higher grade; or

- (3) the student is not academically proficient after completion of the prescribed remediation program and upon the recommendation of the teacher and school principal shall either be:

- (a) retained in the same grade for no more than one school year with an academic improvement plan developed by the student assistance team in order to become academically proficient, at which time the student shall enter the next higher grade; or

- (b) promoted to the next grade if the parent refuses to allow the child to be retained pursuant to Subparagraph (a) of this paragraph. In this case, the parent shall sign a waiver indicating the parent's desire that the student be promoted to the next higher grade with an academic improvement plan designed to address specific academic deficiencies. The academic improvement plan shall be developed by the student assistance team outlining time lines and monitoring activities to ensure progress toward overcoming those academic deficiencies. Students failing to become academically proficient at the end of that year as measured by grades, performance on school district assessments and other measures identified by the school district shall be retained in the same grade for no more than one year in order to have additional time to achieve academic proficiency.

G. At the end of the eighth grade, a student who is not academically proficient shall be retained in the eighth grade for no more than one school year to become academically proficient or if the student assistance team determines that retention of the student in the eighth grade will not assist the student to become academically proficient, the team shall design a high school graduation plan to meet the student's needs for entry into the work force or a post-secondary educational institution. If a student is retained in the eighth grade, the student

assistance team shall develop a specific academic improvement plan that clearly delineates the student's academic deficiencies and prescribes a specific remediation plan to address those academic deficiencies.

H. A student who does not demonstrate academic proficiency for two successive school years shall be referred to the student assistance team for placement in an alternative program designed by the school district. Alternative program plans shall be filed with the department.

I. Promotion and retention decisions affecting a student enrolled in special education shall be made in accordance with the provisions of the individual educational plan established for that student.

J. For the purposes of this section:

(1) "academic improvement plan" means a written document developed by the student assistance team that describes the specific content standards required for a certain grade level that a student has not achieved and that prescribes specific remediation programs such as summer school, extended day or week school and tutoring;

(2) "school-district-determined assessment results" means the results obtained from student assessments developed or adopted by a local school board and conducted at an elementary grade level or middle school level;

(3) "educational plan for student success" means a student-centered tool developed to define the role of the academic improvement plan within the public school and the school district that addresses methods to improve student learning and success in school and that identifies specific measures of a student's progress; and

(4) "student assistance team" means a group consisting of a student's:

- (a) teacher;
- (b) school counselor;
- (c) school administrator; and
- (d) parent.

**History:** 1978 Comp., § 22-2-8.6, enacted by Laws 1986, ch. 33, § 7; 1987, ch. 320, § 3; 1993, ch. 226, § 9; 2000, ch. 20, § 1; recompiled and amended as § 22-2C-6 by Laws 2003, ch. 153, § 15; 2007, ch. 309, § 4.

**Cross references.** — For student achievement, see 22-2C-1 NMSA 1978 et seq.

**Compiler's notes.** — This section was compiled as Section 22-2-8.6 NMSA 1978 at the time of the enactment of Laws 2003, ch. 143, § 2.

**The 2007 amendment,** effective June 15, 2007, amended Subsection B to change "fail to attain adequate yearly progress" to "do not demonstrate academic proficiency" and provided that students failing to become academically proficient as measured by grades, performance on school district assessments and other measures identified by the school district shall be retained in the same grade to provide additional time to achieve academic proficiency.

**The 2003 amendment,** effective April 4, 2003, recompiled former 22-2-8.6 NMSA 1978 as 22-2A-6 NMSA 1978 (relocated to 22-2C-6), and deleted "Educational content standards" at the beginning of the section heading; rewrote Subsection A to the extent that a detailed comparison is impracticable; in Subsection B substituted "adequate yearly progress" for "a level of proficiency

established by the content standards" near the middle and deleted "of education" at the end.

**The 2000 amendment,** effective May 17, 2000, in the section heading, substituted "Educational content" for "Essential competencies" and "restrictions" for "exception"; rewrote Subsections A through D; added Subsection E; redesignated former Subsection E as F and rewrote that section; added Subsection G; redesignated former Subsection G as H and rewrote that section; and added Subsections I and J.

**The 1993 amendment,** effective July 1, 1993, deleted "of education" following "state board" in Subsection C; deleted former Subsection H, which read "The provisions of Subsection A of this section shall take effect in the 1987-88 school year"; and deleted former Subsection I, which read "The provisions of Subsections B through G of this section shall take effect beginning in the 1989-90 school year."

#### ANNOTATIONS

**Constitutionality.** — Subsection C does not offend the "free school guaranty" of N.M. Const., art. XII, § 1, as that provision is construed by the New Mexico Supreme Court, 1990 Op. Att'y Gen. No. 90-06.

## 22-2C-7. Repealed.

**Repealed.** — Laws 2015, ch. 58, § 15 repealed 22-2C-7 NMSA 1978, as enacted by Laws 2003, ch. 153, § 16, relating to adequate yearly progress, school improvement plans, corrective action and restructuring, effective June 19, 2015. For provisions of former section, see the 2014 NMSA 1978 on *NMOneSource.com*.



## 22-2C-7.1. Repealed.

**Repealed.** — Laws 2015, ch. 58, § 15 repealed 22-2C-7.1 NMSA 1978, as enacted by Laws 2007, ch. 309, § 6, relating to failing school subject to reopening as

state-chartered charter school, requirements, effective June 19, 2015. For provisions of former section, see the 2014 NMSA 1978 on *NMOneSource.com*.

## 22-2C-8. State improving schools program.

The department may institute a "state improving schools program" that measures public school improvement through school safety, dropout rate, parent and community involvement and graduation and attendance rates. Those indicators may be weighed against socioeconomic variables such as the percentage of student mobility rates, the percentage of limited English proficient students using criteria established by the federal office of civil rights and the percentage of students eligible for free or reduced-fee lunches and other factors determined by the department. Public schools that show the greatest improvement may be eligible for supplemental funding from the incentives for school improvement fund pursuant to Section 22-2C-9 NMSA 1978. Funding for the state improving schools program may include federal funds allowable under federal law or rule.

**History:** 1978 Comp., § 22-2A-8, enacted by Laws 2003, ch. 153, § 17; 2015, ch. 58, § 8.

**Compiler's notes.** — Laws 2003, ch. 153, §§ 10 to 20 was enacted as 22-2A-1 to 22-2A-11 NMSA 1978, but was relocated due to the existing Article 2A.

**The 2015 amendment**, effective June 19, 2015, removed references to adequate yearly progress and replaced references to the state board with the public education department; deleted the former catchline, "Adequate yearly progress; supplemental incentive funding; state program for other achievement" and added the current language; deleted Subsection A relating to the adequate yearly progress program; removed the subsection designation from Subsection B; in the undesignated

section, after "The", deleted "state board" and added "department", after "public school improvement", deleted "by adequate yearly progress and other indicators, including" and added "through", after "community involvement and", deleted "if not used to determine adequate yearly progress", after "factors determined by the", deleted "state board" and added "department", after "greatest improvement", deleted "through the use of additional indicators", after "school improvement fund", added "pursuant to Section 22-2C-9 NMSA 1978", after "improving schools program", deleted "shall" and added "may", and after "federal funds", deleted "only if allowed by" and added "allowable under".

## 22-2C-9. Incentives for school improvement fund; created; distributions.

A. The "incentives for school improvement fund" is created in the state treasury. The fund includes appropriations, federal allocations for the purposes of the fund, income from investment of the fund, gifts, grants and donations. Balances in the fund shall not revert to any other fund at the end of any fiscal year. The fund shall be administered by the department, and money in the fund is appropriated to the department to provide supplemental incentive funding for the state improving schools program. No more than three percent of the fund may be retained by the department for administrative purposes. Money in the fund shall be expended on warrants of the secretary of finance and administration pursuant to vouchers signed by the secretary of public education or the secretary's authorized representative.

B. The department shall adopt a formula for distributing incentive funding from the fund. The total number of public schools that receive supplemental funding shall not constitute more than fifteen percent of the student membership in the state. Distributions shall be made proportionately to public schools that qualify.

C. Each public school's school council shall determine how the supplemental funding shall be used. The money received by a public school shall not be used for salaries, salary increases or bonuses, but may be used to pay substitute teachers when teachers attend professional development activities.

**History:** 1978 Comp., § 22-2A-9, enacted by Laws 2003, ch. 153, § 18; 2015, ch. 58, § 9.

**Compiler's notes.** — Laws 2003, ch. 153, §§ 10 to 20 was enacted as 22-2A-1 to 22-2A-11 NMSA 1978, but was relocated due to the existing Article 2A.

**The 2015 amendment,** effective June 19, 2015, removed references to adequate yearly progress and required distributions from the incentives for school improvement fund to be made pursuant to vouchers signed

by the secretary of public education; in Subsection A, after "supplemental incentive funding for", deleted "the adequate yearly progress program and", after "vouchers signed by", deleted "state superintendent" and added "secretary of public education", and after "or", deleted "his" and added "the secretary's"; in Subsection B, deleted "state board" and added "department", and after "incentive funding from the fund.", deleted the next two sentences relating to adequate yearly progress.

## 22-2C-10. Schools in need of improvement fund; created.

A. The "schools in need of improvement fund" is created in the state treasury. The fund includes appropriations, federal allocations for the purposes of the fund, income from investment of the fund, gifts, grants and donations. Balances in the fund shall not revert to any other fund at the end of any fiscal year. The fund shall be administered by the department, and money in the fund is appropriated to the department to provide assistance to public schools in need of improvement. No more than three percent of the fund may be retained by the department for administrative purposes. Money in the fund shall be expended on warrants of the secretary of finance and administration pursuant to vouchers signed by the secretary of public education or the secretary's authorized representative.

B. Distributions from the fund shall be by application approved by the department.

**History:** 1978 Comp., § 22-2A-10, enacted by Laws 2003, ch. 153, § 19; 2015, ch. 58, § 10.

**Compiler's notes.** — Laws 2003, ch. 153, §§ 10 to 20 were enacted as 22-2A-1 to 22-2A-11 NMSA 1978, but were relocated due to the existing Article 2A.

**The 2015 amendment,** effective June 19, 2015, made technical changes to the section; in Subsection A, after

"public schools in need of improvement", deleted "and public schools subject to corrective action", after "vouchers signed by the", deleted "state superintendent or his" and added "secretary of public education or the secretary's", and in Subsection B, after "department", deleted "based on a public school's approved improvement plan as provided in Section 22-2C-7 NMSA 1978".

## 22-2C-11. Assessment and accountability system reporting; parent survey; data system; fiscal information.

A. The department shall:

(1) issue a state identification number for each public school student for use in the accountability data system;

(2) adopt the format for reporting individual student assessments to parents. The student assessments shall report each student's progress and academic needs as measured against state standards;

(3) adopt the format for reporting annual progress of public schools, school districts, state-chartered charter schools and the department. A school district's report shall include reports of all locally chartered charter schools in the school district. If the department has adopted a state improving schools program, the annual accountability report shall include the results of that program for each public school. The annual accountability report format shall be clear, concise and understandable to parents and the general public. All annual accountability reports shall ensure that the privacy of individual students is protected;

(4) require that when public schools, school districts, state-chartered charter schools and the state disaggregate and report school data for demographic subgroups, they include data disaggregated by ethnicity, race, limited English proficiency, students with disabilities, poverty and gender; provided that ethnicity and race shall be reported using the following categories:

- (a) Caucasian, non-Hispanic;
- (b) Hispanic;
- (c) African American;
- (d) American Indian or Alaska Native;
- (e) Native Hawaiian or other Pacific Islander;



(f) Asian;

(g) two or more races; and

(h) other; provided that if the sample of students in any category enumerated in Subparagraphs (a) through (g) of this paragraph is so small that a student in the sample may be personally identifiable in violation of the federal Family Educational Rights and Privacy Act of 1974, the report may combine that sample into the "other" category;

(5) report cohort graduation data annually for the state, for each school district and for each state-chartered charter school and each public high school, based on information provided by all school districts and state-chartered charter schools according to procedures established by the department; provided that the report shall include the number and percentage of students in a cohort who:

(a) have graduated by August 1 of the fourth year after entering the ninth grade;

(b) have graduated in more than four years, but by August 1 of the fifth year after entering ninth grade;

(c) have received a state certificate by exiting the school system at the end of grade twelve without having satisfied the requirements for a high school diploma as provided in Section 22-13-1.1 NMSA 1978 or completed all course requirements but have not passed the graduation assessment or portfolio of standards-based indicators pursuant to Section 22-13-1.1 NMSA 1978;

(d) have dropped out or whose status is unknown;

(e) have exited public school and indicated an intent to pursue a high school equivalency credential; or

(f) are still enrolled in public school;

(6) report annually, based on data provided by school districts and state-chartered charter schools, the number and percentage of public school students in each cohort in the state in grades nine through twelve who have advanced to the next grade or graduated on schedule, who remain enrolled but have not advanced to the next grade on schedule, who have dropped out or whose other educational outcomes are known to the department; and

(7) establish technical criteria and procedures to define which students are included or excluded from a cohort.

B. Local school boards and governing boards of charter schools may establish additional indicators through which to measure the school district's or charter school's performance.

C. The school district's or state-chartered charter school's annual accountability report shall include a report of four- and five-year graduation rates for each public high school in the school district or state-chartered charter school. All annual accountability reports shall ensure that the privacy of individual students is protected. As part of the graduation rate data, the school district or state-chartered charter school shall include data showing the number and percentage of students in the cohort:

(1) who have received a state certificate by exiting the school system at the end of grade twelve without having satisfied the requirements for a high school diploma as provided in Section 22-13-1.1 NMSA 1978 or completed all course requirements but have not passed the graduation assessment or portfolio of standards-based indicators pursuant to Section 22-13-1.1 NMSA 1978;

(2) who have dropped out or whose status is unknown;

(3) who have exited public school and indicated an intent to pursue a high school equivalency credential;

(4) who are still enrolled; and

(5) whose other educational outcomes are known to the school district.

D. The school district's or state-chartered charter school's annual accountability report shall be adopted by the local school board or governing body of the state-chartered charter school, shall be published no later than November 15 of each year and shall be published at least once each school year in a newspaper of general circulation in the county where the school district or state-chartered charter school is located as well as online on the website of the school district or state-chartered charter school. In publication, the report shall be titled "The School District Report



Card" or "The Charter School Report Card" and disseminated in accordance with guidelines established by the department to ensure effective communication with parents, students, educators, local policymakers and business and community organizations.

E. The annual accountability report shall include the names of those members of the local school board or the governing body of the charter school who failed to attend annual mandatory training.

F. The annual accountability report shall include data on expenditures for central office administration and expenditures for the public schools of the school district or charter school.

G. The department shall create an accountability data system through which data from each public school and each school district or state-chartered charter school may be compiled and reviewed. The department shall provide the resources to train school district and charter school personnel in the use of the accountability data system.

H. The department shall verify data submitted by the school districts and state-chartered charter schools.

I. At the end of fiscal year 2005, after the budget approval cycle, the department shall produce a report to the legislature that shows for all school districts using performance-based program budgeting the relationship between that portion of a school district's program cost generated by each public school in the school district and the budgeted expenditures for each public school in the school district as reported in the district's performance-based program budget. At the end of fiscal year 2006 and subsequent fiscal years, after the budget approval cycle, the department shall report on this relationship in all public schools in all school districts in the state.

J. When all public schools are participating in performance-based budgeting, the department shall recommend annually to the legislature for inclusion in the general appropriation act the maximum percentage of appropriations that may be expended in each school district for central office administration.

K. The department shall disseminate its statewide accountability report to school districts and charter schools; the governor, legislators and other policymakers; and business and economic development organizations.

L. As used in this section, "cohort" means a group of students who enter grade nine for the first time at the same time, plus those students who transfer into the group in later years and minus those students who leave the cohort for documented excusable reasons.

**History:** 1978 Comp., § 22-2A-11, enacted by Laws 2003, ch. 153, § 20; 2004, ch. 27, § 19; 2007, ch. 309, § 7; 2010, ch. 111, § 1; 2013, ch. 196, § 2; 2015, ch. 58, § 11; 2015, ch. 122, § 10; 2017, ch. 65, § 1.

**Compiler's notes.** — Laws 2003, ch. 153, § 20 was enacted as 22-2A-1 to 22-2A-11 NMSA 1978, but was recompiled as 22-2C-11 NMSA 1978 due to the existing Article 2A.

**Cross references.** — For the federal Family Educational Rights and Privacy Act of 1974, see 20 U.S.C. § 1232g.

**The 2017 amendment,** effective June 16, 2017, eliminated certain reporting requirements for school districts and state-chartered charter schools in their annual accountability reports, and required each school district's and state-chartered charter school's annual accountability report be published online; deleted Subsections D and E and redesignated former Subsections F through N as Subsections D through L, respectively; and in Subsection D, after "charter school is located", added "as well as online on the website of the school district or state-chartered charter school".

**2015 Amendments.** — Laws 2015, ch. 122, § 10, effective July 1, 2015, in Subparagraph A(4)(h), after "Family Educational Rights and Privacy Act", added "of 1974"; in Subparagraph A(5)(e), after "intent to pursue a", deleted "general educational development certificate" and added "high school equivalency credential"; and in Subsection C, Paragraph (3), after "intent to pursue a", deleted "general educational development certificate" and added "high school equivalency credential".

Laws 2015, ch. 58, § 11, effective June 19, 2015, in Subsection A, Paragraph (3), after "reporting annual", deleted "yearly"; in Subparagraph A(5)(e), after "intent to pursue a", deleted "general educational development certificate" and added "high school equivalency credential"; in Subsection B, after "performance", deleted "in areas other than adequate yearly progress"; and in Subsection C, Paragraph (3), after "pursue a", deleted "general educational development certificate" and added "high school equivalency credential".

**The 2013 amendment,** effective June 14, 2013, provided for public school accountability reports, including student achievement disaggregated by certain factors; in Paragraph (4) of Subsection A, in the introductory sentence, after "disaggregated by", added the remainder of the sentence; and added Subparagraphs (a) through (h) of Paragraph (4) of Subsection A.

**The 2010 amendment,** effective May 19, 2010, in Subsection A(3), in the first sentence, after "school districts", added "state-chartered charter schools" and added the second sentence; in Subsection A(4), after "school districts", added "state-chartered charter schools"; added Paragraphs (5), (6) and (7) of Subsection A; in Subsection B, after "Local school boards", added "and governing boards of charter schools" and after "school district's", added "or charter school's"; in Subsection C, in the first sentence, after "The school district's", added "or state-chartered charter school's"; after "include a report of" added "four- and five-year" and after "school district", added "or state-chartered charter school"; added the second sentence; and



in the third sentence, after "the school district", added "or state-chartered charter school" and after "state-chartered charter school shall", deleted "indicate contributing factors to nongraduation such as transfer out of the school district, pregnancy, dropout and other factors as known" and added the remainder of the sentence; added Paragraphs (1), (2), (3), (4) and (5) of Subsection C; in Subsection D, in the first sentence, after "The school district's", added "or state-chartered charter school's"; in Subsection E, in the second sentence, after "local school board", added "or governing body of a state-chartered charter school"; in Subsection F, in the first sentence, after "The school district's", added "or state-chartered charter school"; after "local school board", added "or governing body of the state-chartered charter school"; and after "school district", added "or state-chartered charter school"; and in the second sentence, after "The School District Report Card", added "or The Charter School Report Card"; in Subsection G, after "the names of those", added "members of the" and after "local school board", deleted "members"

and added "or the governing body of the charter school"; in Subsection H, after "school district", added "or charter school"; in Subsection I, in the first sentence, after "school district", added "or state-chartered charter school" and in the second sentence, after "school district", added "and charter school"; in Subsection J, after "school districts", added "and state-chartered charter schools"; and added Subsection N.

**The 2007 amendment**, effective June 15, 2007, added Paragraph (4) of Subsection A.

**The 2004 amendment**, effective May 19, 2004, combined Subsections A and B and inserted as a new Paragraph (1) of Subsection A, the requirement that the department "issue a state identification number for each public school student for use in the accountability data system", redesignated Subsection B as Paragraph (3) of Subsection A, redesignated Subsection C as Subsection B, added a new Subsection C, and changed "state board" to "department" in Subsections E and F.

## 22-2C-11.1. Student identification number unique to that student.

The student identification number required pursuant to Section 22-2C-11 NMSA 1978 shall be unique to each student and shall not be used or assigned to another student. That number shall be on all forms, student records, transcripts and databases in which a student is identified by name. A student shall be assigned only one identification number. It shall be the responsibility of every school district and charter school in the state to determine if the student has ever enrolled previously in a public school in New Mexico, and school districts and charter schools shall use the original student identification number.

**History:** Laws 2019, ch. 195, § 1.

**Effective dates.** — Laws 2019, ch. 195 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

**Temporary provisions.** — Laws 2019, ch. 195, § 2 provided:

**A.** The public education department and the children, youth and families department shall develop a compatible student-child tracking system that is usable among public schools, the public education department and the children, youth and families department and local offices. The departments shall consider if there are other users that should be included in the system.

**B.** The departments shall convene a task force of public school personnel; school and children, youth and families department social workers; juvenile probation and parole personnel; children's court judges or their designees; and child advocates. The task force, with the assistance

of systems analysts from the two departments and the department of information technology, shall develop the tracking system. Task force members shall be appointed by the secretaries of public education and children, youth and families.

**C.** The task force shall work to develop a tracking system that:

(1) provides for real-time reporting; and  
(2) allows for the cross-checking of the student identification number assigned by a New Mexico public school pursuant to Section 22-2C-11 NMSA 1978, the uniform case number required by Section 32A-20-1 NMSA 1978 for neglected and abused children and any other identification numbers used by the children, youth and families department for other children it serves.

**D.** The task force shall report to the legislative education study committee with its design and recommendations for implementation of the tracking system by December 1, 2019.

## 22-2C-12. Repealed.

**Repealed.** — Laws 2015, ch. 58, § 15 repealed 22-2C-12 NMSA 1978, as enacted by Laws 2009, ch. 189, § 1, relating to alternative school accountability system pilot

project, effective June 19, 2015. For provisions of former section, see the 2014 NMSA 1978 on *NMOneSource.com*.

## 22-2C-13. Reporting recommended changes to laws.

By the end of the 2015 calendar year and each calendar year thereafter, the department shall report to the legislative education study committee the department's recommendations for proposed changes to laws to comport with any applicable federal requirements.

**History:** Laws 2015, ch. 58, § 4. **Effective dates.** — Laws 2015, ch. 58 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.

## ARTICLE 2D

### Family and Youth Resources

Sec.  
22-2D-1. Short title.  
22-2D-2. Advisory committee; members; meetings; duties.  
22-2D-3. Programs; purpose; functions.

Sec.  
22-2D-4. Family and youth resource programs; grants; department duties.  
22-2D-5. Family and youth resource fund.

#### 22-2D-1. Short title.

Sections 64 through 68 [22-2D-1 to 22-2D-5 NMSA 1978] of this act may be cited as the "Family and Youth Resource Act".

**History:** Laws 2003, ch. 153, § 64. **Emergency clauses.** — Laws 2003, ch. 153, § 74 contained an emergency clause and was approved April 4, 2003.

#### 22-2D-2. Advisory committee; members; meetings; duties.

- A. The "family and youth resource advisory committee" is created. Members of the committee are:
- (1) the state superintendent [secretary] or his designee;
  - (2) the secretary of health or his designee;
  - (3) the secretary of human services or his designee;
  - (4) the secretary of children, youth and families or his designee; and
  - (5) the following members appointed by the state board [department]:
    - (a) one representative each from four different local community-based organizations, including faith-based providers, involved with the provision of health or social services to families; and
    - (b) one local superintendent or his designee from a school district in which there are more than two schools eligible to participate in the family and youth resources program.
- B. The members of the committee shall appoint the chairman and such other officers as they deem necessary.
- C. The committee shall meet as frequently as it deems appropriate or necessary, but at least once a year. The chairman may call special meetings as he deems necessary and shall convene special meetings at the request of a majority of the members.
- D. A majority of the committee constitutes a quorum.
- E. Members who are not state officers may be reimbursed for per diem and mileage expenses as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978].
- F. The department shall staff the committee.
- G. The committee shall:
- (1) recommend to the department guidelines for the creation, implementation and operation of programs;
  - (2) recommend to the department standards and criteria for awarding grants and the form and content of grant applications; and
  - (3) review applications for grants and make recommendations to the department within ninety days of receipt of the grant applications.

**History:** Laws 2003, ch. 153, § 65. **Emergency clauses.** — Laws 2003, ch. 153, § 74 contained an emergency clause and was approved April 4, 2003.

**Cross references.** — For references to the former state superintendent, see 9-24-15 NMSA 1978.



### 22-2D-3. Programs; purpose; functions.

A. A "family and youth resources program" may be created in any public school in the state. Except as provided in Subsection D of this section, the department shall accept applications for grants from public schools in which eighty percent of the students are eligible for the free or reduced-fee lunch program to fund their program.

B. The purpose of the program is to provide an intermediary for students and their families at public schools to access social and health care services. The goal of the program is to forge mutual long-term relationships with public and private agencies and community-based, civic and corporate organizations to help students attain high academic achievement by meeting certain nonacademic needs of students and their families.

C. A program shall include the employment of a resource liaison, who shall:

- (1) assess student and family needs and match those needs with appropriate public or private providers, including civic and corporate sponsors;
- (2) make referrals to health care and social service providers;
- (3) collaborate and coordinate with health and social service agencies and organizations through school-based and off-site delivery systems;
- (4) recruit service providers and business, community and civic organizations to provide needed services and goods that are not otherwise available to a student or the student's family;
- (5) establish partnerships between the school and community organizations such as civic, business and professional groups and organizations; and recreational, social and after-school programs such as boys' and girls' clubs and boy and girl scouts;
- (6) identify and coordinate age-appropriate resources for students in need of:
  - (a) counseling, training and placement for employment;
  - (b) drug and alcohol abuse counseling;
  - (c) family crisis counseling; and
  - (d) mental health counseling;
- (7) promote family support and parent education programs; and
- (8) seek out other services or goods a student or the student's family needs to assist the student to stay in school and succeed.

D. A public school or group of public schools that has received a grant to establish a family and youth resources program may continue to be eligible for funding if its percentage of students eligible for the free or reduced-fee price lunch program drops below eighty percent, so long as it maintains an average of eighty percent or more for any three-year period.

**History:** Laws 2003, ch. 153, § 66; 2009, ch. 118, § 1.

**Emergency clauses.** — Laws 2003, ch. 153, § 74 contained an emergency clause and was approved April 4, 2003.

**The 2009 amendment**, effective June 19, 2009, in Subsection A, at the beginning of the second sentence, added "Except as provided in Subsection D of this section"; and added Subsection D.

### 22-2D-4. Family and youth resource programs; grants; department duties.

A. Subject to the availability of funding, grants are available to a public school or group of public schools that meets department eligibility requirements.

B. Applications for grants shall be in the form prescribed by the department and shall include the following information:

- (1) a statement of need, including demographic and socioeconomic information about the area to be served by the program;
- (2) goals and expected outcomes of the program;
- (3) services and activities to be provided by the program;
- (4) written agreements for the provision of services by public and private agencies, community groups and other parties;
- (5) a work plan and budget for the program, including staffing requirements and the expected availability of staff;

- (6) hours of operation;
- (7) strategies for dissemination of information about the program to potential users;
- (8) training and professional development plans;
- (9) plans to ensure that program participants are not stigmatized for their use of the program;
- (10) a physical description of the place in the school or adjacent to the school in which the program will be located;
- (11) letters of endorsement and commitment from community agencies and organizations and local governments; and
- (12) any other information the department requires.

C. Grants shall not be awarded for applications submitted that supplant funding and other resources that have been used for purposes similar to the program.

**History:** Laws 2003, ch. 153, § 67.

**Emergency clauses.** — Laws 2003, ch. 153, § 74 contained an emergency clause and was approved April 4, 2003.

## 22-2D-5. Family and youth resource fund.

The "family and youth resource fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants, donations and earnings from investment of the fund. The fund shall not be transferred to any other fund at the end of a fiscal year. The fund shall be administered by the department, and money in the fund is appropriated to the department to carry out the purposes of the Family and Youth Resource Act. Money in the fund shall be disbursed on warrants issued by the secretary of finance and administration pursuant to vouchers signed by the state superintendent [secretary] or his authorized representative.

**History:** Laws 2003, ch. 153, § 68.

**Emergency clauses.** — Laws 2003, ch. 153, § 74 contained an emergency clause and was approved April 4, 2003.

# ARTICLE 2E

## A-B-C-D-F Schools Rating

Sec.

22-2E-1. Repealed.

22-2E-2. Repealed.

Sec.

22-2E-3. Repealed.

22-2E-4. Repealed.

### 22-2E-1. Repealed.

**Repeals.** — Laws 2019, ch. 249, § 4 repealed 22-2E-1 NMSA 1978, as enacted by Laws 2011, ch. 10, § 1, relating to short title, effective June 14, 2019. For provisions

of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

### 22-2E-2. Repealed.

**Repeals.** — Laws 2019, ch. 249, § 4 repealed 22-2E-2 NMSA 1978, as enacted by Laws 2011, ch. 10, § 2, relating to definitions, effective June 14, 2019. For provisions

of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

### 22-2E-3. Repealed.

**Repeals.** — Laws 2019, ch. 249, § 4 repealed 22-2E-3 NMSA 1978, as enacted by Laws 2011, ch. 10, § 3, relating to rating certain schools, effective June 14, 2019. For

provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.



## 22-2E-4. Repealed.

**Repeals.** — Laws 2019, ch. 249, § 4 repealed 22-2E-4 NMSA 1978, as enacted by Laws 2011, ch. 10, § 4, relating to annual ratings, letter grades, ratings based on standards-based assessments, right to school choice,

distance learning, responsibility for cost, use of funds, additional remedy, effective June 14, 2019. For provisions of former section, see the 2018 NMSA 1978 on *NMOneSource.com*.

## ARTICLE 2F

### School Support and Accountability

Sec.

22-2F-1. Short title.

22-2F-2. Definitions.

Sec.

22-2F-3. School support and accountability system; created; establishing a school dashboard; prioritizing resources for schools receiving additional support.

#### 22-2F-1. Short title.

This act [22-2F-1 through 22-2F-3 NMSA 1978] may be cited as the "School Support and Accountability Act".

**History:** Laws 2019, ch. 249, § 1.

**Effective dates.** — Laws 2019, ch. 249 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

**Applicability.** — Laws 2019, ch. 249, § 5 provided that Laws 2019, ch. 249, applies to the 2019-2020 and succeeding school years.

#### 22-2F-2. Definitions.

As used in the School Support and Accountability Act:

A. "adjusted cohort graduation rate" means the graduation rate of first-time ninth grade students with a diploma of excellence in a particular school year adjusted by adding any students who transfer into the cohort after the ninth grade and subtracting any students who transfer out, emigrate to another country or die;

B. "chronic absenteeism" means the percentage of students missing ten percent or more of the school year for any reason, including excused absences, unexcused absences and out-of-school suspensions;

C. "college, career and civic readiness" includes the completion of a college-ready course of study; the completion of a high-quality career technical education program; the completion of advanced courses such as advanced placement, international baccalaureate or dual credit; a seal of bilingualism-biliteracy on the student's diploma of excellence; demonstrating competency for college readiness or career certification; or the completion of a work-based learning experience; and for all students, includes the completion of a service-based learning experience, participation in a civic engagement experience or participation in a college or career exploration experience;

D. "comprehensive support" means support for a school that performs at or below the support identification threshold, or has an adjusted cohort graduation rate of less than sixty-six and two-thirds percent, or fails to exit targeted support status after a number of years determined by the department;

E. "educational climate" means the percentage of school stakeholders who report that the school provides an appropriate climate for learning in the domains of student and staff engagement, social-emotional and physical safety and a school environment conducive to teaching and learning;

F. "English language proficiency" means the ability of students to use academic English to make and communicate meaning in spoken and written contexts in an assessment determined by the department;

G. "local school board" includes the governing body of a charter school;

H. "more rigorous intervention" means an intervention plan for a school that fails to exit comprehensive support status after a number of years determined by the department;

I. "on track to graduate" means data on each individual student that show the student's graduation status and potential predictors of dropout, such as student attendance, behavior, grades and test scores;

J. "opportunity to learn standards" means a comprehensive view of the context in which learning takes place, including curriculum and instruction, educational resources and school staff competency;

K. "school stakeholders" means students, parents, other family members, teachers, school staff and community partners who are part of a school's immediate environment;

L. "student growth" means a measure, either norm-referenced to students with similar prior test scores or criterion-referenced to a specific standard, of students' academic progress within a specified time period;

M. "student proficiency" means a measure demonstrating students' grade level mastery of the knowledge and skills determined by the New Mexico standards-based assessments;

N. "support identification threshold" means a threshold set by the department using the metrics in the school support and accountability system to identify the lowest performing five percent of schools in the state receiving Title 1 funds;

O. "system" means the school support and accountability system;

P. "targeted support" means support for a school in which at least one subgroup of students, but not the entire school, performs at or below the support identification threshold; and

Q. "traditional support" means a school that is not designated for targeted support or comprehensive support or has exited more rigorous intervention status by surpassing the support identification threshold.

**History:** Laws 2019, ch. 249, § 2.

**Effective dates.** — Laws 2019, ch. 249 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

**Applicability.** — Laws 2019, ch. 249, § 5 provided that Laws 2019, ch. 249, applies to the 2019-2020 and succeeding school years.

### **22-2F-3. School support and accountability system; created; establishing a school dashboard; prioritizing resources for schools receiving additional support.**

A. The "school support and accountability system" is created in the department. The department, in consultation with school districts, charter schools, school personnel, tribal nations and the legislative education study committee, shall promulgate rules to carry out the provisions of the School Support and Accountability Act through the system.

B. The system shall:

(1) differentiate Title 1 support to public schools in the state using the metrics identified in Paragraphs (2) and (3) of this subsection to assign, for each public school, a designation of targeted support, comprehensive support or more rigorous intervention to comply with the federal Elementary and Secondary Education Act of 1965;

(2) include indicators of academic achievement that shall be afforded substantial weight and, in the aggregate, much greater weight than the indicators described in Paragraph (3) of this subsection, including:

(a) student proficiency on the New Mexico standards-based assessments pursuant to Subsection B of Section 22-2C-4 NMSA 1978;



(b) student growth, which will comprise a substantial part of the weighting of academic achievement indicators both for all students at the public school and disaggregated by quartile on the New Mexico standards-based assessments;

(c) progress of English language learners toward English language proficiency as measured by an assessment determined by the department; and

(d) for high schools, the four-year, five-year and six-year adjusted cohort graduation rates; and

(3) include indicators of school quality and student success that are valid, reliable, comparable and statewide, including:

(a) chronic absenteeism;

(b) college, career and civic readiness; and

(c) the educational climate of the school.

C. The department shall include in the system student data disaggregated by each major racial and ethnic group, economically disadvantaged students, English learner status, children with disabilities, gender and migrant status; provided that ethnicity and race shall be reported using the following categories:

(1) Caucasian, non-Hispanic;

(2) Hispanic;

(3) African American;

(4) American Indian or Alaska Native;

(5) Native Hawaiian or other Pacific Islander;

(6) Asian;

(7) two or more races; and

(8) other; provided that if the sample of students in any category enumerated in Paragraphs (1) through (7) of this subsection is so small that a student in the sample may be personally identifiable in violation of the federal Family Educational Rights and Privacy Act of 1974, the report may combine that sample into the "other" category.

D. The department shall provide the technological platform for a dashboard for each public school. The dashboard shall provide school and student information to school stakeholders and policymakers in a transparent manner, including the following indicators:

(1) the results of each indicator included in Paragraphs (2) and (3) of Subsection B and in Subsection C of this section;

(2) designations of school quality and student success for any school meeting a specific standard set by the department for any indicator included in Paragraphs (2) and (3) of Subsection B of this section;

(3) designations of excellence for any school scoring in the ninetieth percentile for any indicator included in Paragraphs (2) and (3) of Subsection B of this section;

(4) designations of school quality and student success for any school meeting a specific standard set by the department for American Indian or Hispanic students for any indicator included in Paragraphs (2) and (3) of Subsection B of this section;

(5) designations of excellence for any school scoring in the ninetieth percentile for American Indian or Hispanic students for any indicator included in Paragraphs (2) and (3) of Subsection B of this section;

(6) the designation of support for schools that meet the criteria for traditional support, targeted support, comprehensive support or more rigorous intervention;

(7) the demographics of the students and staff of the school; and

(8) indicators of opportunity to learn standards, including:

(a) a survey of relevant and engaging curriculum and instruction;

(b) educational resources, including total school-level expenditures and total instructional expenditures per student; and

(c) qualified and competent school staff, including the percentage of teachers with three or more years of experience, the percentage of teachers who are fully licensed and endorsed in the field they teach, the types of degrees held by staff, information from the highly objective,

uniform state standards of evaluation for teachers and the percentage of national board-certified teachers.

E. The dashboard shall include each school's mission, vision and goals and provide for optional comments from the local school board about the strengths, opportunities for improvement and programmatic offerings corresponding to any of the reported indicators in the dashboard. For local school boards that do not provide this information, the department shall populate this section of the dashboard with information from the public school's educational plan for student success.

F. The department shall ensure that a local school board prioritizes the resources of a public school that has received a designation of targeted support, comprehensive support or more rigorous intervention toward improving student performance using evidence-based programs and a continuous improvement plan based on the indicators in Paragraphs (2) and (3) of Subsection B of this section identified through a school-level needs assessment until the public school no longer holds that designation.

**History:** Laws 2019, ch. 249, § 3.

**Effective dates.** — Laws 2019, ch. 249 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

**Applicability.** — Laws 2019, ch. 249, § 5 provided that Laws 2019, ch. 249, applies to the 2019-2020 and succeeding school years.

**Cross references.** — For the federal Family Educational Rights and Privacy Act of 1974, see 20 U.S.C.

## ARTICLE 3

### Educational Apportionment

Sec.		Sec.	
22-3-1.	Repealed.	22-3-20.	Repealed.
22-3-2.	Repealed.	22-3-21.	Repealed.
22-3-3.	Repealed.	22-3-22.	Repealed.
22-3-4.	Repealed.	22-3-23.	Repealed.
22-3-5.	Repealed.	22-3-24.	Repealed.
22-3-6.	Repealed.	22-3-25.	Repealed.
22-3-7.	Repealed.	22-3-26.	Repealed.
22-3-8.	Repealed.	22-3-27.	Repealed.
22-3-9.	Repealed.	22-3-28.	Repealed.
22-3-10.	Repealed.	22-3-29.	Repealed.
22-3-11.	Repealed.	22-3-30.	Repealed.
22-3-12.	Repealed.	22-3-31.	Repealed.
22-3-13.	Repealed.	22-3-32.	Repealed.
22-3-14.	Repealed.	22-3-33.	Repealed.
22-3-15.	Repealed.	22-3-34.	Repealed.
22-3-16.	Repealed.	22-3-35.	Repealed.
22-3-17.	Repealed.	22-3-36.	Repealed.
22-3-18.	Repealed.	22-3-37 to 22-3-54.	Repealed.
22-3-19.	Repealed.	22-3-54.1.	Deleted.

#### 22-3-1. Repealed.

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-1 NMSA 1978, as enacted by Laws 1972, ch. 24, § 1, relating

to educational apportionment, effective June 17, 1983. For present provisions, see 22-3-54.1 NMSA 1978.

#### 22-3-2. Repealed.

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-2 NMSA 1978, as enacted by Laws 1972, ch. 24, § 2, relating

to educational apportionment, effective June 17, 1983. For present provisions, see 22-3-54.1 NMSA 1978.



### 22-3-3. Repealed.

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-3 NMSA 1978, as enacted by Laws 1972, ch. 24, § 3, relating

to educational apportionment, effective June 17, 1983. For present provisions, *see* 22-3-54.1 NMSA 1978.

### 22-3-4. Repealed.

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-4 NMSA 1978, as enacted by Laws 1972, ch. 24, § 4, relating

to educational apportionment, effective June 17, 1983. For present provisions, *see* 22-3-54.1 NMSA 1978.

### 22-3-5. Repealed.

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-5 NMSA 1978, as enacted by Laws 1972, ch. 24, § 5, relating

to educational apportionment, effective June 17, 1983. For present provisions, *see* 22-3-54.1 NMSA 1978.

### 22-3-6. Repealed.

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-6 NMSA 1978, as enacted by Laws 1972, ch. 24, § 6, relating

to educational apportionment, effective June 17, 1983. For present provisions, *see* 22-3-54.1 NMSA 1978.

### 22-3-7. Repealed.

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-7 NMSA 1978, as enacted by Laws 1972, ch. 24, § 7, relating

to educational apportionment, effective June 17, 1983. For present provisions, *see* 22-3-54.1 NMSA 1978.

### 22-3-8. Repealed.

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-8 NMSA 1978, as enacted by Laws 1972, ch. 24, § 8, relating

to educational apportionment, effective June 17, 1983. For present provisions, *see* 22-3-54.1 NMSA 1978.

### 22-3-9. Repealed.

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-9 NMSA 1978, as enacted by Laws 1972, ch. 24, § 9, relating

to educational apportionment, effective June 17, 1983. For present provisions, *see* 22-3-54.1 NMSA 1978.

### 22-3-10. Repealed.

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-10 NMSA 1978, as enacted by Laws 1972, ch. 24, § 10,

relating to educational apportionment, effective June 17, 1983. For present provisions, *see* 22-3-54.1 NMSA 1978.

### 22-3-11. Repealed.

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-11 NMSA 1978, as enacted by Laws 1972, ch. 24, § 11,

relating to educational apportionment, effective June 17, 1983. For present provisions, *see* 22-3-54.1 NMSA 1978.

### 22-3-12. Repealed.

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-12 NMSA 1978, as enacted by Laws 1972, ch. 24, § 12,

relating to educational apportionment, effective June 17, 1983. For present provisions, *see* 22-3-54.1 NMSA 1978.

**22-3-13. Repealed.**

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-13 NMSA 1978, as enacted by Laws 1972, ch. 24, § 13,

relating to educational apportionment, effective June 17, 1983. For present provisions, *see* 22-3-54.1 NMSA 1978.

**22-3-14. Repealed.**

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-14 NMSA 1978, as enacted by Laws 1972, ch. 24, § 14,

relating to educational apportionment, effective June 17, 1983. For present provisions, *see* 22-3-54.1 NMSA 1978.

**22-3-15. Repealed.**

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-15 NMSA 1978, as enacted by Laws 1972, ch. 24, § 15, relating

to educational apportionment, effective June 17, 1983. For present provisions, *see* 22-3-54.1 NMSA 1978.

**22-3-16. Repealed.**

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-16 NMSA 1978, as enacted by Laws 1972, ch. 24, § 16,

relating to educational apportionment, effective June 17, 1983. For present provisions, *see* 22-3-54.1 NMSA 1978.

**22-3-17. Repealed.**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-17 NMSA 1978, as enacted by Laws 1983, ch. 65, § 1, relating to the Educational Apportionment Act, effective

December 18, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

**22-3-18. Repealed.**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-18 NMSA 1978, as enacted by Laws 1983, ch. 65, § 2, relating to the Educational Apportionment Act, effective

December 18, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

**22-3-19. Repealed.**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-19 NMSA 1978, as enacted by Laws 1983, ch. 65, § 3, relating to the Educational Apportionment Act, effective

December 18, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

**22-3-20. Repealed.**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-20 NMSA 1978, as enacted by Laws 1983, ch. 65, § 4, relating to the Educational Apportionment Act, effective

December 18, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

**22-3-21. Repealed.**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-21 NMSA 1978, as enacted by Laws 1983, ch. 65, § 5, relating to the Educational Apportionment Act, effective

December 18, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

**22-3-22. Repealed.**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-22 NMSA 1978, as enacted by Laws 1983, ch. 65, § 6, relating to the Educational Apportionment Act, effective

December 18, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.



**22-3-23. Repealed.**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-23 NMSA 1978, as enacted by Laws 1983, ch. 65, § 7, relating to the Educational Apportionment Act, effective

December 18, 1991. For provisions of former section, see the 1990 NMSA 1978 on *NMOneSource.com*.

**22-3-24. Repealed.**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-24 NMSA 1978, as enacted by Laws 1983, ch. 65, § 8, relating to the Educational Apportionment Act, effective

December 18, 1991. For provisions of former section, see the 1990 NMSA 1978 on *NMOneSource.com*.

**22-3-25. Repealed.**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-25 NMSA 1978, as enacted by Laws 1983, ch. 65, § 9, relating to the Educational Apportionment Act, effective

December 18, 1991. For provisions of former section, see the 1990 NMSA 1978 on *NMOneSource.com*.

**22-3-26. Repealed.**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-26 NMSA 1978, as enacted by Laws 1983, ch. 65, § 10, relating to the Educational Apportionment Act, effective

December 18, 1991. For provisions of former section, see the 1990 NMSA 1978 on *NMOneSource.com*.

**22-3-27. Repealed.**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-27 NMSA 1978, as enacted by Laws 1983, ch. 65, § 11, relating to the Educational Apportionment Act, effective

December 18, 1991. For provisions of former section, see the 1990 NMSA 1978 on *NMOneSource.com*.

**22-3-28. Repealed.**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-28 NMSA 1978, as enacted by Laws 1983, ch. 65, § 12, relating to the Educational Apportionment Act, effective

December 18, 1991. For provisions of former section, see the 1990 NMSA 1978 on *NMOneSource.com*.

**22-3-29. Repealed.**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-29 NMSA 1978, as enacted by Laws 1983, ch. 65, § 13, relating to the Educational Apportionment Act, effective

December 18, 1991. For provisions of former section, see the 1990 NMSA 1978 on *NMOneSource.com*.

**22-3-30. Repealed.**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-30 NMSA 1978, as enacted by Laws 1983, ch. 65, § 14, relating to the Educational Apportionment Act, effective

December 18, 1991. For provisions of former section, see the 1990 NMSA 1978 on *NMOneSource.com*.

**22-3-31. Repealed.**

**Repeals.** — Laws 1987, ch. 99, § 9 repealed 22-3-31 NMSA 1978, as enacted by Laws 1983, ch. 65, § 15,

effective April 7, 1987, relating to election and terms of board members.

## 22-3-32. Repealed.

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-32 NMSA 1978, as enacted by Laws 1987, ch. 99, §4, relating to the Educational Apportionment Act, effective

December 18, 1991. For provisions of former section, see the 1990 NMSA 1978 on *NMOneSource.com*.

## 22-3-33. Repealed.

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-33 NMSA 1978, as enacted by Laws 1987, ch. 99, §6, relating to the Educational Apportionment Act, effective

December 18, 1991. For provisions of former section, see the 1990 NMSA 1978 on *NMOneSource.com*.

## 22-3-34. Repealed.

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-34 NMSA 1978, as enacted by Laws 1987, ch. 99, §7, relating to the Educational Apportionment Act, effective

December 18, 1991. For provisions of former section, see the 1990 NMSA 1978 on *NMOneSource.com*.

## 22-3-35. Repealed.

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-35 NMSA 1978, as enacted by Laws 1987, ch. 99, §7, relating to the Educational Apportionment Act, effective

December 18, 1991. For provisions of former section, see the 1990 NMSA 1978 on *NMOneSource.com*.

## 22-3-36. Repealed.

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-36 NMSA 1978, as enacted by Laws 1987, ch. 99, §8, relating to the Educational Apportionment Act, effective

December 18, 1991. For provisions of former section, see the 1990 NMSA 1978 on *NMOneSource.com*.

## 22-3-37 to 22-3-54. Repealed.

**Repeals.** — Laws 2011 (1st S.S.), ch. 4, § 17 repealed 22-3-37 through 22-3-54 NMSA 1978, as enacted by Laws 1991 (1st S.S.), ch. 4, §§ 1 through 18, the 1991 Educational Redistricting Act, effective December 23, 2011. For provisions of former sections, see the 2000 NMSA 1978 on *NMOneSource.com*.

**Compiler's notes.** — The 1991 Educational Redistricting Act, as enacted by Laws 1991 (1st S.S.), Chapter 4, was declared malapportioned and, therefore, unconstitutional in *Sanchez v. Vigil-Giron*, D-0101-CV-2001-02250 (1st Dist. Ct., filed February 6, 2002).

## 22-3-54.1. Deleted.

**Compiler's notes.** — This section was copied from House Voters and Elections Substitute for House Bill 10, 45th Legislature, 1st Special Session, which was adopted by reference in the final judgment and order in *Sanchez v. Vigil-Giron*, D-0101-CV-2001-02250 (1st Dist. Ct., filed February 6, 2002), which declared 22-3-37 to 22-3-54 NMSA 1978 unconstitutional. The section number was assigned by the compiler.

N.M. Const., art. XII, § 6, approved September 23, 2003, abolished the state board of education and created a public education commission. The former state board of

education members were continued in office until their terms expired. The state board of education districts were continued as the public education commission until changed by law. Section 9-24-9 NMSA 1978, effective May 19, 2004, provided that the members of the commission be elected from districts provided in the "decennial educational redistricting act".

Laws 2011 (1st S.S.), ch. 4 enacted the 2011 Educational Redistricting Act [22-3A-1 to 22-3A-16 NMSA 1978], effective December 23, 2011.



## ARTICLE 3A

### 2011 Educational Redistricting (Repealed.)

Sec.

22-3A-1. Repealed.  
 22-3A-2. Repealed.  
 22-3A-3. Repealed.  
 22-3A-4. Repealed.  
 22-3A-5. Repealed.  
 22-3A-6. Repealed.  
 22-3A-7. Repealed.  
 22-3A-8. Repealed.

Sec.

22-3A-9. Repealed.  
 22-3A-10. Repealed.  
 22-3A-11. Repealed.  
 22-3A-12. Repealed.  
 22-3A-13. Repealed.  
 22-3A-14. Repealed.  
 22-3A-15. Repealed.  
 22-3A-16. Repealed.

#### 22-3A-1. Repealed.

**Repeals.** — Laws 2021 (2nd S.S.), ch. 3, § 17 repealed 22-3A-1 NMSA 1978, as enacted by Laws 2011 (1st S.S.), ch. 4, § 1, relating to short title, effective March 17, 2022.

For provisions of former section, see the 2021 NMSA 1978 on *NMOneSource.com*.

#### 22-3A-2. Repealed.

**Repeals.** — Laws 2021 (2nd S.S.), ch. 3, § 17 repealed 22-3A-2 NMSA 1978, as enacted by Laws 2011 (1st S.S.), ch. 4, § 2, relating to commission members, effective

March 17, 2022. For provisions of former section, see the 2021 NMSA 1978 on *NMOneSource.com*.

#### 22-3A-3. Repealed.

**Repeals.** — Laws 2021 (2nd S.S.), ch. 3, § 17 repealed 22-3A-3 NMSA 1978, as enacted by Laws 2011 (1st S.S.), ch. 4, § 3, relating to election for staggered terms,

vacancies, effective March 17, 2022. For provisions of former section, see the 2021 NMSA 1978 on *NMOneSource.com*.

#### 22-3A-4. Repealed.

**Repeals.** — Laws 2021 (2nd S.S.), ch. 3, § 17 repealed 22-3A-4 NMSA 1978, as enacted by Laws 2011 (1st S.S.), ch. 4, § 4, relating to residence, effective March 17, 2022.

For provisions of former section, see the 2021 NMSA 1978 on *NMOneSource.com*.

#### 22-3A-5. Repealed.

**Repeals.** — Laws 2021 (2nd S.S.), ch. 3, § 17 repealed 22-3A-5 NMSA 1978, as enacted by Laws 2011 (1st S.S.), ch. 4, § 5, relating to precincts, effective March 17, 2022.

For provisions of former section, see the 2021 NMSA 1978 on *NMOneSource.com*.

#### 22-3A-6. Repealed.

**Repeals.** — Laws 2021 (2nd S.S.), ch. 3, § 17 repealed 22-3A-6 NMSA 1978, as enacted by Laws 2011 (1st S.S.), ch. 4, § 6, relating to public education commission district

one, effective March 17, 2022. For provisions of former section, see the 2021 NMSA 1978 on *NMOneSource.com*.

#### 22-3A-7. Repealed.

**Repeals.** — Laws 2021 (2nd S.S.), ch. 3, § 17 repealed 22-3A-7 NMSA 1978, as enacted by Laws 2011 (1st S.S.), ch. 4, § 7, relating to public education commission district

two, effective March 17, 2022. For provisions of former section, see the 2021 NMSA 1978 on *NMOneSource.com*.

**22-3A-8. Repealed.**

**Repeals.** — Laws 2021 (2nd S.S.), ch. 3, § 17 repealed 22-3A-8 NMSA 1978, as enacted by Laws 2011 (1st S.S.), ch. 4, § 8, relating to public education commission district

three, effective March 17, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

**22-3A-9. Repealed.**

**Repeals.** — Laws 2021 (2nd S.S.), ch. 3, § 17 repealed 22-3A-9 NMSA 1978, as enacted by Laws 2011 (1st S.S.), ch. 4, § 9, relating to public education commission district

four, effective March 17, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

**22-3A-10. Repealed.**

**Repeals.** — Laws 2021 (2nd S.S.), ch. 3, § 17 repealed 22-3A-10 NMSA 1978, as enacted by Laws 2011 (1st S.S.), ch. 4, § 10, relating to public education commission district

five, effective March 17, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

**22-3A-11. Repealed.**

**Repeals.** — Laws 2021 (2nd S.S.), ch. 3, § 17 repealed 22-3A-11 NMSA 1978, as enacted by Laws 2011 (1st S.S.), ch. 4, § 11, relating to public education commission district

six, effective March 17, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

**22-3A-12. Repealed.**

**Repeals.** — Laws 2021 (2nd S.S.), ch. 3, § 17 repealed 22-3A-12 NMSA 1978, as enacted by Laws 2011 (1st S.S.), ch. 4, § 12, relating to public education commission district

seven, effective March 17, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

**22-3A-13. Repealed.**

**Repeals.** — Laws 2021 (2nd S.S.), ch. 3, § 17 repealed 22-3A-13 NMSA 1978, as enacted by Laws 2011 (1st S.S.), ch. 4, § 13, relating to public education commission district

eight, effective March 17, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

**22-3A-14. Repealed.**

**Repeals.** — Laws 2021 (2nd S.S.), ch. 3, § 17 repealed 22-3A-14 NMSA 1978, as enacted by Laws 2011 (1st S.S.), ch. 4, § 14, relating to public education commission district

nine, effective March 17, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

**22-3A-15. Repealed.**

**Repeals.** — Laws 2021 (2nd S.S.), ch. 3, § 17 repealed 22-3A-15 NMSA 1978, as enacted by Laws 2011 (1st S.S.), ch. 4, § 15, relating to public education commission district

ten, effective March 17, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

**22-3A-16. Repealed.**

**Repeals.** — Laws 2021 (2nd S.S.), ch. 3, § 17 repealed 22-3A-16 NMSA 1978, as enacted by Laws 2011 (1st S.S.), ch. 4, § 16, relating to continuing terms, vacancies,

effective March 17, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.



## ARTICLE 3B

### 2021 Educational Redistricting Act

Sec.

22-3B-1. Short title.  
 22-3B-2. Commission members.  
 22-3B-3. Election for staggered terms.  
 22-3B-4. Residence.  
 22-3B-5. Precincts.  
 22-3B-6. Public education commission district one.  
 22-3B-7. Public education commission district two.  
 22-3B-8. Public education commission district three.

Sec.

22-3B-9. Public education commission district four.  
 22-3B-10. Public education commission district five.  
 22-3B-11. Public education commission district six.  
 22-3B-12. Public education commission district seven.  
 22-3B-13. Public education commission district eight.  
 22-3B-14. Public education commission district nine.  
 22-3B-15. Public education commission district ten.  
 22-3B-16. Continuing terms; vacancies.

#### 22-3B-1. Short title.

This act [22-23B-1 to 22-23B-16 NMSA 1978] may be cited as the "2021 Educational Redistricting Act".

**History:** Laws 2021 (2nd S.S.), ch. 3, § 1.

**Effective dates.** — Laws 2021 (2nd S.S.), ch. 3 contained no effective date provision, but, pursuant to N.M.

Const., art. IV, § 23, was effective March 17, 2022, 90 days after adjournment of the legislature.

#### 22-3B-2. Commission members.

The public education commission is composed of ten members to be elected from districts established by law.

**History:** Laws 2021 (2nd S.S.), ch. 3, § 2.

**Effective dates.** — Laws 2021 (2nd S.S.), ch. 3 contained no effective date provision, but, pursuant to N.M.

Const., art. IV, § 23, was effective March 17, 2022, 90 days after adjournment of the legislature.

#### 22-3B-3. Election for staggered terms.

A. Members of the public education commission shall be elected for staggered terms of four years.

B. Members shall be elected at the general election for terms commencing on January 1 next succeeding their election.

C. Members from districts two, three, five, six and seven shall be elected from the districts described in Sections 7, 8, 10, 11 and 12 of the 2021 Educational Redistricting Act at the 2022 and subsequent general elections.

D. Members from districts one, four, eight, nine and ten shall be elected from the districts described in Sections 6, 9, 13, 14 and 15 of the 2021 Educational Redistricting Act at the 2024 and subsequent general elections.

**History:** Laws 2021 (2nd S.S.), ch. 3, § 3.

**Effective dates.** — Laws 2021 (2nd S.S.), ch. 3 contained no effective date provision, but, pursuant to N.M.

Const., art. IV, § 23, was effective March 17, 2022, 90 days after adjournment of the legislature.

#### 22-3B-4. Residence.

A candidate for the office of public education commissioner shall reside in the district for which the candidate files a declaration of candidacy at the time of such filing. A public education commissioner shall reside in the district from which the commissioner was elected or appointed and shall be deemed to have resigned if the commissioner changes residence to a place outside the district. Vacancies shall be filled as provided in Section 16 of the 2021 Educational Redistricting Act.

**History:** Laws 2021 (2nd S.S.), ch. 3, § 4.

**Effective dates.** — Laws 2021 (2nd S.S.), ch. 3 contained no effective date provision, but, pursuant to N.M.

Const., art. IV, § 23, was effective March 17, 2022, 90 days after adjournment of the legislature.

## 22-3B-5. Precincts.

A. Precinct designations and boundaries used in the 2021 Educational Redistricting Act are those precinct designations and boundaries established pursuant to the Precinct Boundary Adjustment Act as revised and approved pursuant to that act by the secretary of state as of November 30, 2021.

B. A board of county commissioners shall not create any precinct that lies in more than one public education commission district and shall not divide any precinct so that the divided parts of the precinct are situated in two or more public education commission districts. Votes cast in a public education commission election from precincts created or divided in violation of this subsection shall be invalid and shall not be counted or canvassed.

**History:** Laws 2021 (2nd S.S.), ch. 3, § 5.

**Effective dates.** — Laws 2021 (2nd S.S.), ch. 3 contained no effective date provision, but, pursuant to N.M.

Const., art. IV, § 23, was effective March 17, 2022, 90 days after adjournment of the legislature.

## 22-3B-6. Public education commission district one.

Public education commission district one is composed of Bernalillo county precincts 20 through 30, 32 through 57, 59 through 67, 70 through 77, 80 through 83, 90, 91, 94, 95, 98, 100, 109 through 115, 117 through 120, 127, 128, 130, 134, 136 through 149, 156 through 160, 167 through 169, 178, 189, 190, 198, 199, 202 through 210, 227 through 231, 233, 234, 236, 237, 239, 240, 247, 249, 258, 260, 262 through 265, 267 through 269, 340, 363, 367, 394, 399, 599, 600, 604 through 607, 609, 611, 612, 614 through 622, 625, 626, 629, 631 through 633, 635 through 639, 647 through 650, 652 through 655 and 687.

**History:** Laws 2021 (2nd S.S.), ch. 3, § 6.

**Effective dates.** — Laws 2021 (2nd S.S.), ch. 3 contained no effective date provision, but, pursuant to N.M.

Const., art. IV, § 23, was effective March 17, 2022, 90 days after adjournment of the legislature.

## 22-3B-7. Public education commission district two.

Public education commission district two is composed of Bernalillo county precincts 289 through 302, 304 through 310, 316 through 325, 328 through 336, 339, 348 through 350, 360 through 362, 364 through 366, 368, 376, 380, 388 through 393, 395 through 398, 407, 413 through 419, 421 through 430, 447 through 454, 456 through 550, 560 through 569, 574, 583 through 590, 592 through 594, 598, 601 through 603, 608, 656 through 660, 662 through 665, 667 and 669 through 685.

**History:** Laws 2021 (2nd S.S.), ch. 3, § 7.

**Effective dates.** — Laws 2021 (2nd S.S.), ch. 3 contained no effective date provision, but, pursuant to N.M.

Const., art. IV, § 23, was effective March 17, 2022, 90 days after adjournment of the legislature.

## 22-3B-8. Public education commission district three.

Public education commission district three is composed of Bernalillo county precincts 2 through 19, 68, 69, 78, 79, 84 through 86, 89, 101 through 108, 116, 121 through 126, 131 through 133, 135, 150 through 155, 161 through 166, 171 through 175, 177, 179 through 188, 191 through 197, 200, 201, 211, 212, 214 through 216, 218 through 226, 232, 235, 238, 241 through 246, 248, 251 through 257, 259, 266, 271 through 287, 311 through 315, 326, 327, 337, 338, 341 through 347, 351 through 359, 369 through 375, 377 through 379, 381 through 387, 400 through 406, 408 through 412, 420,



431 through 446, 455, 581, 591, 610, 613, 623, 624, 627, 628, 634, 640, 642, 644 through 646, 651, 661, 666, 668 and 686.

**History:** Laws 2021 (2nd S.S.), ch. 3, § 8.

**Effective dates.** — Laws 2021 (2nd S.S.), ch. 3 contained no effective date provision, but, pursuant to N.M.

Const., art. IV, § 23, was effective March 17, 2022, 90 days after adjournment of the legislature.

## **22-3B-9. Public education commission district four.**

Public education commission district four is composed of Bernalillo county precincts 1, 87, 129, 170, 176, 217, 261, 303, 553 through 559, 570 through 573, 575 through 580, 595 through 597, 641 and 643; Los Alamos county; Sandoval county precincts 1 through 23 and 27 through 157; and Santa Fe county precincts 11, 12, 15 through 19, 63, 72, 73, 80, 82, 84, 85, 90, 92, 93, 114, 115, 125, 145, 146, 148, 152, 153, 155 through 157, 165 and 177.

**History:** Laws 2021 (2nd S.S.), ch. 3, § 9.

**Effective dates.** — Laws 2021 (2nd S.S.), ch. 3 contained no effective date provision, but, pursuant to N.M.

Const., art. IV, § 23, was effective March 17, 2022, 90 days after adjournment of the legislature.

## **22-3B-10. Public education commission district five.**

Public education commission district five is composed of Bernalillo county precinct 31; Cibola county precincts 2 through 6, 8 through 14 and 16 through 30; McKinley county; Sandoval county precincts 24 through 26; San Juan county precincts 1 through 59, 70, 71, 75, 77 through 83, 99 through 110, 120, 121 and 130 through 134; and Socorro county precinct 15.

**History:** Laws 2021 (2nd S.S.), ch. 3, § 10.

**Effective dates.** — Laws 2021 (2nd S.S.), ch. 3 contained no effective date provision, but, pursuant to N.M.

Const., art. IV, § 23, was effective March 17, 2022, 90 days after adjournment of the legislature.

## **22-3B-11. Public education commission district six.**

Public education commission district six is composed of Bernalillo county precincts 58, 88, 92, 93, 96, 97, 99, 213, 250, 270, 288, 551, 552, 582 and 630; Catron county; Cibola county precincts 1, 7 and 15; Dona Ana county precincts 1 through 4, 21, 60, 63, 64, 95, 100, 105, 107, 111, 115, 121, 123, 171, 172, 182 and 185; Grant county; Hidalgo county; Luna county; Sierra county; Socorro county precincts 1 through 14 and 16 through 27; Torrance county; and Valencia county.

**History:** Laws 2021 (2nd S.S.), ch. 3, § 11.

**Effective dates.** — Laws 2021 (2nd S.S.), ch. 3 contained no effective date provision, but, pursuant to N.M.

Const., art. IV, § 23, was effective March 17, 2022, 90 days after adjournment of the legislature.

## **22-3B-12. Public education commission district seven.**

Public education commission district seven is composed of Dona Ana county precincts 5 through 20, 22 through 59, 61, 62, 65 through 94, 96 through 99, 101 through 104, 106, 108 through 110, 112 through 114, 116 through 120, 122, 124 through 170, 173 through 181, 183, 184 and 186 through 190; and Otero county precincts 1, 41 through 46 and 66.

**History:** Laws 2021 (2nd S.S.), ch. 3, § 12.

**Effective dates.** — Laws 2021 (2nd S.S.), ch. 3 contained no effective date provision, but, pursuant to N.M.

Const., art. IV, § 23, was effective March 17, 2022, 90 days after adjournment of the legislature.

## **22-3B-13. Public education commission district eight.**

Public education commission district eight is composed of Chaves county precincts 1 through 18, 20 through 25, 31 through 36, 40 through 46, 51, 52, 61 through 64, 71 through 73, 81 through

85, 90 through 93 and 95; Colfax county; Curry county; De Baca county; Guadalupe county; Harding county; Lincoln county; Mora county; Quay county; Roosevelt county; San Miguel county; Taos county precincts 2 through 4, 7, 18, 21 and 26; and Union county.

**History:** Laws 2021 (2nd S.S.), ch. 3, § 13.

**Effective dates.** — Laws 2021 (2nd S.S.), ch. 3 contained no effective date provision, but, pursuant to N.M.

Const., art. IV, § 23, was effective March 17, 2022, 90 days after adjournment of the legislature.

## 22-3B-14. Public education commission district nine.

Public education commission district nine is composed of Chaves county precincts 47, 74, 94 and 101 through 106; Eddy county; Lea county; and Otero county precincts 2 through 40 and 47 through 65.

**History:** Laws 2021 (2nd S.S.), ch. 3, § 14.

**Effective dates.** — Laws 2021 (2nd S.S.), ch. 3 contained no effective date provision, but, pursuant to N.M.

Const., art. IV, § 23, was effective March 17, 2022, 90 days after adjournment of the legislature.

## 22-3B-15. Public education commission district ten.

Public education commission district ten is composed of Rio Arriba county; San Juan county precincts 60 through 69, 72 through 74, 76 and 90; Santa Fe county precincts 1 through 10, 13, 14, 20 through 62, 64 through 71, 74 through 79, 81, 83, 86 through 89, 91, 94 through 113, 116 through 124, 126 through 144, 147, 149 through 151, 154, 158 through 164, 166 through 176, 178 and 179; and Taos county precincts 1, 5, 6, 8 through 17, 19, 20, 22 through 25 and 27 through 47.

**History:** Laws 2021 (2nd S.S.), ch. 3, § 15.

**Effective dates.** — Laws 2021 (2nd S.S.), ch. 3 contained no effective date provision, but, pursuant to N.M.

Const., art. IV, § 23, was effective March 17, 2022, 90 days after adjournment of the legislature.

## 22-3B-16. Continuing terms; vacancies.

A. A public education commissioner who is serving on the public education commission as of the effective date of this section shall serve the remainder of the term for which the commissioner was elected or appointed.

B. The governor shall by appointment fill a vacancy on the public education commission. An appointment to fill a vacancy on the public education commission shall be for a term ending on December 31 after the next general election, at which election a person shall be elected to fill any remainder of the unexpired term.

C. Before the general election of 2022, an appointment to fill a vacancy on the public education commission shall be made from the district as it existed when the person creating the vacancy in office was elected or appointed.

D. After the general election of 2022, an appointment to fill a vacancy in district two, three, five, six or seven shall be made from the district as set out in Sections 7, 8, 10, 11 and 12 of the 2021 Educational Redistricting Act.

E. After the general election of 2022 and before the general election of 2024, an appointment to fill a vacancy in district one, four, eight, nine or ten shall be made from the district as it existed when the person creating the vacancy in office was elected or appointed. After the general election of 2024, an appointment to fill a vacancy in district one, four, eight, nine or ten shall be made from the district as set out in Sections 6, 9, 13, 14 and 15 of the 2021 Educational Redistricting Act.

**History:** Laws 2021 (2nd S.S.), ch. 3, § 16.

**Effective dates.** — Laws 2021 (2nd S.S.), ch. 3 contained no effective date provision, but, pursuant to N.M.

Const., art. IV, § 23, was effective March 17, 2022, 90 days after adjournment of the legislature.



## ARTICLE 4

### Creation, Consolidation and Annexation of School Districts

Sec.  
22-4-1. School districts.  
22-4-2. New school districts; creation.  
22-4-3. Consolidation; request; districts without junior or senior high schools; standards.  
22-4-4. Consolidation of district without junior or senior high schools; governing board.  
22-4-5. Alternate method of consolidation.  
22-4-6. Alternate method; survey; report; submission to the state board [department].  
22-4-7. Alternate method; survey committee.  
22-4-8. Alternate method; survey committee; compensation.  
22-4-9. Alternate method; standards for consolidation.

Sec.  
22-4-10. Order of state board [department].  
22-4-11. Publication of order; actions attacking order.  
22-4-12. Interim local school board; special election.  
22-4-13. Special school district election; term of office.  
22-4-14. Regular school district election; term of office.  
22-4-15. Consolidated school districts; outstanding contracts; indebtedness.  
22-4-16. Existing school districts validated.  
22-4-17. Annexation of area for school district purposes; resolutions; approval; filing.  
22-4-18. Validation of previous annexation.

#### 22-4-1. School districts.

A. Every public school in the state shall be located within the geographical boundaries of a school district.

B. A school district shall be created, exist or be consolidated only pursuant to the provisions of law.

C. The geographical boundaries of a school district shall not coincide or overlap the geographical boundaries of another school district except as may be provided by law.

**History:** 1953 Comp., § 77-3-1, enacted by Laws 1967, ch. 16, § 14.

#### 22-4-2. New school districts; creation.

A. The state board [department] may order the creation of a new school district:

(1) upon receipt of and according to a resolution requesting the creation of the new school district by the local school board of the existing school district;

(2) after review by the local school board and upon receipt of a petition bearing signatures verified by the county clerk of the affected area of sixty percent of the registered voters residing within the geographic area desiring creation of a new school district; or

(3) upon recommendation of the state superintendent [secretary] and upon a determination by the state board [department] that creation of a new district would meet the standards set forth in Subsection B of this section.

B. Within ninety days of receipt of the local school board resolution, receipt of the voters' petition or receipt of a recommendation by the state superintendent [secretary], the state board [department] shall conduct a public hearing to determine whether:

(1) the existing school district and the new school district to be created will each have a minimum membership of five hundred;

(2) a high school program is to be taught in the existing school district and in the new school district to be created unless an exception is granted to this requirement by the state board [department]; and

(3) creating the new school district is in the best interest of public education in the existing school district and in the new school district to be created and in the best interest of public education in the state.

**History:** 1953 Comp., § 77-3-2, enacted by Laws 1967, ch. 16, § 15; 1981, ch. 26, § 1; 1993, ch. 235, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed

references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**Cross references.** — For current powers and duties of the former state board of education, *see* 9-24-9 NMSA 1978.

For references to the former state board, *see* 9-24-15 NMSA 1978.

For contents and publication of order creating new school district, *see* 22-4-10 and 22-4-11 NMSA 1978.

For interim school board of newly created district, *see* 22-4-12 NMSA 1978.

For election of local school board for newly created district, *see* 22-4-13 and 22-4-14 NMSA 1978.

**The 1993 amendment**, effective June 18, 1993, added the subsection designation "A" at the beginning of the section; deleted "within an existing school district" at the end of the introductory paragraph of Subsection A; inserted the paragraph designations (1) and (2) and added Paragraph (3) in Subsection A; deleted "after a hearing to be held within ninety (90) days after filing of petition by the

state board to determine that" at the end of Paragraph (2) of Subsection A; added the introductory paragraph of current Subsection B; redesignated former Subsections A to C as Paragraphs (1) to (3) of Subsection B; and made minor stylistic changes in Subsection A.

#### ANNOTATIONS

**Secretary of education may create a new school district.** — Under N.M. Const. art. XII, § 6, as amended in 2003, the secretary of education has legal authority to order the creation of a new school district and to order a school district to convey by deed all right, title and interest in school-owned realty located in the proposed boundary of the new school district to the new school district. If the transferred property is encumbered, the school district that incurred the indebtedness remains liable on the debt. 2010 Op. Att'y Gen. No. 10-01.

### 22-4-3. Consolidation; request; districts without junior or senior high schools; standards.

A. The state board [department] may order consolidation of school districts upon receipt of and according to identical resolutions requesting consolidation from each local school board of each school district affected by the consolidation only if it determines that such consolidation:

- (1) will help to equalize the educational opportunities for public school students in each school district affected by the consolidation;
- (2) will make the most advantageous and economical use of public school facilities;
- (3) takes into consideration the convenience and welfare of the public school students in each school district affected by the consolidation; and
- (4) is in the best interest of public education in each school district affected by the consolidation and in the best interest of the public education in the state.

B. The state board [department] may also order consolidation of a school district which has not maintained either a junior or senior high school program for two consecutive years prior to consolidation with an adjacent district which has maintained such programs for the students of both districts upon receipt of and according to identical resolutions requesting consolidation from each local school board of each school district affected by the consolidation.

C. The state board [department] may bring an action in the district court for an order of consolidation of two or more school districts when:

- (1) all attempts to obtain an agreement between the local school boards to consolidate such school districts under Subsection A of this section have failed;
- (2) one or more schools within the school districts proposed to be consolidated have received a disapproval accreditation status from the state department of education [public education department]; and
- (3) after public hearing on such proposed consolidation, the state board makes findings of fact:
  - (a) that such consolidation will meet the criteria specified in Paragraphs (1) through (4) of Subsection A of this section; and
  - (b) that one or more schools within a school district proposed to be consolidated are deficient in their ability to provide the necessary educational opportunities for public school students in that district.

D. Notice of public hearing shall be given by the state board [department] at least thirty days prior to the hearing date by two consecutive publications one week apart in a newspaper of general circulation in the deficient school district proposed to be consolidated. The notice shall state:

- (1) the subject of the hearing;
- (2) the time and place of the hearing; and
- (3) the manner in which interested persons may present their views.

E. The public hearing shall be held in a suitable and convenient location within the deficient school district proposed to be consolidated. At the hearing, the state board [department] shall



allow all interested persons a reasonable opportunity to submit data, views or arguments, orally or in writing, and to examine witnesses testifying at the hearing.

F. Within ten days from the date the hearing is concluded the state board [department] shall make its determination in writing and if such determination includes an intention to bring an action for consolidation in the district court, such intention shall be included in the written determination. A copy of the written determination of the state board shall be sent to each of the school boards concerned.

G. Within sixty days from the date of the issuance of its written determination, the state board [department] may bring an action for a court order of consolidation in the district court of any judicial district in which the deficient school district is located. A copy of the petition for such action shall be served upon each of the local school boards affected by the consolidation. Such local school boards shall be parties to the action. The director shall authorize the necessary transfers and expenditures in the budgets of the concerned school districts to cover all necessary costs incurred by them in such action. Upon request of any of the parties to the action, a jury trial shall be allowed. The state board shall have the burden of establishing the existence of conditions required under Subsection C of this section and of proving that such consolidation will meet the criteria specified in Paragraphs (1) through (4) of Subsection A of this section. The court may deny the order for consolidation if it is found that:

(1) the conditions prescribed in Paragraphs (1) and (2) of Subsection C of this section do not exist;

(2) such proposed consolidation will not meet the criteria specified in Paragraphs (1) through (4) of Subsection A of this section; or

(3) that the alleged deficiency in the school district's ability to provide the necessary educational opportunities for public school students in such district does not exist.

H. In the event the court denies the order for consolidation, the state board [department] shall not again initiate such action for consolidation affecting the same or substantially the same school districts for one year after the date of the denial of such order.

I. In the event the court orders the consolidation, such consolidation shall not become effective until the end of the current school term.

J. Any final order of the district court is reviewable by the court of appeals in the same manner as provided under the rules of civil procedure.

**History:** 1953 Comp., § 77-3-3, enacted by Laws 1967, ch. 16, § 16; 1970, ch. 4, § 1; 1973, ch. 106, § 1; 1977, ch. 246, § 61.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Cross references.** — For alternate method of consolidation, *see* 22-4-5 to 22-4-9 NMSA 1978.

For contents and publication of order consolidating school districts, *see* 22-4-10 and 22-4-11 NMSA 1978.

For interim school board of newly consolidated district, *see* 22-4-12 NMSA 1978.

For election of local school board for newly created district, *see* 22-4-13 and 22-4-14 NMSA 1978.

#### ANNOTATIONS

**Constitutionality of Subsection B.** — Subsection B has applicability to any and all school districts which come within the classification created by the statute. The bases, or reasons, for the classification of school districts affected by the provisions of this statute, as opposed to those school districts not affected thereby, are substantial, and the classification is clearly reasonable within the applicable rules of construction and interpretation. *State ex rel. Apodaca v. N.M. State Bd. of Educ.*, 1971-NMSC-058, 82 N.M. 558, 484 P.2d 1268.

Where school consolidation was ordered pursuant to Subsection B, the provisions of Section 22-4-4 NMSA 1978 were controlling as to the board which should govern the consolidated district, and the provisions of Sections 22-4-10 to 22-4-14 NMSA 1978 were inapplicable. *State ex rel. Apodaca v. N.M. State Bd. of Educ.*, 1971-NMSC-058, 82 N.M. 558, 484 P.2d 1268.

### 22-4-4. [Consolidation of district without junior or senior high schools; governing board.]

Where consolidation is ordered under Subsection B hereof [22-4-3B NMSA 1978], the governing board of the district maintaining the junior and senior high school programs shall become the governing board of the consolidated district, the board of the district consolidated shall be dissolved, and the provisions of Sections 22-4-10 through 22-4-14 NMSA 1978 relating to appointment of an interim board and the holding of special elections shall not be applicable.

**History:** 1953 Comp., § 77-3-3.1, enacted by Laws 1970, ch. 4, § 2.

#### ANNOTATIONS

Where school consolidation was ordered pursuant to Subsection B of Section 22-4-3 NMSA 1978,

the provisions of this section were controlling as to the board which should govern the consolidated district, and the provisions of Sections 22-4-10 to 22-4-14 NMSA 1978 were inapplicable. *State ex rel. Apodaca v. N.M. State Bd. of Educ.*, 1971-NMSC-058, 82 N.M. 558, 484 P.2d 1268.

### 22-4-5. Alternate method of consolidation.

Sections 22-4-6 through 22-4-9 NMSA 1978 shall be an alternative method of consolidation to that provided in Section 22-4-3 NMSA 1978.

**History:** 1953 Comp., § 77-3-4, enacted by Laws 1967, ch. 16, § 17.

### 22-4-6. Alternate method; survey; report; submission to the state board [department].

A. Upon receipt of a request from a local school board, the state board [department] shall cause a school district survey to be made to study the feasibility of a consolidation.

B. A school district survey shall be made by a school district survey committee. The school district survey committee shall submit a written report on a school district survey, along with any recommendations made by the committee, to each local school board of each school district affected by the survey. The report shall be accompanied by all maps, records and material supporting the recommendations.

C. Any local school board of a school district affected by the survey may suggest alterations to the report and the recommendations. If these alterations are approved by each local school board of each school district affected by the survey and the school district survey committee, the alterations shall become part of the final report and recommendations of the school district survey committee. If local school boards of all school districts affected by the survey approve the final report and recommendations of the school district survey committee, the final report and recommendations shall be submitted to the state board [department].

**History:** 1953 Comp., § 77-3-5, enacted by Laws 1967, ch. 16, § 18.

**Cross references.** — For references to the former state board, *see* 9-24-15 NMSA 1978.

### 22-4-7. Alternate method; survey committee.

To make a school district survey to determine the feasibility of a consolidation, the school district survey committee shall consist of the following members:

A. one person designated by the state transportation director from the state transportation division;

B. one person appointed by the state board [department] for each school district affected by the survey. Each person appointed by the state board shall reside outside of every school district affected by the school district survey; and

C. one person appointed by each local school board of a school district affected by the school district survey.

**History:** 1953 Comp., § 77-3-6, enacted by Laws 1967, ch. 16, § 19.

**Cross references.** — For references to the former state board, *see* 9-24-15 NMSA 1978.

### 22-4-8. Alternate method; survey committee; compensation.

Members of a school district survey committee shall serve without compensation but shall be entitled to reimbursement of expenses incurred in the performance of committee duties out of funds of the department of education [public education department].



**History:** 1953 Comp., § 77-3-7, enacted by Laws 1967, ch. 16, § 20.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed

references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

## 22-4-9. Alternate method; standards for consolidation.

The state board [department] may order consolidation according to the recommendations contained in a final report and recommendations of the school district survey committee approved by each local school board of each school district affected by the survey only if it determines that such consolidation:

- A. will help to equalize the educational opportunities for public school students in each school district affected by the consolidation;
- B. will make the most advantageous and economical use of public school facilities;
- C. takes into consideration the convenience and welfare of the public school students in each school district affected by the survey; and
- D. is in the best interest of public education in each school district affected by the consolidation and in the best interest of public education in the state.

**History:** 1953 Comp., § 77-3-8, enacted by Laws 1967, ch. 16, § 21.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**Cross references.** For standards for consolidation generally, see 22-4-3 NMSA 1978.

For contents and publication of order consolidating school districts, see 22-4-10 and 22-4-11 NMSA 1978.

## ANNOTATIONS

**Applicability of section to consolidation under Subsection B of Section 22-4-3 NMSA 1978.** — Where school consolidation was ordered pursuant to Subsection B of Section 22-4-3 NMSA 1978, the provisions of Section 22-4-4 NMSA 1978 were controlling as to the board which should govern the consolidated district, and the provisions of this section and Sections 22-4-10 to 22-4-14 NMSA 1978 were inapplicable. *State ex rel. Apodaca v. N.M. State Bd. of Educ.*, 1971-NMSC-058, 82 N.M. 558, 484 P.2d 1268.

## 22-4-10. Order of state board [department].

A. Any order of the state board [department] for creation of a new school district or for consolidation shall contain the following:

- (1) an accurate description of the geographical boundaries of all school districts affected by the order;
- (2) the disposition of all property affected by the order;
- (3) the dissolution of the elected local school board of each school district affected by the order of consolidation; and
- (4) the appointment of three qualified electors of the state who are residents of the new school district created by the order or the consolidated school district to be members of an interim local school board to govern the new or consolidated school district.

B. A certified copy of the order of the state board [department] shall be kept on permanent file with the department of education [public education department].

C. One certified copy of the order of the state board [department] shall be furnished to each local school board affected by the order, to each county assessor of a county having a school district within it affected by the order, to the chief [secretary of public education], to the state tax commission [property tax division of the taxation and revenue department], to the oil and gas accounting commission [audit and compliance division of the taxation and revenue department] and to each member appointed to the interim local school board.

D. Any creation of a new school district or consolidation ordered by the state board [department] shall take effect upon the issuance of the order. However, for taxation purposes, creation of a new school district or consolidation shall be effective on January 1 following the date of the issuance of the order by the state board [department].

**History:** 1953 Comp., § 77-3-9, enacted by Laws 1967, ch. 16, § 22.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The provisions relating to the state tax commission, referred to in this section, were repealed by Laws 1970, ch. 31, § 22. Laws 1970, ch. 31, created the property appraisal department. The provisions of Laws 1970, ch. 31, relating to the property appraisal department, were repealed by Laws 1973, ch. 258, § 156. Laws 1973, ch. 258, created the property tax department. The property tax department and the oil and gas accounting commission were abolished by Laws 1977, ch. 249, § 5. Laws 1977, ch. 249, § 4, established the taxation and revenue department, which now consists of, inter alia, the revenue division, the property tax division and the audit and compliance division.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed

references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Cross references.** — For references to the former state board, *see* 9-24-15 NMSA 1978.

The public school finance division of the department of finance and administration was abolished by Laws 1977, ch. 246, § 69. Laws 1977, ch. 246, § 3, established the public school finance division of the educational finance and cultural affairs department. Laws 1977, ch. 246, § 63, compiled as 22-8-3 NMSA 1978, designated the administrative and executive head of the public school finance division of the educational finance and cultural affairs department as the director of public school finance.

*See* the Public Education Department Act, 9-24-1 NMSA 1978 and N.M. Const. art. XII, § 6 for current law governing the former powers of the chief of the public school finance division.

## 22-4-11. [Publication of order; actions attacking order.]

After adoption of an order of the state board [department] for creation of a new school district or for consolidation of school districts, the state superintendent [secretary] of public instruction shall forthwith cause a copy of such order to be published in a newspaper of general circulation in each county within which any part of the new or consolidated school district may be located.

Actions to attack the validity of any such order shall be filed within thirty days from the date of such publication, but not afterwards. Such actions shall be filed in Santa Fe county district court and the state board of education [department] shall be an indispensable party thereto.

**History:** 1953 Comp., § 77-3-9.1, enacted by Laws 1970, ch. 4, § 3.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed

references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## 22-4-12. Interim local school board; special election.

A. The interim local school board of a newly created or consolidated school district has all the powers and duties of a local school board. The interim local school board shall hold office only until the local school board is elected and qualified.

B. For the purpose of electing five members to the local school board of a newly created or consolidated school district, the interim local school board shall call a special school district election to be held not less than forty-five days nor more than ninety days from the date of the issuance of the order of the state board [department] appointing members to the interim local school board. If the date for a regular school district election occurs during this period, the interim local school board shall give notice of the regular school district election for the purpose of electing five members to the local school board of the newly created or consolidated school district instead of calling a special school district election.

C. The interim local school board shall appoint a superintendent of schools to perform the administrative and supervisory functions of the interim local school board and to also conduct the school district election. The term of office of the superintendent of schools appointed by the interim local school board shall coincide with the term of office of the interim local school board.

**History:** 1953 Comp., § 77-3-10, enacted by Laws 1967, ch. 16, § 23.

## 22-4-13. Special school district election; term of office.

The term of office of members of a local school board elected at a special school district election for a newly created or consolidated school district shall be as follows:



A. three members shall be elected for terms expiring at the next regular school district election; and

B. two members shall be elected for terms expiring two years after the next regular school district election.

**History:** 1953 Comp., § 77-3-11, enacted by Laws 1967, ch. 16, § 24; 1985, ch. 142, § 1.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Applicability and application of § 2 of Voting Rights Act of 1965 (42 USCS § 1973) to members of school board, 105 A.L.R. Fed. 254.

### 22-4-14. Regular school district election; term of office.

If the interim local school board calls for the election of members to the local school board of a newly created or consolidated school district at a regular school district election, the terms of office of the members elected shall be as follows:

A. three members shall be elected for terms of two years; and

B. two members shall be elected for terms of four years.

**History:** 1953 Comp., § 77-3-12, enacted by Laws 1967, ch. 16, § 25; 1985, ch. 142, § 2.

### 22-4-15. Consolidated school districts; outstanding contracts; indebtedness.

A. All contracts entered into by a local school board of a school district prior to consolidation shall be honored by the consolidated school district. The acquiring of tenure rights and tenure rights that have been obtained shall not be affected by consolidation.

B. Any outstanding school district bonds or other indebtedness of a school district shall not be affected by consolidation. Whenever a school district included within a consolidation has outstanding school district bonds or certificates of indebtedness, the school district shall retain its identity for the purpose of paying any debt service until the bonds or certificates are paid in full. No school district included within a consolidation shall become responsible for the debt service of any other school district included within the consolidation.

**History:** 1953 Comp., § 77-3-13, enacted by Laws 1967, ch. 16, § 26.

### 22-4-16. [Existing school districts validated.]

That the organization, existence or consolidation of all school districts heretofore ordered by the state board [department] of education of the state of New Mexico are hereby validated and their existence as ordered by the state board of education is hereby validated and confirmed, provided that the passage of this act [22-4-16 NMSA 1978] shall not affect any consolidations upon which an action is pending contesting such consolidation at the time this act becomes effective.

**History:** 1953 Comp., § 73-15-9, enacted by Laws 1955, ch. 76, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed

references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

### 22-4-17. Annexation of area for school district purposes; resolutions; approval; filing.

A. Whenever it becomes economically feasible for students residing in one school district to attend school in another school district, whether or not that school district is within the same county

as the school district of residence, the local school boards of the school districts may provide for annexation of the appropriate area by resolution of each of the local school boards concerned. The resolutions shall be submitted to the state board [department] of education for its approval.

B. Prior to adopting such resolution, the local school board proposing to annex the area within another school district shall furnish an accurate legal description of the area to be annexed and the net taxable value of the property within the area to the chief, public school finance division [secretary of public education]. The chief [secretary] shall furnish to each local school board concerned a statement of the financial implication of the annexation.

C. After resolutions are adopted by each of the local school boards concerned and approved by the state board [department] of education, copies of the resolutions shall be filed with:

- (1) the county commission of the county where the principal office of each local school board is located and the county commissions of those other counties in which area is affected;
- (2) the county assessor of the county where the principal office of each local school board is located and the county assessors of those other counties in which area is affected;
- (3) state board of education; and
- (4) department of finance and administration,

**History:** 1953 Comp., § 77-3-2.1, enacted by Laws 1977, ch. 213, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Cross references.** — The public school finance division of the department of finance and administration

was abolished by Laws 1977, ch. 246, § 69. Laws 1977, ch. 246, § 3, established the public school finance division of the educational finance and cultural affairs department. Laws 1977, ch. 246, § 63, compiled as 22-8-3 NMSA 1978, designated the administrative and executive head of the public school finance division of the educational finance and cultural affairs department as the director of public school finance.

*See* the Public Education Department Act, 9-24-1 NMSA 1978 and N.M. Const. art. XII, § 6 for current law governing the former powers of the chief of the public school finance division.

## 22-4-18. Validation of previous annexation.

Every member of a local school board of a local school district which has been a party to an annexation similar to that authorized in Section 1 [22-4-17 NMSA 1978] of this act but occurring prior to the effective date of this act is determined to have been a legally authorized governing authority and such annexation is validated as of the date of the resolution adopting such action.

**History:** 1953 Comp., § 77-3-2.2, enacted by Laws 1977, ch. 213, § 2.

## ARTICLE 4A

### Advisory Referenda

Sec.

22-4A-1. Repealed.

22-4A-2. Repealed.

Sec.

22-4A-3. Repealed.

### 22-4A-1. Repealed.

**Repeals.** — Laws 2019, ch. 212, § 284 repealed 22-4A-1 NMSA 1978, as enacted by Laws 1987, ch. 191, § 1, relating to short title, effective April 3, 2019. For provisions

of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

### 22-4A-2. Repealed.

**Repeals.** — Laws 2019, ch. 212, § 284 repealed 22-4A-2 NMSA 1978, as enacted by Laws 1987, ch. 191, § 2, relating to purpose, effective April 3, 2019. For provisions

of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.



## 22-4A-3. Repealed.

**Repeals.** — Laws 2019, ch. 212, § 284 repealed 22-4A-3 NMSA 1978, as enacted by Laws 1987, ch. 191, § 3, relating to advisory referendum authorized, effect of referendum,

effective April 3, 2019. For provisions of former section, see the 2018 NMSA 1978 on *NMOneSource.com*.

## ARTICLE 5

### Local School Boards

Sec.

22-5-1. Local school boards; members.

22-5-1.1. Local school board members; elected from districts.

22-5-2. Repealed.

22-5-3. School board membership; optional form.

22-5-3.1. Local school boards; reversion to five members.

22-5-4. Local school boards; powers; duties.

22-5-4.1. Repealed.

22-5-4.2. Child abuse; report coordination; confirmation.

22-5-4.3. School discipline policies; racial sensitivity and anti-racism training; hotline for reporting racially charged incidents and racialized aggression involving students or school personnel; students may self-administer certain medications.

22-5-4.4. School employees; reporting drug and alcohol use; release from liability.

22-5-4.5. Pledge of allegiance.

22-5-4.6. Recompiled.

22-5-4.7. Additional student discipline policies; weapon-free schools.

22-5-4.8. Area vocational high schools.

22-5-4.9. High school diplomas; World War II veterans.

22-5-4.10. High school diplomas; Korean conflict veterans.

22-5-4.11. Psychotropic medication; prohibition on compulsion.

Sec.

22-5-4.12. Use of restraint and seclusion; techniques; requirements.

22-5-4.13. Local school board; consideration of opening or closing a public school on tribal land; consultation with tribal leaders and members and families of students.

22-5-4.14. High school diplomas; Vietnam conflict veterans.

22-5-5. Compensation; prohibited employment.

22-5-6. Nepotism prohibited.

22-5-7. Officers; surety bonds.

22-5-8. Term of office.

22-5-8.1. Repealed.

22-5-9. Local school board vacancies.

22-5-9.1. Oath of office.

22-5-10. Publications; advertisements.

22-5-11. School district salary system.

22-5-12. Local school boards; vacant or vacated offices.

22-5-13. Local school board training.

22-5-14. Local superintendent; powers and duties.

22-5-15. Collaborative school improvement programs.

22-5-16. Advisory school councils; creation; duties.

22-5-17. Private use of school facilities; policy; insurance.

22-5-18. Local school board authority over who may carry a firearm on school premises.

## 22-5-1. Local school boards; members.

A local school board shall be composed of five qualified electors of the state residing within the school district.

**History:** 1953 Comp., § 77-4-1, enacted by Laws 1967, ch. 16, § 27.

**Cross references.** — For recall of local school board members, see 1-25-1 NMSA 1978 et seq.

For constitutional provision as to residence of public officers, see N.M. Const., art. V, § 13.

For school district elections, see 1-22-1 NMSA 1978 et seq.

## 22-5-1.1. Local school board members; elected from districts.

Members of local school boards in districts having a population in excess of sixteen thousand shall reside in and be elected from single-member districts. Once, following every federal decennial census, the local school board shall divide the school district into a number of election districts equal in number to the number of members on the school board. Such election districts shall be contiguous and compact and as equal in population as is practicable; provided that the local school board of any district having a population of sixteen thousand or less may provide for single-member districts as provided in this section.

**History:** 1978 Comp., § 22-5-1.1, enacted by Laws 1985, ch. 202, § 1; 1993, ch. 226, § 10.

**The 1993 amendment,** effective July 1, 1993, deleted "Notwithstanding any other provision of the Public School Code" at the beginning of the first sentence.

## 22-5-2. Repealed.

**Repeals.** — Laws 1993, ch. 226, § 54 repealed 22-5-2 NMSA 1978, as enacted by Laws 1969, ch. 103, § 1, containing the purpose of the act, effective July 1, 1993. For

provisions of former section, see the 1992 NMSA 1978 on *NMOneSource.com*.

## 22-5-3. School board membership; optional form.

A. The local school board of any school district in this state may by resolution provide for the local board of that district to be composed of seven qualified electors of the state who reside within the district. The resolution shall provide that the board consist of seven separate positions, and each such position shall be designated by number. Qualified electors seeking election to the school board shall file and run for only one of the numbered positions.

B. If the resolution provided for in this section is adopted, it shall go into effect within thirty days after its adoption unless a petition signed by the qualified electors of the school district in a number equal to twenty percent of all the voters in the district voting at the last regular school board election is presented to the local board within such thirty days asking that an election be held on the question of increasing the membership of the local board to seven members.

C. Upon receipt and verification of the petition, the local school board shall within thirty days call a special school election to vote upon the question of increasing the membership of the local school board in that district to seven members.

D. If the voters of the school district approve the increase in the local school board's membership to seven members, the resolution shall be in effect.

E. A resolution adopted pursuant to Subsection A of this section shall conform to the requirements of Section 1-22-5 NMSA 1978 and shall provide for the election of two additional school board members at the next regular school district election. One new member shall be elected to serve until the first regular school board election following the member's election. The second new member shall be elected to serve until the second regular school board election following the member's election. Thereafter, persons elected to fill the additional new positions on the board shall be elected for terms as provided by law.

**History:** 1953 Comp., § 77-4-1.3, enacted by Laws 1969, ch. 103, § 2; 1981, ch. 316, § 1; 1993, ch. 226, § 11; 2015, ch. 145, § 95.

**Cross references.** — For school district elections generally, see 1-22-1 NMSA 1978 et seq.

**The 2015 amendment**, effective July 1, 2015, amended the required contents of a resolution providing for an election of school board members; in Subsection E, after "additional school board members at", deleted "a special" and added "the next regular", after the first occurrence of "serve until the", deleted "second" and added "first", after "election following the", deleted "special school district"

and added "member's" after the second occurrence of "serve until the", deleted "third" and added "second", and after "board election following", deleted "such special school district" and added "the member's".

**The 1993 amendment**, effective July 1, 1993, substituted "Section 1-22-5" for "Section 22-6-3" in the first sentence of Subsection E.

### ANNOTATIONS

**Provisions of former Subsection B (now Subsection E) are constitutional and valid.** 1971 Op. Att'y Gen. No. 71-29.

### 22-5-3.1. Local school boards; reversion to five members.

A. Any seven-member local school board of a school district in the state may by resolution provide for the local school board of that school district to be composed of five qualified electors of the state who reside within the school district.

B. If the resolution specified in Subsection A of this section is adopted, the existing local school board at the first election at which the terms of three members expire shall by lot:

(1) eliminate two positions if the next succeeding election is one at which the terms of two members expire;

(2) eliminate two positions if the next succeeding election is one at which the term of one member expires, and at the next election at which the terms of three members expire designate one position for a two-year term; provided that thereafter all terms shall be four-year terms; or

(3) eliminate two positions if the next succeeding election is one at which the terms of three members expire, and at the succeeding election designate one position for a two-year term; provided that thereafter all terms shall be four-year terms.



C. Any resolution adopted pursuant to the provisions of this section shall be effective thirty days after its adoption unless a petition signed by the qualified electors of the school district in a number equal to at least twenty percent of all voters in the school district voting at the last regular school board election is presented to the local school board on or before the thirtieth day asking that an election be held on the question of decreasing the membership of the local school board to five members.

D. Upon receipt and verification of the petition, the local school board shall within thirty days call a special election to vote upon the question of decreasing the membership of the local school board in that school district to five members.

E. If the voters of the school district approve the decrease in the local school board's membership to five members, the resolution shall be in effect, and the elimination of two members at subsequent elections as provided in Subsection B of this section shall be valid.

**History:** 1978 Comp., § 22-5-3.1, enacted by Laws 1981, ch. 902, § 1; 2015, ch. 145, § 96.

The 2015 amendment, effective July 1, 2015, amended terms for certain school board positions; in Subsection A, after "local", added "school", after "board of that", added "school", and after "reside within the", added "school"; in Paragraph (2) of Subsection B, after "all terms shall be",

deleted "six-year" and added "four-year"; in Paragraph (3) of Subsection B, after "all terms shall be", deleted "six-year" and added "four-year"; in Subsection C, after "all voters in the", added "school", and after "membership in the local", added "school"; and in Subsection D, after "call a special", deleted "school", and after "school board in that", added "school".

## 22-5-4. Local school boards; powers; duties.

A local school board shall have the following powers or duties:

- A. subject to the rules of the department, develop educational policies for the school district;
- B. employ a local superintendent for the school district and fix the superintendent's salary;
- C. review and approve the annual school district budget;
- D. acquire, lease and dispose of property;
- E. have the capacity to sue and be sued;
- F. acquire property by eminent domain pursuant to the procedures provided in the Eminent Domain Code [42A-1-1 through 42A-1-33 NMSA 1978];
- G. issue general obligation bonds of the school district;
- H. provide for the repair of and maintain all property belonging to the school district;
- I. for good cause and upon order of the district court, subpoena witnesses and documents in connection with a hearing concerning any powers or duties of the local school board;
- J. except for expenditures for salaries, contract for the expenditure of money according to the provisions of the Procurement Code [13-1-28 through 13-1-199 NMSA 1978];
- K. adopt rules pertaining to the administration of all powers or duties of the local school board;
- L. accept or reject any charitable gift, grant, devise or bequest. The particular gift, grant, devise or bequest accepted shall be considered an asset of the school district or the public school to which it is given;
- M. offer and, upon compliance with the conditions of such offer, pay rewards for information leading to the arrest and conviction or other appropriate disciplinary disposition by the courts or juvenile authorities of offenders in case of theft, defacement or destruction of school district property. All such rewards shall be paid from school district funds in accordance with rules promulgated by the department; and
- N. give prior approval for any educational program in a public school in the school district that is to be conducted, sponsored, carried on or caused to be carried on by a private organization or agency.

**History:** 1953 Comp., § 77-4-2, enacted by Laws 1967, ch. 16, § 28; 1973, ch. 3, § 1; 1979, ch. 385, § 3; 1981, ch. 116, § 1; 1981, ch. 125, § 48; 1990, ch. 52, § 2; 1992, ch. 77, § 2; 1993, ch. 226, § 12; 2003, ch. 153, § 21; 2004, ch. 27, § 20; 2005, ch. 315, § 3.

**Cross references.** — For requirement of reports as to membership in schools, see 22-8-13 NMSA 1978.

For reemployment or termination of certified school instructors, see 22-10A-22 NMSA 1978 et seq.

For request for operation under variable school calendar, see 22-22-4 NMSA 1978.

For preparation and review of bilingual instruction programs, see 22-23-5 NMSA 1978.

For lease of state lands, see 19-7-55 NMSA 1978.



**The 2005 amendment**, effective April 7, 2005, provides in Subsection C that the local school board shall review and approve the annual school district budget.

**The 2004 amendment**, effective May 19, 2004, changed "state board" to "department" in Subsections A and M and added Subsection N.

**The 2003 amendment**, effective April 4, 2003, rewrote Subsection A to the extent that a detailed comparison is impracticable; in Subsection B, inserted "local" following "employ a" near the beginning and deleted "of schools" following "superintendent" near the beginning; deleted former Subsections C, D, E, F, and G; inserted present Subsection C and redesignated the subsequent paragraphs accordingly; inserted "provide for the" at the beginning of present Subsection H; substituted "rules" for "regulations" near the beginning of present Subsection K; and in present Subsection M substituted "rules" for "regulations that shall be" following "in accordance with" near the end and substituted "state board" for "department of education" at the end.

**The 1993 amendment**, effective July 1, 1993, added the proviso at the end of the first sentence of Subsection D.

**The 1992 amendment**, effective May 20, 1992, inserted "or the purchase of instructional materials" in Subsection E; substituted "department of education" for "director" in the second sentence of Subsection Q; and made minor stylistic changes throughout the section.

**The 1990 amendment**, effective May 16, 1990, added present Subsection E, redesignated former Subsections E to P as present Subsections F to Q, substituted "Procurement Code" for "Public Purchasers Act" at the end of present Subsection N, and, in present Subsection Q, deleted "local" preceding "school district property" at the end of the first sentence and "of the public school finance division" at the end of the second sentence.

#### ANNOTATIONS

**Violation of Open Meetings Act.** — Charges of multiple intentional violations of the Open Meetings Act, which permitted policy decisions concerning the respective roles of the superintendent and the school board without public participation, were a form of misconduct for which recall was provided. *Doña Ana Cnty. Clerk v. Martinez*, 2005-NMSC-037, 138 N.M. 575, 124 P.3d 210.

**Teaching positions.** — A local school board may add or abolish teaching positions in performing its fiscal responsibilities. *Aguilera v. Hatch Valley Pub. Schs. Bd. of Educ.*, 2005-NMCA-069, 137 N.M. 642, 114 P.3d 322, cert. granted, 2005-NMCERT-006, 137 N.M. 767, 115 P.3d 230.

**Section makes local board's supervision and control of public school in district "subject to the regulations of state board."** *Morgan v. N.M. State Bd. of Educ.*, 1971-NMCA-102, 83 N.M. 106, 488 P.2d 1210, cert. denied, 83 N.M. 105, 488 P.2d 1209.

**No Eleventh Amendment immunity.** — School districts and their governing boards in New Mexico are not arms of the state entitled to Eleventh Amendment immunity. *Duke v. Grady Mun. Schs.*, 127 F.3d 972 (10th Cir. 1997).

**Legislative intent.** — The New Mexico legislature intended school districts or boards to be political subdivisions or local public bodies, not arms of the state. *Duke v. Grady Mun. Schs.*, 127 F.3d 972 (10th Cir. 1997).

**Liability of state.** — State of New Mexico is not legally liable for judgment against a school district. *Duke v. Grady Mun. Schs.*, 127 F.3d 972 (10th Cir. 1997).

**Authority of local board over personnel.** — A local board is the only entity with power to terminate employees; the purpose of former Subsection D is to require input of a superintendent before a personnel decision is made, and not to render a board powerless to act except in accordance with the recommendation of its superintendent.

*Daddow v. Carlsbad Mun. Sch. Dist.*, 1995-NMSC-032, 120 N.M. 97, 898 P.2d 1235 (decided under prior law).

**Procurement Code exemptions applicable to school boards.** — The provision of Subsection N (now Subsection J) requires school boards to contract according to all but two sections of the entire Procurement Code; this means that all bidding requirements of the Code, including the exemptions in Section 13-1-98 NMSA 1978, apply to school district contracts. *Morningstar Water Users Ass'n v. Farmington Mun. Sch. Dist. No. 5*, 1995-NMSC-052, 120 N.M. 307, 901 P.2d 725.

**Ultra vires acts by school boards.** — Any attempt by a local school board to enter into a contract or formulate a policy that violates the specific statutory provisions governing school boards is ultra vires and void. Thus, any attempt by a school board to enter into a contract or promulgate a termination policy through manuals which give an employee rights in conflict with the School Personnel Act is ultra vires and void. *Swinney v. Deming Bd. of Educ.*, 1994-NMSC-039, 117 N.M. 492, 873 P.2d 238.

**The local school board, as the policy maker of the public employer, is the proper party to engage in collective bargaining negotiations and to review employee grievances.** — Where the central consolidated school district refused to review grievances appealed to the school board pursuant to a negotiated grievance procedure contained in a collective bargaining agreement (CBA) with the teachers' union, and where the school board asserted that changes made to the Public School Code in 2003 divested school boards of all authority to act on any personnel matters and vested exclusive authority to act on all personnel matters in the local school superintendent, the district court did not err in affirming the order of the public employee labor relations board that the school board is required to hear and decide appeals from decisions of the school superintendent under grievance procedures set forth in the CBA, because the school board, as the policy maker who negotiated and agreed to the CBA is the appropriate entity to determine whether its own policy, or specific provision in the CBA, has been violated, misinterpreted, or misapplied. *Alarcon v. Albuquerque Pub. Schs. Bd. of Educ.*, 2018-NMCA-021, cert. denied.

**School board's supervision and discharge of superintendent.** — Inherent in the power given to the school board to employ a superintendent is the ability for the board to supervise and discharge a superintendent. *Stanley v. Raton Bd. of Educ.*, 1994-NMSC-059, 117 N.M. 717, 876 P.2d 232.

**Employment of administrators.** — The school board effectively terminated the plaintiffs' employment as school administrators by declaring the jobs vacant, and therefore met the obligations under this section. The plaintiffs could reasonably infer from the board's actions that they were not reemployed for the next year. *Naranjo v. Board of Educ.*, 1995-NMSC-015, 119 N.M. 401, 891 P.2d 542.

**School districts and their governing boards in New Mexico** are not arms of the state, and they are accordingly not shielded by the Eleventh Amendment from liability for a 42 U.S.C. § 1983 action in federal court. *Duke v. Grady Mun. Schs.*, 127 F.3d 972 (10th Cir. 1997).

**Liability of local board under federal civil rights law.** — In an action brought by a school employee against a school district local school board under 42 U.S.C. § 1983, the board was a "person" for purposes of the suit, and the action under such law was not barred by any statutory governmental immunity. *Daddow v. Carlsbad Mun. Sch. Dist.*, 1995-NMSC-032, 120 N.M. 97, 898 P.2d 1235.

**No power to create police department.** — A local school board does not have the authority to create and fund an independent police department without specific legislative authority. 2007 Op. Att'y Gen. No. 07-07.



**Use of public funds to defend actions involving misconduct.** — Public funding may be used to defend public school districts, boards and employees in legal actions involving misconduct if the charges arise from the discharge of an official duty in which the government has an interest; the public employee was acting in good faith when the alleged wrongful conduct occurred; the employing government entity has express or implied legal authority to pay the employee's legal expenses; the employee is exonerated of the charges; and the decision to pay the legal fees is made by an impartial official or official body. 2007 Op. Att'y Gen. No. 07-03.

**Conditions under which private group may use facilities.** — A local board of education may permit a particular religious denomination or private group to use public school buildings or facilities after school hours where such use, in the opinion of the school board, will not interfere with normal school activities, but the board may not in any respect sanction or give endorsement to such religious denominational programs. 1963-64 Op. Att'y Gen. No. 63-106.

**Include equal treatment of all groups.** — A local school board must, in exercising its discretion as to whether a particular religious denomination may use public school facilities after school hours, either make the use of school facilities available to all religious groups on an equal basis and without preference as to any particular group or not permit such use at all. 1963-64 Op. Att'y Gen. No. 63-106.

**And reimbursement of school's actual expenses.** — Since a school district may not in any manner lend its financial or other support to any private religious denominations, it is incumbent upon school authorities to obtain reimbursement for any actual expenses occasioned from a religious group's private use of public school facilities. 1963-64 Op. Att'y Gen. No. 63-106.

**Payment for time spent away from district by district employee.** — A local school district employee who serves on the state board of education may draw salary from the district and per diem and expenses from the state department of education; however, he may not be paid for time spent away from his duties with the district unless he takes authorized leave with pay. 1987 Op. Att'y Gen. No. 87-45.

**Character of private use determines whether state approval required.** — Where a local school board desires to enter into a lease of real property to any private party or religious group and proposes to give exclusive right of possession and occupancy to school lands or buildings, the state board of finance must give its approval pursuant to Section 13-6-2 NMSA 1978. Where, however, the use permitted is temporary or brief and limited to hours when the property is not needed for school purposes, the approval of the state board of finance is not necessary, and the local board of education may or may not authorize such usage according to its discretion. 1963-64 Op. Att'y Gen. No. 63-106.

**School board attendance allocation proper.** — So long as the statutory and constitutional minimum educational standards are satisfied, the local school board may allocate attendance within the district. 1979 Op. Att'y Gen. No. 79-36.

**School boards have authority to enact reasonable regulations** relating to the suspension or expulsion of students. 1959-60 Op. Att'y Gen. No. 59-214.

**Regulating married students.** — A rule or regulation prohibiting married students from participating in band, glee club, dramatic events, school newspapers, school clubs, school sponsored trips and school athletics is arbitrary and unreasonable and therefore void. 1967 Op. Att'y Gen. No. 67-117.

**Pregnant students.** — A rule which would require the withdrawal of a student when it is known that she is

pregnant and when the school officials do not believe that such attendance is proper clearly violates the compulsory attendance law; therefore if the girl is physically capable of attending school, the local school board may not prohibit her attendance by rule or regulation merely because she is pregnant. 1967 Op. Att'y Gen. No. 67-117.

**School boards have authority to ban smoking.** — Because local school boards have authority to supervise and control all public schools within their district, they can use that authority to ban smoking by both adults and minors on all public school campuses within their district. 1994 Op. Att'y Gen. No. 94-08.

**School board president's authority.** — A local school board president has authority to deny citizens the right to address the local school board during a meeting of the board, if he is authorized to do so by rules promulgated by the board and he does not exercise that authority arbitrarily or capriciously. 1990 Op. Att'y Gen. No. 90-26.

**Health club memberships for employees.** — A school district may spend public funds to provide its full time employees with membership in a private health club if the membership is provided in return for services rendered to the district. 1989 Op. Att'y Gen. No. 89-20.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools § 15 et seq.

Releasing public school pupils from attendance for purpose of attending religious education classes, 2 A.L.R.2d 1371.

Trust for school children as charitable, or merely benevolent, 25 A.L.R.2d 1114.

Operation of garage for maintenance and repair of municipal vehicles as governmental function, 26 A.L.R.2d 944.

Rejection of public schoolteacher because of disloyalty, 27 A.L.R.2d 487.

Title to buildings when school lands revert for nonuse for school purposes, 28 A.L.R.2d 564.

Validity, as a charity, of trust to lend money to students, 33 A.L.R.2d 1183.

Hearing on charges before suspension or expulsion from educational institution, 58 A.L.R.2d 903.

Waiver of, or estoppel to assert, failure to give required notice of claim of injury to school district or authorities, 65 A.L.R.2d 1278.

Malicious prosecution, civil liability of school officials for, 66 A.L.R.2d 749.

Tax: rescission of vote authorizing school district expenditure or tax, 68 A.L.R.2d 1041.

Power of school district to employ counsel, 75 A.L.R.2d 1339.

Age: power of public school authorities to set minimum or maximum age requirements for pupils in absence of specific statutory authority, 78 A.L.R.2d 1021.

Use of public school premises for religious purposes during nonschool time, 79 A.L.R.2d 1148.

Attendance: determination of school attendance, enrollment, or pupil population for purpose of apportionment of funds, 80 A.L.R.2d 953.

What is "public place" within requirements as to posting of notices, 90 A.L.R.2d 1210.

Use of school property for other than public school or religious purposes, 94 A.L.R.2d 1274.

Inclusion or exclusion of first and last days in computing the time for performance of an act or event which must take place a certain number of days before a known future date, 98 A.L.R.2d 1331.

Regulations as to fraternities and similar associations connected with educational institution, 10 A.L.R.3d 389.

Marriage or pregnancy of public school student as ground for expulsion or exclusion, or of restriction of activities, 11 A.L.R.3d 996.

Validity of regulation by school authorities as to clothes or personal appearance of pupils, 14 A.L.R.3d 1201.



Local improvements: exemption of public school property from assessments for local improvements, 15 A.L.R.3d 847.

Participation of student in demonstration on or near campus as warranting expulsion or suspension from school or college, 32 A.L.R.3d 864.

Public schools: modern status of doctrine of sovereign immunity as applied to public schools and institutions of higher learning, 33 A.L.R.3d 703.

Tax exemption: garage or parking lot as within tax exemption extended to property of educational, charitable, or hospital organizations, 33 A.L.R.3d 938.

Tort liability of public schools and institutions of higher learning from accidents due to condition of buildings or equipment, 34 A.L.R.3d 1166.

Athletic events: tort liability of public schools and institutions of higher learning for accident occurring during school athletic events, 35 A.L.R.3d 725.

Vocational training: liability of public schools and institutions of higher learning for accidents associated with chemistry experiments, shopwork and manual or vocational training, 35 A.L.R.3d 758.

Fellow students: tort liability of public schools and institutions of higher learning for injuries caused by acts of fellow students, 36 A.L.R.3d 380.

Physical education: tort liability of public schools and institutions of higher learning for accidents occurring during physical education classes, 36 A.L.R.3d 361.

Nonschool purposes: tort liability of public schools and institutions of higher learning for accidents occurring during use of premises and equipment for other than school purposes, 37 A.L.R.3d 712.

Playground: tort liability of public schools and institutions of higher learning for injuries due to condition of grounds, walks, and playgrounds, 37 A.L.R.3d 738.

Tort liability of public schools and institutions of higher learning for injuries resulting from lack or insufficiency of supervision, 38 A.L.R.3d 830.

Fees: validity of exaction of fees from children attending elementary or secondary public schools, 41 A.L.R.3d 752.

Property taxes: validity of basing public school financing system on local property taxes, 41 A.L.R.3d 1220.

Loitering or trespass: validity and construction of statute or ordinance forbidding unauthorized persons to enter upon or remain in school buildings or premises, 50 A.L.R.3d 340.

Tax exemption: charitable or educational organization from sales or use taxes, 53 A.L.R.3d 748.

Discipline of pupil for conduct away from school grounds, 53 A.L.R.3d 1124.

Residence for purpose of admission to public school, 56 A.L.R.3d 641.

What constitutes "school," "educational use," or the like within zoning ordinance, 64 A.L.R.3d 1087.

Zoning regulations as applied to colleges, universities, or similar institutions for higher education, 64 A.L.R.3d 1138.

Zoning regulations as applied to private and parochial schools below the college level, 74 A.L.R.3d 14.

Zoning regulations as applied to public elementary and high schools, 74 A.L.R.3d 136.

Sex education: validity of sex education programs in public schools, 82 A.L.R.3d 579.

Student's right to compel school officials to issue degree diploma, or the like, 11 A.L.R.4th 1182.

Personal liability of public school teacher in negligence action for personal injury or death of student, 34 A.L.R.4th 228.

Personal liability of public school executive or administrative officer in negligence action for personal injury or death of student, 35 A.L.R.4th 272.

Personal liability in negligence action of public school employee, other than teacher or executive or administrative officer, for personal injury or death of student, 35 A.L.R.4th 328.

AIDS infection as affecting right to attend public school, 60 A.L.R.4th 15.

Liability of school authorities for hiring or retaining incompetent or otherwise unsuitable teacher, 60 A.L.R.4th 260.

Validity, construction, and effect of municipal residency requirements for teachers, principals, and other school employees, 75 A.L.R.4th 272.

Tort liability of public schools and institutions of higher learning for accidents associated with transportation of students, 23 A.L.R.5th 1.

Search conducted by school official or teacher as violation of fourth amendment or equivalent state constitutional provision, 31 A.L.R.5th 229.

Tort liability of public schools and institutions of higher learning for accidents occurring in physical education classes, 66 A.L.R.5th 1.

Tort liability of schools and institutions of higher learning for personal injury suffered during school field trip, 68 A.L.R.5th 519.

Tort liability of public schools and institutions of higher learning for accidents occurring during school athletic events, 68 A.L.R.5th 663.

Tort liability of public schools and institutions of higher learning for injury to student walking to or from school, 72 A.L.R.5th 469.

Lunches and nutrition: construction and application of National School Lunch Act (42 U.S.C.S. §§ 1751 et seq.) and Child Nutrition Act of 1966 (42 U.S.C.S. §§ 1771 et seq.), 14 A.L.R. Fed. 634.

Freedom of press: validity, under federal Constitution, of public school or state college regulation of student newspapers, magazines, or other publications - federal cases, 16 A.L.R. Fed. 182.

Attorneys' fees: construction and application of § 718 of Education Amendments Act of 1972 (20 U.S.C.S. § 1617) authorizing court to allow prevailing party, other than United States, reasonable attorneys' fee as part of costs in school desegregation case, 22 A.L.R. Fed. 688.

Tax exemption: construction and application of so-called "charitable and educational exemption" of Copyright Act (17 U.S.C.S. § 104), 23 A.L.R. Fed. 974.

78 C.J.S. Schools and School Districts § 100 et seq.

## 22-5-4.1. Repealed.

**Repeals.** — Laws 1993, ch. 226, § 54 repealed 22-5-4.1 NMSA 1978, as enacted by Laws 1981, ch. 296, § 1, allowing local school boards to authorize a period of silence at

the beginning of the school day, effective July 1, 1993. For provisions of former section, see the 1992 NMSA 978 on *NMOneSource.com*.

## 22-5-4.2. Child abuse; report coordination; confirmation.

A. A local school board shall adopt policies providing for the coordination and internal tracking of reports made pursuant to Section 32A-4-3 NMSA 1978. Such policies, however, shall not



require any notification to school district personnel before the report is made to the offices listed in Subsection A of Section 32A-4-3 NMSA 1978. Such policies shall include measures to protect the identity of any alleged victims. No policy shall purport to relieve any person having a duty to report under Section 32A-4-3 NMSA 1978 from that duty.

B. After a report is made pursuant to Section 32A-4-3 NMSA 1978, the office receiving the notification shall notify the person making the report within five days after the report was made that the office is investigating the matter. Mailing a notice within five days shall constitute compliance with this subsection.

**History: Laws 1985, ch. 94, § 1; 2021, ch. 94, § 3.**

The 2021 amendment, effective June 18, 2021, removed discretionary language, and added mandatory language, related to a local school board adopting policies providing for the coordination and internal tracking of reports of child abuse or child neglect, added a confidentiality provision for alleged victims, and required the office receiving the report of child abuse or child neglect to notify the person making the report that the office is investigating the matter; in Subsection A, after "local school board", changed "may" to "shall", after "tracking of reports made", deleted "by school district personnel", after the

first occurrence of "Section", changed "32-1-15" to "32A-4-3", after the second occurrence of "Section", added "32A-4-3 NMSA 1978. Such policies shall include measures to protect the identity of any alleged victims", after the third occurrence of "Section", added "32A-4-3 NMSA 1978"; and in Subsection B, after "report is made", deleted "to a county social services office of the human services department", after "Section", deleted "32-1-15" and added "32A-4-3", after "NMSA 1978", deleted "by any school district personnel that the", and after "office", added "receiving the notification".

### **22-5-4.3. School discipline policies; racial sensitivity and anti-racism training; hotline for reporting racially charged incidents and racialized aggression involving students or school personnel; students may self-administer certain medications.**

A. Local school boards shall establish student discipline policies and shall file them with the department. The local school board shall involve parents, school personnel and students in the development of these policies, and public hearings shall be held during the formulation of these policies in the high school attendance areas within each school district or on a district-wide basis for those school districts that have no high school. No local school board shall allow for the imposition of discipline, discrimination or disparate treatment against a student based on the student's race, religion or culture or because of the student's use of protective hairstyles or cultural or religious headdresses.

B. Each school district discipline policy shall establish rules of conduct governing areas of student and school activity, detail specific prohibited acts and activities and enumerate possible disciplinary sanctions, which sanctions may include in-school suspension, school service, suspension or expulsion. Corporal punishment shall be prohibited by each local school board and each governing body of a charter school.

C. An individual school within a school district may establish a school discipline policy, provided that parents, school personnel and students are involved in its development and a public hearing is held in the school prior to its adoption. If an individual school adopts a discipline policy in addition to the local school board's school district discipline policy, it shall submit its policy to the local school board for approval.

D. All school discipline policies shall define and include a specific prohibition against racialized aggression involving a student or school personnel. Every school district and every charter school shall provide links to the statewide hotline to report racially charged incidents or racialized aggression.

E. No school employee who in good faith reports any known or suspected violation of the school discipline policy or in good faith attempts to enforce the policy shall be held liable for any civil damages as a result of such report or of the employee's efforts to enforce any part of the policy.

F. All public school and school district discipline policies shall allow students to carry and self-administer asthma medication and emergency anaphylaxis medication that has been legally prescribed to the student by a licensed health care provider under the following conditions:

(1) the health care provider has instructed the student in the correct and responsible use of the medication;



(2) the student has demonstrated to the health care provider and the school nurse or other school official the skill level necessary to use the medication and any device that is necessary to administer the medication as prescribed;

(3) the health care provider formulates a written treatment plan for managing asthma or anaphylaxis episodes of the student and for medication use by the student during school hours or school-sponsored activities, including transit to or from school or school-sponsored activities; and

(4) the student's parent has completed and submitted to the school any written documentation required by the school or the school district, including the treatment plan required in Paragraph (3) of this subsection and other documents related to liability.

G. The parent of a student who is allowed to carry and self-administer asthma medication and emergency anaphylaxis medication may provide the school with backup medication that shall be kept in a location to which the student has immediate access in the event of an asthma or anaphylaxis emergency.

H. Authorized school personnel who in good faith provide a person with backup medication as provided in this section shall not be held liable for civil damages as a result of providing the medication.

I. As used in this section:

(1) "cultural or religious headdresses" includes hijabs, head wraps or other headdresses used as part of an individual's personal cultural or religious beliefs;

(2) "protective hairstyles" includes such hairstyles as braids, locs, twists, tight coils or curls, cornrows, bantu knots, afros, weaves, wigs or head wraps; and

(3) "race" includes traits historically associated with race, including hair texture, length of hair, protective hairstyles or cultural or religious headdresses.

**History:** 1978 Comp., § 22-5-4.3, enacted by Laws 1986, ch. 33, § 9; 1993, ch. 226, § 13; 2005, ch. 60, § 1; 2011, ch. 97, § 1; 2021, ch. 19, § 1; 2021, ch. 37, § 1; 2021, ch. 51, § 8.

**2021 Multiple Amendments.** — Laws 2021, ch. 19, § 1 and Laws 2021, ch. 37, § 1, both effective July 1, 2021, and Laws 2021, ch. 51, § 8, effective June 18, 2021, enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2021, ch. 51, § 8 as the last act signed by the governor is set out above and incorporates all amendments. The amendments enacted by Laws 2021, ch. 19, § 1, Laws 2021, ch. 37, § 1, and Laws 2021, ch. 51, § 8 are described below. To view the session laws in their entirety, see the 2021 session laws on [NMOneSource.com](http://NMOneSource.com).

The nature of the difference between the amendments is that Laws 2021, ch. 19, § 1 and Laws 2021, ch. 37, § 1, which enacted identical amendments, prohibited the imposition of discipline, discrimination or disparate treatment against a student based on the student's race, religion or culture or because of the student's use of protective hairstyles or cultural or religious headdresses, and defined "cultural or religious headdresses", "protective hairstyles", and "race" as used in this section, and Laws 2021, ch. 51, § 8, required school discipline policies to define and include a specific prohibition against racialized aggression involving a student or school personnel, and required every school district and every charter school to provide links to the statewide hotline to report incidents of racial aggression.

**Laws 2021, ch. 19, § 1 and Laws 2021, ch. 37, § 1,** effective July 1, 2021, prohibited the imposition of discipline, discrimination or disparate treatment against a student based on the student's race, religion or culture or because of the student's use of protective hairstyles or cultural or religious headdresses, and defined "cultural or religious headdresses", "protective hairstyles", and "race" as used in this section; in Subsection A, added the last sentence; and added Subsection H (now Subsection D).

**Laws 2021, ch. 51, § 8,** effective June 18, 2021, required school discipline policies to define and include a specific prohibition against racialized aggression involving a student or school personnel, and required every school district and every charter school to provide links to the statewide hotline to report incidents of racial aggression; in the section heading, added "racial sensitivity and anti-racism training; hotline for reporting racially charged incidents and racialized aggression involving students or school personnel"; and added a new Subsection D and redesignated the succeeding subsections accordingly.

**The 2011 amendment,** effective June 17, 2011, prohibited corporal punishment as a disciplinary sanction.

**The 2005 amendment,** effective June 17, 2005, permits students to carry and self-administer asthma medication and emergency anaphylaxis medication prescribed by a license health care provider.

**The 1993 amendment,** effective July 1, 1993, deleted former Subsection E, pertaining to the effective date of policies adopted pursuant to this section and the time for review of existing school discipline policies, and made a minor stylistic change in Subsection A.

## ANNOTATIONS

**Dress code.** — Wearing of sagging pants is not constitutionally protected speech under the First Amendment. *Bivens by & Through Green v. Albuquerque Pub. Sch.*, 899 F. Supp. 556 (D.N.M. 1995).

**Corporal punishment.** — In school discipline cases, the substantive due process inquiry is whether the force applied caused injury so severe, was so disproportionate to the need presented, and was so inspired by malice or sadism rather than a merely careless or unwise excess of zeal that it amounted to a brutal and inhumane abuse of official power literally shocking to the conscience. *Garcia by Garcia v. Miera*, 817 F.2d 650 (10th Cir. 1987), cert. denied, 485 U.S. 959, 108 S.Ct. 1220, 99 L.Ed.2d 421 (1988).



#### **22-5-4.4. School employees; reporting drug and alcohol use; release from liability.**

A. A school employee who knows or in good faith suspects any student of using or abusing alcohol or drugs shall report such use or abuse pursuant to procedures established by the local school board.

B. No school employee who in good faith reports any known or suspected instances of alcohol or drug use or abuse shall be held liable for any civil damages as a result of such report or his efforts to enforce any school policies or regulations regarding drug or alcohol use or abuse.

**History:** 1978 Comp., § 22-1-5, enacted by Laws 1985, ch. 180, § 1; recompiled as § 22-5-4.4 by Laws 1986, ch. 33, § 10.

#### **22-5-4.5. Pledge of allegiance.**

Local school boards shall provide that the pledge of allegiance shall be recited daily in each public school in the school district according to regulations adopted by the state board [department].

**History:** 1978 Comp., § 22-5-4.5, enacted by Laws 1986, ch. 33, § 11.

#### **22-5-4.6. Recompiled.**

**Recompilations.** — Laws 2003, ch. 153, § 26 recompiled and amended former 22-5-4.6 NMSA 1978, relating

to collaborative school improvement programs, as 22-5-15 NMSA 1978, effective April 4, 2003.

#### **22-5-4.7. Additional student discipline policies; weapon-free schools.**

A. In addition to other student discipline policies, each school district shall adopt a policy providing for the expulsion from school, for a period of not less than one year, of any student who is determined to have knowingly brought a weapon to a school under the jurisdiction of the local board. The local school board or the superintendent of the school district may modify the expulsion requirement on a case-by-case basis.

B. Student discipline policies shall also provide for placement in an alternative educational setting, for not more than forty-five days, of any student with a disability who is determined to have knowingly brought a weapon to a school under the jurisdiction of the local board. If a parent or guardian of the student requests a due process hearing, then the student shall remain in the alternative educational setting during the pendency of any proceeding, unless the parent or guardian and the school district agree otherwise.

C. For the purposes of this section, "weapon" means:

(1) any firearm that is designed to, may readily be converted to or will expel a projectile by the action of an explosion; and

(2) any destructive device that is an explosive or incendiary device, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter-ounce, mine or similar device.

**History:** 1978 Comp., § 22-5-4.7, enacted by Laws 1995, ch. 47, § 1.

**Cross references.** — For unlawful carrying of deadly weapon on school premises, see 30-7-2.1 NMSA 1978.

bringing a weapon onto school property does not violate the student's substantive due process right to a public education, if any such right exists. *Butler v. Rio Rancho Pub. Sch. Bd. of Educ.*, 341 F.3d 1197 (10th Cir. 2003).

#### **ANNOTATIONS**

**Suspension constitutional.** — A school's decision to suspend a student who "should have known" he was

### 22-5-4.8. Area vocational high schools.

A. A local school board, alone or in cooperation with other local school boards, may develop a plan for the establishment of an area vocational high school. The plan shall be submitted to the department for its approval.

B. The department may approve a plan for an area vocational high school if the plan adequately provides for:

(1) sufficient financing for the operation of the school, which may include an election for a special levy not to exceed one dollar (\$1.00) for each one thousand dollars (\$1,000) of net taxable value, and that may be in addition to levies authorized by the College District Tax Act [21-2A-1 through 21-2A-10 NMSA 1977];

(2) a broad vocational and technical education program serving a sufficient number of students to achieve economic viability; and

(3) compliance with the state plan for vocational education.

**History:** Laws 1999, ch. 219, § 19; 2019, ch. 59, § 1.

**Cross references.** — For references to the former state board, see 9-24-15 NMSA 1978.

For references to the former commission on higher education, see 9-25-4.1 NMSA 1978.

**The 2019 amendment**, effective June 14, 2019, removed a provision requiring area vocational high schools be located on the campus of a post-secondary educational institution, and required school boards to submit plans to

develop vocational high schools to the public education department for approval; in Subsection A, deleted "on the campus of a post-secondary educational institution to facilitate sharing of facilities", and deleted "state board of education and the commission on higher education for their" and added "department for its"; and in Subsection B, deleted "state board of education and the commission on higher education" and added "department".

### 22-5-4.9. High school diplomas; World War II veterans.

A. Notwithstanding any other provision of the Public School Code, a local school board may issue a high school diploma to a World War II veteran who:

(1) is an honorably discharged member of the armed forces of the United States;

(2) was scheduled to graduate from high school after 1940 and before 1951;

(3) was a resident of New Mexico and attended a high school in the locality of the current school district; and

(4) left high school before graduation to serve in World War II.

B. A local school board may issue a high school diploma to a qualifying World War II veteran regardless of whether the veteran holds a high school equivalency credential or is deceased.

C. The department shall adopt and promulgate rules to carry out the provisions of this section, including:

(1) an application form to be submitted by the World War II veteran or a person acting on behalf of the veteran if the veteran is incapacitated or deceased; and

(2) what constitutes acceptable evidence of eligibility for a diploma.

**History:** Laws 2003, ch. 113, § 1; 2015, ch. 122, § 11.

**The 2015 amendment**, effective July 1, 2015, replaced the term "state board" with the public education department" and "high school equivalency diploma" with "high school equivalency credential" in the provision relating to

providing high school diplomas to World War II veterans; in Subsection B, after "equivalency", deleted "diploma" and added "credential"; and in Subsection C, after "The", deleted "state board" and added "department".

### 22-5-4.10. High school diplomas; Korean conflict veterans.

A. Notwithstanding any other provision of the Public School Code, a local school board may issue a high school diploma to a Korean conflict veteran who:

(1) is an honorably discharged member of the armed forces of the United States;

(2) was scheduled to graduate from high school after June 27, 1950 and before January 31, 1955;

(3) was a resident of New Mexico and attended a high school in the locality of the current school district; and



(4) left high school before graduation to serve in the Korean conflict.

B. A local school board may issue a high school diploma to a qualifying Korean conflict veteran regardless of whether the veteran holds a high school equivalency credential or is deceased.

C. The department shall adopt and promulgate rules to carry out the provisions of this section, including:

- (1) an application form to be submitted to the local school board by the Korean conflict veteran or a person acting on behalf of the veteran if the veteran is incapacitated or deceased; and
- (2) what constitutes acceptable evidence of eligibility for a diploma.

**History:** Laws 2005, ch. 11, § 1; 2015, ch. 122, § 12.

The 2015 amendment, effective July 1, 2015, replaced the term "high school equivalency diploma" with "high school equivalency credential" in the provision relating to

providing high school diplomas to veterans of the Korean conflict; and in Subsection B, after "equivalency", deleted "diploma" and added "credential".

### 22-5-4.11. Psychotropic medication; prohibition on compulsion.

A. Each local school board or governing body shall develop and promulgate policies that prohibit school personnel from denying any student access to programs or services because the parent or guardian of the student has refused to place the student on psychotropic medication.

B. School personnel may share school-based observations of a student's academic, functional and behavioral performance with the student's parent or guardian and offer program options and other forms of assistance that are available to the parent or guardian and the student based on those observations. However, an employee or agent of a school district or governing body shall not compel or attempt to compel any specific actions by the parent or guardian or require that a student take a psychotropic medication.

C. School personnel shall not require a student to undergo psychological screening unless the parent or guardian of that student gives prior written consent before each instance of psychological screening.

D. Nothing in this act shall be construed to create a prohibition against a teacher or other school personnel from consulting or sharing a classroom-based observation with a parent or guardian regarding:

- (1) a student's academic and functional performance;
- (2) a student's behavior in the classroom or school; or
- (3) the need for evaluation for special education or related services.

E. As used in this section:

- (1) "psychotropic medication" means a drug that shall not be dispensed or administered without a prescription, whose primary indication for use has been approved by the federal food and drug administration for the treatment of mental disorders and that is listed as a psychotherapeutic agent in drug facts and comparisons or in the American hospital formulary service; and
- (2) "school personnel" means school personnel that the department has licensed.

**History:** Laws 2015, ch. 51, § 1.

**Effective dates.** — Laws 2015, ch. 51 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.

### 22-5-4.12. Use of restraint and seclusion; techniques; requirements.

A. A school may permit the use of restraint or seclusion techniques on any student only if both of the following apply:

- (1) the student's behavior presents an imminent danger of serious physical harm to the student or others; and
- (2) less restrictive interventions appear insufficient to mitigate the imminent danger of serious physical harm.

B. If a restraint or seclusion technique is used on a student:

(1) school employees shall maintain continuous visual observation and monitoring of the student while the restraint or seclusion technique is in use;

(2) the restraint or seclusion technique shall end when the student's behavior no longer presents an imminent danger of serious physical harm to the student or others;

(3) the restraint or seclusion technique shall be used only by school employees who are trained in the safe and effective use of restraint and seclusion techniques unless an emergency situation does not allow sufficient time to summon those trained school employees;

(4) the restraint technique employed shall not impede the student's ability to breathe or speak; and

(5) the restraint technique shall not be out of proportion to the student's age or physical condition.

C. Schools shall establish policies and procedures for the use of restraint or seclusion techniques in a school safety plan; provided that:

(1) the school safety plan shall not be specific to any individual student; and

(2) any school safety plan shall be drafted by a planning team that includes at least one special education expert.

D. Schools shall establish reporting and documentation procedures to be followed when a restraint or seclusion technique has been used on a student. The procedures shall include the following provisions:

(1) a school employee shall provide the student's parent or guardian with written or oral notice on the same day that the incident occurred, unless circumstances prevent same-day notification. If the notice is not provided on the same day of the incident, notice shall be given within twenty-four hours after the incident;

(2) within a reasonable time following the incident, a school employee shall provide the student's parent or guardian with written documentation that includes information about any persons, locations or activities that may have triggered the behavior, if known, and specific information about the behavior and its precursors, the type of restraint or seclusion technique used and the duration of its use; and

(3) schools shall review strategies used to address a student's dangerous behavior if use of restraint or seclusion techniques for an individual student has occurred two or more times during any thirty-calendar-day period. The review shall include:

(a) a review of the incidents in which restraint or seclusion techniques were used and an analysis of how future incidents may be avoided, including whether the student requires a functional behavioral assessment; and

(b) a meeting of the student's individualized education program team, behavioral intervention plan team or student assistance team within two weeks of each use of restraint or seclusion after the second use within a thirty-calendar-day period to provide recommendations for avoiding future incidents requiring the use of restraint or seclusion.

E. If a school summons law enforcement instead of using a restraint or seclusion technique on a student, the school shall comply with the reporting, documentation and review procedures established pursuant to Subsection D of this section.

F. Policies regarding restraint and seclusion shall consider school district support and strategies for school employees to successfully reintegrate a student who has been restrained or secluded back into the school or classroom environment.

G. The provisions of this section shall not be interpreted as addressing the conduct of law enforcement or first responders.

H. The provisions of this section do not apply to any school located within a county juvenile detention center or a state-operated juvenile facility.

I. For the purposes of this section:

(1) "first responder" means a person based outside of a school who functions within the emergency medical services system and who is dispatched to a school to provide initial emergency aid;

(2) "mechanical restraint" means the use of any device or material attached or adjacent to the student's body that restricts freedom of movement or normal access to any portion of the student's body and that the student cannot easily remove, but "mechanical restraint" does not include mechanical supports or protective devices;



(3) "physical restraint" means the use of physical force without the use of any device or material that restricts the free movement of all or a portion of a student's body, but "physical restraint" does not include physical escort;

(4) "restraint" when not otherwise modified means mechanical or physical restraint; and

(5) "seclusion" means the involuntary confinement of a student alone in a room from which egress is prevented. "Seclusion" does not mean the use of a voluntary behavior management technique, including a timeout location, as part of a student's education plan, individual safety plan, behavioral plan or individualized education program that involves the student's separation from a larger group for purposes of calming.

**History:** Laws 2017, ch. 33, § 1.

**Effective dates.** — Laws 2017, ch. 33 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

### **22-5-4.13. Local school board; consideration of opening or closing a public school on tribal land; consultation with tribal leaders and members and families of students.**

A. Whenever a local school board is contemplating opening a public school on tribal land, in addition to negotiations involving land or buildings, the local school board and the local superintendent shall consult with tribal leaders and members and families of students who will be eligible to attend the public school on the design of the school's programming.

B. Consultation shall include, among other actions, meetings in which the local school board and local superintendent explain:

(1) how and why they reached the decision to approach the tribe about opening a public school on tribal land; and

(2) the level of their commitment to improving educational outcomes for Indian students by opening a public school and how that commitment will be manifested through:

(a) culturally and linguistically responsive school policies;

(b) rigorous and culturally meaningful curricula and instructional materials;

(c) sensitivity to the tribe's calendar of religious and tribal obligations when making the school calendar; and

(d) professional development for school personnel at the public school to ensure that the best practices used in teaching, mentoring, counseling and administration are culturally and linguistically responsive to students.

C. Whenever a local school board is contemplating closing a public school on tribal land for any reason, it shall consult with tribal leaders and members and families of students attending the public school.

D. Consultation shall include, among other actions, meetings in which the local board and the local superintendent explain:

(1) the reasons for closing the public school;

(2) the reasons why the local school board has not or cannot provide additional resources to keep the public school open;

(3) locations of other public schools in the vicinity to which students will be sent and the plan to transport students to those schools;

(4) how the public school receiving new students will consult with tribal leaders and members and families of students attending the public school related to:

(a) culturally and linguistically responsive school policies;

(b) rigorous and culturally meaningful curricula and instructional materials;

(c) sensitivity to the tribe's calendar of religious and other tribal obligations when making the school calendar; and

(d) professional development for school personnel at the public school to ensure that the best practices used in teaching, mentoring, counseling and administration are culturally and linguistically responsive to students;

- (5) how the educational outcomes for the Indian students will be improved by attending another public school;
- (6) plans for the public school buildings that will be left empty by the closure; and
- (7) any other matters the local school board believes provide an adequate explanation of the reasons for closing the public school on tribal lands.

**History:** Laws 2019, ch. 174, § 2.

**Effective dates.** — Laws 2019, ch. 174 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

#### **22-5-4.14. High school diplomas; Vietnam conflict veterans.**

A. Notwithstanding any other provision of the Public School Code, a local school board may issue a high school diploma to a Vietnam conflict veteran who:

- (1) is an honorably discharged member of the armed forces of the United States;
- (2) was scheduled to graduate from high school after February 28, 1961 and before May 7, 1975;
- (3) was a resident of New Mexico and attended a high school in the locality of the current school district; and
- (4) left high school before graduation to serve in the Vietnam conflict.

B. A local school board may issue a high school diploma to a qualifying Vietnam conflict veteran regardless of whether the veteran holds a high school equivalency credential or is deceased.

C. The department shall adopt and promulgate rules to carry out the provisions of this section, including:

- (1) an application form to be submitted to the local school board by the Vietnam conflict veteran or a person acting on behalf of the veteran if the veteran is incapacitated or deceased; and
- (2) what constitutes acceptable evidence of eligibility for a diploma.

**History:** Laws 2020, ch. 72, § 1.

**Effective dates.** — Laws 2020, ch. 72, § 2 made Laws 2020, ch. 72, § 1 effective July 1, 2020.

#### **22-5-5. Compensation; prohibited employment.**

A. The members of a local school board shall serve without compensation.

B. No member of a local school board shall be employed in any capacity by a school district governed by that local school board during the term of office for which the member was elected or appointed.

**History:** 1953 Comp., § 77-4-3, enacted by Laws 1967, ch. 16, § 29.

superintendent of schools or be otherwise employed by that school district during the term for which he or she was elected or appointed. 1974 Op. Att'y Gen. No. 74-17.

#### **ANNOTATIONS**

Member of local school board cannot resign from such office and thereafter be appointed

#### **22-5-6. Nepotism prohibited.**

A. A local superintendent shall not initially employ or approve the initial employment in any capacity of a person who is the spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister or sister-in-law of a member of the local school board or the local superintendent. The local school board may waive the nepotism rule for family members of a local superintendent.

B. Nothing in this section shall prohibit the continued employment of a person employed on or before July 1, 2008.



**History:** 1953 Comp., § 77-4-3.1, enacted by Laws 1971, ch. 199, § 1; 1981, ch. 86, § 1; 2003, ch. 153, § 22; 2009, ch. 195, § 1.

The 2009 amendment, effective June 19, 2009, in Subsection A, after "daughter-in-law", added "brother, brother-in-law, sister or sister-in-law" and in Subsection B, changed March 1, 2003 to July 1, 2008.

The 2003 amendment, effective April 4, 2003, in Subsection A substituted "superintendent" for "school board" following "local" near the beginning and inserted "or the local superintendent. The local school board may waive the nepotism rule for family members of a local superintendent." at the end; and substituted "2003" for "1981" at the end of Subsection B.

#### ANNOTATIONS

**Object of section is to prevent nepotism in initial hiring** of school employees. The hiring of a teacher closely

related to a member of the school board justifiably arouses public suspicion that the teacher was hired on the basis of relationship rather than merit. Such suspicions, however, relate only to the initial hiring of the teacher. There is no reason to suspect nepotism in the continued employment of a tenured teacher whose competency has been established by years of service, merely because a family member is elected to the school board at some time during the teacher's career. *N.M. State Bd. of Educ. v. Board of Educ.*, 1981-NMSC-031, 95 N.M. 588, 624 P.2d 530 (decided prior to 1981 amendment).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity, construction, and effect of state constitutional or statutory provision regarding nepotism in the public service, 11 A.L.R.4th 826;

### 22-5-7. Officers; surety bonds.

A. From among its members, a local school board shall elect a president, a vice-president and a secretary.

B. Before assuming the duties of office, the president and secretary of a local school board and the superintendent of schools of a school district shall each obtain an official bond payable to the school district and conditioned upon the faithful performance of their duties during their terms of office. The bonds shall be executed by a corporate surety company authorized to do business in this state. The amount of each bond required shall be fixed by the local school board but shall not be less than five thousand dollars (\$5,000).

C. A local school board may elect to obtain a schedule or blanket corporate surety bond covering all local school board members and school district administrators and employees for any period not exceeding four years.

D. The cost of bonds obtained pursuant to this section shall be paid from the operational fund of the school district. The bonds shall be approved by the director of the public school finance division [secretary] and filed with the secretary of finance and administration.

**History:** 1953 Comp., § 77-4-4, enacted by Laws 1967, ch. 16, § 30; 1977, ch. 247, § 202; 1980, ch. 151, § 45.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For the Surety Board Act, see 10-2-13 NMSA 1978.

For references to the former state board, see 9-24-15 NMSA 1978.

For references to the former public school finance division, see 9-6-3.1 NMSA.

### 22-5-8. Term of office.

A. The full term of office of a member of a local school board shall be four years succeeding the member's election to office at a regular local election held pursuant to the Local Election Act [Chapter 1, Article 22 NMSA 1978].

B. Any member of a local school board whose term of office has expired shall continue in that office until a successor is elected and qualified.

**History:** 1953 Comp., § 77-4-5, enacted by Laws 1967, ch. 16, § 31; 1985, ch. 142, § 3; 1993, ch. 226, § 15; 2018, ch. 79, § 88.

The 2018 amendment, effective July 1, 2018, required local school board elections to be held pursuant to the Local Election Act, and made technical and conforming changes; and in Subsection A, after "four years", deleted "from March 1", after "regular", deleted "school district" and added "local", and after "election", added "held pursuant to the Local Election Act".

The 1993 amendment, effective July 1, 1993, deleted former Subsections B to D, pertaining to the term of office

for a member elected prior to March 1, 1985 and the procedure for avoiding coinciding terms for members, and redesignated former Subsection E as Subsection B.

#### ANNOTATIONS

**Defeated incumbent who is still a member of an existing five-man board may vote** on the resolution to increase the board membership to seven. While he is what is commonly referred to as a lame duck, he still exercises the full powers of his office for his term of office. 1971 Op. Att'y Gen. No. 71-17.

### 22-5-8.1. Repealed.

**Repeals.** — Laws 1993, ch. 226, § 54 repealed 22-5-8.1 NMSA 1978, as enacted by Laws 1983, ch. 237, § 1, concerning the term of office for board members of certain

districts, effective July 1, 1993. For provisions of former section, see the 1992 NMSA 1978 on *NMOneSource.com*.

### 22-5-9. Local school board vacancies.

A. A vacancy occurring in the membership of a local school board shall be filled at an open meeting, at which a quorum of the membership is present, by a majority vote of the remaining members appointing a qualified elector to fill the vacancy.

B. A qualified elector appointed to fill a vacancy occurring in the membership of a local school board shall hold that office until the next regular school district election when an election shall be held to fill the vacancy for the unexpired term.

C. If a qualified elector is not appointed to fill the vacancy within forty-five days from the date the vacancy occurred, the department shall appoint a qualified elector to fill the vacancy until the next regular school district election.

D. In the event vacancies occur in a majority of the full membership of a local school board, the department shall appoint qualified electors to fill the vacancies. Those persons appointed shall hold office until the next regular school district election when an election shall be held to fill the vacancies for the unexpired terms.

**History:** 1953 Comp., § 77-4-6, enacted by Laws 1967, ch. 16, § 32; 1979, ch. 335, § 4; 2015, ch. 145, § 97.

**The 2015 amendment,** effective July 1, 2015, substituted "qualified elector" for each reference to "qualified person" and substituted the "public education department" for each reference to the "state board"; in Subsections A and B, after "qualified", deleted "person" and

added "elector"; in Subsection C, after "qualified", deleted "person" and added "elector" in two places, and after "occurred, the", deleted "state board" and added "department"; and in Subsection D, after "board, the", deleted "state board" and added "department", after "qualified", deleted "persons" and added "electors", and after "next regular", deleted "or special".

### 22-5-9.1. Oath of office.

All elected or appointed members of local school boards shall take the oath of office prescribed by Article 20, Section 1 of the constitution of New Mexico.

**History:** Laws 1979, ch. 335, § 7.

### 22-5-10. Publications; advertisements.

Except where otherwise specifically provided, whenever a local school board is required by law to make a publication or advertisement, the publication or advertisement shall be published in English in any newspaper published in the school district having general circulation within the school district. If there is no such newspaper, any newspaper published in the state having general circulation in the school district.

**History:** 1953 Comp., § 77-4-7, enacted by Laws 1967, ch. 16, § 33.

**Cross references.** — For publication of notice generally, see 14-11-1 NMSA 1978 et seq.

### 22-5-11. School district salary system.

A. Prior to the beginning of each school year, each local superintendent shall file with the department the school district salary system, which salary system shall incorporate any salary increases or compensation measures specifically mandated by the legislature. Salaries for teachers and school administrators shall be aligned with the licensure framework provided for in the School Personnel Act [Chapter 22, Article 10A NMSA 1978].

B. A local superintendent shall not reduce the school district salary system established pursuant to Subsection A of this section without the prior written approval of the state superintendent



[secretary]. The state superintendent shall give written notice to the legislative finance committee, the legislative education study committee and the department of finance and administration of approved reduction of any school district's salary system, including the reasons for the request for reduction and the grounds for approval.

**History:** 1978 Comp., § 22-5-11, enacted by Laws 1986, ch. 33, § 12; 1993, ch. 226, § 16; 2003, ch. 153, § 23.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**The 2003 amendment,** effective April 4, 2003, substituted "School district salary system" for "Local school boards salary schedule" in the section heading; substituted "superintendent" for "school board" throughout the section; in Subsection A substituted "the school" for "of education a" following "the department" near the middle,

substituted "system" for "schedule" following "salary" twice near the middle and inserted "Salaries for teachers and school administrators shall be aligned with the licensure framework provided for in the School Personnel Act." at the end; in Subsection B substituted "system" for "schedule" following "salary" once near the beginning and once near the end and inserted "the legislative education study committee" following "legislative finance committee" near the middle.

**The 1993 amendment,** effective July 1, 1998, deleted the former first sentence, pertaining to filing 1985-86 and 1986-87 salary schedules; deleted "subsequent" preceding "school year" and substituted "department" for "office" in Subsection A; and substituted "state superintendent" for "director of the office of education" in two places in Subsection B.

## 22-5-12. Local school boards; vacant or vacated offices.

A. A local school board shall hold at least one regular meeting each month of the calendar year.

B. The office of any member of a local school board, if the member misses four consecutive regular meetings, may be declared vacant by a majority vote of the remaining members of the local school board.

C. The office of any member of a local school board, if the member misses six consecutive regular meetings, shall be vacant.

D. Any vacancy of an office on a local school board created pursuant to this section shall be filled in the same manner as other vacancies on a local school board are filled. Any member of a local school board who has his office declared vacant or vacated pursuant to this section shall not be eligible for appointment to the local school board until the term for which he was originally elected or appointed has expired.

E. As used in this section "regular meeting" means a meeting of the members of a local school board at which at least a quorum is present, about which notice has been published and at which normal school district business is transacted.

**History:** 1953 Comp., § 5-3-1.1, enacted by Laws 1967, ch. 131, § 1; 1979, ch. 335, § 2; 1978 Comp., § 10-3-2, recompiled as § 22-5-12 by Laws 1993, ch. 226, § 53.

### ANNOTATIONS

**Denial to citizen of right to address board.** — A local school board president has authority to deny citizens

the right to address the local school board during a meeting of the board, if he is authorized to do so by rules promulgated by the board and he does not exercise that authority arbitrarily or capriciously. 1990 Op. Atty Gen. No. 90-26.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 67 C.J.S. Officers and Public Employees §§ 74 to 76.

## 22-5-13. Local school board training.

The department shall develop a mandatory training course for local school board members that explains state board [department] rules, department policies and procedures, statutory powers and duties of local school boards, legal concepts pertaining to public schools, finance and budget and other matters deemed relevant by the department. The department shall notify local school board members of the dates of the training course, the last of which shall not be later than three months after a local school board election.

**History:** 1978 Comp., § 22-5-13, enacted by Laws 2003, ch. 153, § 24.

**Cross references.** — For references to the former state board, see 9-24-15 NMSA 1978.

**Emergency clauses.** — Laws 2003, ch. 153, § 74 contained an emergency clause and was approved April 4, 2003.

## 22-5-14. Local superintendent; powers and duties.

- A. The local superintendent is the chief executive officer of the school district.
- B. The local superintendent shall:
  - (1) carry out the educational policies and rules of the state board [department] and local school board;
  - (2) administer and supervise the school district;
  - (3) employ, fix the salaries of, assign, terminate or discharge all employees of the school district;
  - (4) prepare the school district budget based on public schools' recommendations for review and approval by the local school board and the department. The local superintendent shall tell each school principal the approximate amount of money that may be available for his school and provide a school budget template to use in making school budget recommendations; and
  - (5) perform other duties as required by law, the department or the local school board.
- C. The local superintendent may apply to the state board [department] for a waiver of certain provisions of the Public School Code [Chapter 22 [except Article 5A] NMSA 1978] relating to length of school day, staffing patterns, subject area or the purchase of instructional materials for the purpose of implementing a collaborative school improvement program for an individual public school.

**History:** 1978 Comp., § 22-5-14, enacted by Laws 2003, ch. 153, § 25.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be

deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

## 22-5-15. Collaborative school improvement programs.

- A. A local superintendent may approve an individual public school's plan to implement a collaborative school improvement program upon a finding that the plan is in the best interest of the public school and is supported by the participating teaching staff.
- B. The input and concerns of parents, students, school employees and members of the community shall be solicited and considered in the development and adoption of a collaborative school improvement program.
- C. If necessary for the implementation of a collaborative school improvement program, the local superintendent may apply to the state board [department] for a waiver of Public School Code [Chapter 22 [except Article 5A] NMSA 1978] provisions relating to length of school day, staffing patterns, subject areas or purchase of instructional material. The state board may approve a request for a waiver upon a finding that the local superintendent has demonstrated accountability for student learning through alternative planning and that the participating teaching staff supports the implementation of a collaborative school improvement program. The local superintendent shall provide the state board with a program budget that shows the type and number of students served, the type and number of school employees involved and all expenditures of the waiver.
- D. A teacher participating in the development and implementation of a collaborative school improvement program may contact the state board [department] to comment on the local superintendent's waiver request if the teacher communicated his opinion in writing to the local superintendent at the time the local superintendent approved implementation of the program.

**History:** 1978 Comp., § 22-5-4.6, enacted by Laws 1990, ch. 52, § 3; 1993, ch. 226, § 14; recompiled and amended as 1978 Comp., § 22-5-15 by Laws 2003, ch. 153, § 26.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all

references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**The 2003 amendment,** effective April 4, 2003, recompiled former 22-5-4.6 NMSA 1978 as present 22-5-15 NMSA 1978 and substituted "superintendent" for "school board" throughout the section; inserted "public" preceding "school" twice in Subsection A; substituted "employees"



for "personnel" following "students, school" near the beginning of Subsection B; and substituted "school employees" for "personnel" following "number of" near the end of Subsection C.

**The 1993 amendment**, effective July 1, 1993, in Subsection C, substituted "subject areas or purchase of instructional material" for "or subject areas" at the end of the first sentence and added the second and third sentences.

## **22-5-16. Advisory school councils; creation; duties.**

A. Each public school shall create an advisory "school council" to assist the school principal with school-based decision-making and to involve parents in their children's education.

B. A school council shall be created and its membership elected in accordance with local school board rule. School council membership shall reflect an equitable balance between school employees and parents and community members. At least one community member shall represent the business community, if such person is available. The school principal may serve as chairman. The school principal shall be an active member of the school council.

C. The school council shall:

(1) work with the school principal and give advice, consistent with state and school district rules and policies, on policies relating to instructional issues and curricula and on the public school's proposed and actual budgets;

(2) develop creative ways to involve parents in the schools;

(3) where appropriate, coordinate with any existing work force development boards or vocational education advisory councils to connect students and school academic programs to business resources and opportunities; and

(4) serve as the champion for students in building community support for schools and encouraging greater community participation in the public schools.

**History:** 1978 Comp., § 22-5-16, enacted by Laws 2003, ch. 153, § 27.

## **22-5-17. Private use of school facilities; policy; insurance.**

The local school board of a school district that is not a participant under the Public School Insurance Authority Act [Chapter 22, Article 29 NMSA 1978]:

A. shall, by rule, establish a policy to be followed relating to the use of volunteers. The policy shall be distributed to each school in the district and posted upon the school district's web site;

B. shall, by rule, establish a policy to be followed relating to the use of school facilities by private persons. The policy shall be distributed to each school in the district and posted upon the school district's web site; and

C. may insure, by negotiated policy, self-insurance or any combination thereof, against claims of bodily injury, personal injury or property damage related to the use of school facilities by private persons; provided that the coverage shall be for no more than one million dollars (\$1,000,000) for each occurrence.

**History:** Laws 2009, ch. 198, § 2.

**Effective dates.** — Laws 2009, ch. 198, § 3 made Laws 2009, ch. 198, § 2 effective July 1, 2010.

## **22-5-18. Local school board authority over who may carry a firearm on school premises.**

Only a local school board has the authority to authorize school security personnel to carry a firearm on any public school premises or other school district property. The decision shall be made in an open meeting and shall be formalized as a policy of the board.

**History:** Laws 2019, ch. 189, § 1.

**Effective dates.** — Laws 2019, ch. 189, § 5 made Laws 2019, ch. 189, § 1 effective July 1, 2020.

## ARTICLE 5A

### School Alcohol-Free Zone

Sec.

22-5A-1. Short title.

22-5A-2. Definitions.

22-5A-3. Alcoholic beverages prohibited on public school grounds.

Sec.

22-5A-4. Notices required.

22-5A-5. Penalties.

#### 22-5A-1. Short title.

This act [22-5A-1 to 22-5A-5 NMSA 1978] may be cited as the "School Alcohol-Free Zone Act".

**History:** Laws 2005, ch. 249, § 1.

**Compiler's note.** — The School Alcohol-Free Zone Act is not part of the Public School Code. It has been compiled as part of the Public School Code for the convenience of the user.

**Effective dates.** — Laws 2005, ch. 249 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

#### 22-5A-2. Definitions.

As used in the School Alcohol-Free Zone Act:

A. "alcoholic beverage" means a beverage with no less than one-half percent alcohol and includes wine, beer, fermented, distilled, rectified and fortified beverages; and

B. "school grounds" means public elementary and secondary schools, including charter schools and facilities owned or leased by the school district in or on which public school-related and sanctioned activities are performed, but does not include other commercial properties owned by a school district but not related to the functions of a public school. "School grounds" includes the buildings, playing fields, parking lots and other facilities located on a school's premises.

**History:** Laws 2005, ch. 249, § 2.

**Effective dates.** — Laws 2005, ch. 249 contained no effective date provision, but, pursuant to N.M. Const.,

art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

#### 22-5A-3. Alcoholic beverages prohibited on public school grounds.

It is unlawful to possess or consume alcoholic beverages on public school grounds.

**History:** Laws 2005, ch. 249, § 3.

**Cross references.** — For school employees reporting drug and alcohol abuse, see 22-5-4.4 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 249 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

#### 22-5A-4. Notices required.

A school shall conspicuously post notices on school grounds stating that possession and consumption of alcoholic beverages is prohibited on school grounds.

**History:** Laws 2005, ch. 249, § 4.

**Cross references.** — For school employees reporting drug and alcohol abuse, see 22-5-4.4 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 249 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

#### 22-5A-5. Penalties.

A. A person convicted of consumption or possession of an alcoholic beverage on school property for the first offense is guilty of a petty misdemeanor and subject to a fine of not less than



twenty-five dollars (\$25.00) or more than one hundred dollars (\$100) and may be ordered to perform community service.

B. A person convicted of consumption or possession of an alcoholic beverage on school property for the second or a subsequent offense is guilty of a misdemeanor and subject to a fine of not more than five hundred dollars (\$500) or imprisonment for a definite term not to exceed six months, or both.

**History:** Laws 2005, ch. 249, § 5.

**Cross references.** — For school employees reporting drug and alcohol abuse, *see* 22-5-4.4 NMSA 1978.

For penalty for possession of drugs in a posted drug-free zone, *see* 30-31-23 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 249 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## ARTICLE 6

### School District Elections

(Repealed by Laws 1985, ch. 168, § 22 and Laws 1993, ch. 226, § 54.)

#### 22-6-1. Repealed.

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-1 NMSA 1978, relating to regular and special school district elections, precincts and polling places, effective June 14,

1985. For present comparable provisions, *see* 1-22-3 to 1-22-6 NMSA 1978.

#### 22-6-2. Repealed.

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-2 NMSA 1978, relating to regular and special school district elections, precincts and polling places, effective June 14,

1985. For present comparable provisions, *see* 1-22-3 to 1-22-6 NMSA 1978.

#### 22-6-3. Repealed.

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-3 NMSA 1978, relating to regular and special school district elections, precincts and polling places, effective June 14,

1985. For present comparable provisions, *see* 1-22-3 to 1-22-6 NMSA 1978.

#### 22-6-4. Repealed.

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-4 NMSA 1978, relating to regular and special school district elections, precincts and polling places, effective June 14,

1985. For present comparable provisions, *see* 1-22-3 to 1-22-6 NMSA 1978.

#### 22-6-5. Repealed.

**Repeals.** — Laws 1993, ch. 226, § 54 repealed 22-6-5 NMSA 1978, relating to qualifications for a candidate for membership on a local school board, effective July 1, 1993.

For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com*.

#### 22-6-6. Repealed.

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-6 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

#### 22-6-7. Repealed.

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-7 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-8. Repealed.

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-8 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-9. Repealed.

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-9 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-10. Repealed.

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-10 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-11. Repealed.

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-11 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-12. Repealed.

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-12 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-13. Repealed.

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-13 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-14. Repealed.

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-14 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-15. Repealed.

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-15 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-16. Repealed.

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-16 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-17. Repealed.

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-17 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.



**22-6-18. Repealed.**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-18 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

**22-6-19. Repealed.**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-19 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

**22-6-20. Repealed.**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-20 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

**22-6-21. Repealed.**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-21 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

**22-6-22. Repealed.**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-22 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

**22-6-23. Repealed.**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-23 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

**22-6-24. Repealed.**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-24 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

**22-6-25. Repealed.**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-25 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

**22-6-26. Repealed.**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-26 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

**22-6-27. Repealed.**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-27 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

**22-6-28. Repealed.**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-28 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

**22-6-29. Repealed.**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-29 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

**22-6-30. Repealed.**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-30 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

**22-6-31. Repealed.**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-31 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

**22-6-32. Repealed.**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-32 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

**22-6-33. Repealed.**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-33 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

**22-6-34. Repealed.**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-34 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

**ARTICLE 7****Local School Board Member Recall**

Sec.

22-7-1. Recompiled.  
22-7-2. Repealed.  
22-7-3. Recompiled.  
22-7-4. Recompiled.  
22-7-5. Recompiled.  
22-7-6. Recompiled.  
22-7-7. Recompiled.  
22-7-8. Recompiled.  
22-7-9. Recompiled.

Sec.

22-7-9.1. Recompiled.  
22-7-10. Recompiled.  
22-7-11. Repealed.  
22-7-12. Recompiled.  
22-7-13. Recompiled.  
22-7-14. Recompiled.  
22-7-15. Repealed.  
22-7-16. Repealed.



## 22-7-1. Recompiled.

**Recompilations.** — Laws 2019, ch. 212, § 159 recompiled and amended former 22-7-1 NMSA 1978 as 1-25-1 NMSA 1978 effective April 3, 2019.

## 22-7-2. Repealed.

**Repeals.** — Laws 2019, ch. 212, § 284 repealed 22-7-2 NMSA 1978, as enacted by Laws 1977, ch. 308, § 2, relating to purpose of act, effective April 3, 2019. For

provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

## 22-7-3. Recompiled.

**Recompilations.** — Laws 2019, ch. 212, § 160 recompiled and amended former 22-7-3 NMSA 1978 as 1-25-2 NMSA 1978 effective April 3, 2019.

## 22-7-4. Recompiled.

**Recompilations.** — Laws 2019, ch. 212, § 161 recompiled and amended former 22-7-4 NMSA 1978 as 1-25-3 NMSA 1978 effective April 3, 2019.

## 22-7-5. Recompiled.

**Recompilations.** — Laws 2019, ch. 212, § 170 recompiled and amended former 22-7-5 NMSA 1978 as 1-25-12 NMSA 1978 effective April 3, 2019.

## 22-7-6. Recompiled.

**Recompilations.** — Laws 2019, ch. 212, § 162 recompiled and amended former 22-7-6 NMSA 1978 as 1-25-4 NMSA 1978 effective April 3, 2019.

## 22-7-7. Recompiled.

**Recompilations.** — Laws 2019, ch. 212, § 166 recompiled and amended former 22-7-7 NMSA 1978 as 1-25-8 NMSA 1978 effective April 3, 2019.

## 22-7-8. Recompiled.

**Recompilations.** — Laws 2019, ch. 212, § 163 recompiled and amended former 22-7-8 NMSA 1978 as 1-25-5 NMSA 1978 effective April 3, 2019.

## 22-7-9. Recompiled.

**Recompilations.** — Laws 2019, ch. 212, § 165 recompiled and amended former 22-7-9 NMSA 1978 as 1-25-7 NMSA 1978 effective April 3, 2019.

## 22-7-9.1. Recompiled.

**Recompilations.** — Laws 2019, ch. 212, § 164 recompiled and amended former 22-7-9.1 NMSA 1978 as 1-25-6 NMSA 1978 effective April 3, 2019.

## 22-7-10. Recompiled.

**Recompilations.** — Laws 2019, ch. 212, § 167 recompiled and amended former 22-7-10 NMSA 1978 as 1-25-9 NMSA 1978 effective April 3, 2019.

## 22-7-11. Repealed.

**Repeals.** — Laws 1979, ch. 277, § 4 repealed 22-7-11 NMSA 1978, relating to duties of the attorney general in

relation to a petition for a recall of a local school board member.

## 22-7-12. Recompiled.

**Recompilations.** — Laws 2019, ch. 212, § 168 recompiled and amended former 22-7-12 NMSA 1978 as 1-25-10 NMSA 1978 effective April 3, 2019.

## 22-7-13. Recompiled.

**Recompilations.** — Laws 2019, ch. 212, § 169 recompiled and amended former 22-7-13 NMSA 1978 as 1-25-11 NMSA 1978 effective April 3, 2019.

## 22-7-14. Recompiled.

**Recompilations.** — Laws 2019, ch. 212, § 171 recompiled and amended former 22-7-14 NMSA 1978 as 1-25-13 NMSA 1978 effective April 3, 2019.

## 22-7-15. Repealed.

**Repeals.** — Laws 2019, ch. 212, § 284 repealed 22-7-15 NMSA 1978, as enacted by Laws 1977, ch. 308, § 15, relating to mandamus, effective April 3, 2019. For

provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

## 22-7-16. Repealed.

**Repeals.** — Laws 2019, ch. 212, § 284 repealed 22-7-16 NMSA 1978, as enacted by Laws 1977, ch. 308, § 16, relating to penalties, effective April 3, 2019. For

provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

# ARTICLE 8

## Public School Finance

Sec.

- 22-8-1. Short title.
- 22-8-2. Definitions.
- 22-8-3. Office of education abolished; functions transferred.
- 22-8-4. Department; duties.
- 22-8-5. Rules; procedures.
- 22-8-5.1. Procurement, travel and gas cards.
- 22-8-6. Operating budgets; educational plans; submission; failure to submit.
- 22-8-6.1. Charter school operating budgets; maximum MEM.
- 22-8-7. Manner of budget submission.
- 22-8-7.1. Certain school district budgets.
- 22-8-8. Budgets; minimum student membership.
- 22-8-9. Budgets; minimum requirements.
- 22-8-10. Budgets; fixing the operating budget.
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Sec.

- 22-8-12. Operating budgets; amendments.
- 22-8-12.1. Membership projections and budget requests.
- 22-8-12.2. Repealed.
- 22-8-12.3. Local school board finance subcommittee; audit committee; membership; duties.
- 22-8-13. Reports.
- 22-8-13.1. School district and charter school audits; sanctions for not submitting timely audit reports.
- 22-8-13.2. Financial reporting.
- 22-8-13.3. Reporting system; reporting requirements.
- 22-8-14. Public school fund.
- 22-8-15. Allocation limitation.
- 22-8-16. Payment to school districts.
- 22-8-17. Program cost determination; required information.
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- Sec. 22-8-19. Early childhood education program units.  
 22-8-19.1. Preschool programs; selected districts.  
 22-8-20. Basic program units.  
 22-8-21. Special education program units.  
 22-8-22. Bilingual multicultural education program units.  
 22-8-23. Size adjustment program units.  
 22-8-23.1. Enrollment growth program units.  
 22-8-23.2. New district adjustment; additional program units.  
 22-8-23.3. At-risk program units.  
 22-8-23.4. National board for professional teaching standards; certified teachers program units.  
 22-8-23.5. Fine arts education program units.  
 22-8-23.6. Charter school student activities program unit.  
 22-8-23.7. Elementary physical education program units.  
 22-8-23.8. Home school student activities program unit.  
 22-8-23.9. Home school student program units.  
 22-8-23.10. Extended learning time program.  
 22-8-23.11. K-5 plus program units.  
 22-8-23.12. New program funding.  
 22-8-23.13. Public education reform fund created.  
 22-8-24. Instructional staff training and experience index; definitions; factors; calculations.  
 22-8-25. State equalization guarantee distribution; determination of amount.  
 22-8-25.1. Additional per unit distribution from public school fund.  
 22-8-26. Transportation distribution.  
 22-8-27. Transportation equipment.  
 22-8-28. Repealed.  
 22-8-29. Transportation distributions; reports; payments.  
 22-8-29.1. Calculation of transportation allocation.  
 22-8-29.2. Repealed.
- Sec. 22-8-29.3. Repealed.  
 22-8-29.4. Transportation distribution adjustment factor.  
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 22-8-30. Supplemental distributions.  
 22-8-30.1. Recompiled.  
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 22-8-31. State-support reserve fund.  
 22-8-32. Current school fund; receipts; disposition.  
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 22-8-34. Federal mineral leasing funds.  
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 22-8-36. Certification of allocations; fund accounts.  
 22-8-37. Public school funds.  
 22-8-38. Boards of finance; designation.  
 22-8-39. Boards of finance; suspension.  
 22-8-40. Deposit of public school funds; distribution; interest.  
 22-8-40.1. Deposit of public school funds; providing exception on interest rate limitation for "NOW" accounts.  
 22-8-41. Restriction on operational funds; emergency accounts; cash balances.  
 22-8-42. Violation of act; penalties.  
 22-8-43. Public school reading proficiency fund; created.  
 22-8-44. Educator licensure fund; distribution; appropriation.  
 22-8-45. Teacher professional development fund.  
 22-8-45.1. Beginning teacher mentorship fund; created.  
 22-8-46. Repealed.  
 22-8-47. New Mexico government education fund.  
 22-8-48. New school development fund; distribution.  
 22-8-49. Teacher cost index; licensure-experience factor; report.

## 22-8-1. Short title.

Chapter 22, Article 8 NMSA 1978 may be cited as the "Public School Finance Act".

**History:** 1953 Comp., § 77-6-1, enacted by Laws 1967, ch. 16, § 55; 2003, ch. 153, § 28.

**Cross references.** — For general obligation bonds of school districts, see 22-18-1 NMSA 1978 et seq.

For school revenue bonds, see 22-19-1 NMSA 1978 et seq.

For public school emergency capital outlay, see 22-24-1 NMSA 1978 et seq.

For public school capital improvements, see 22-25-1 NMSA 1978 et seq.

**The 2003 amendment**, effective April 4, 2003, substituted "Chapter 22, Article 8 NMSA 1978" for "Sections 22-8-1 through 22-8-42 NMSA 1978" at the beginning of the section.

not give rise to a contractual relationship for which an individual may sue for breach of contract. *Rubio v. Carlsbad Mun. Sch. Dist.*, 1987-NMCA-127, 106 N.M. 446, 744 P.2d 919.

**Education of nonresidents without taking state allotment unconstitutional donation.** — To the extent that a local school district would undertake the total burden of educating nonresident students without benefit of state allotment as dispensed on the basis of average daily membership, the school district would still be making a donation in aid of those students in violation of N.M. Const., art. IX, § 14. 1978 Op. Att'y Gen. No. 78-14.

## ANNOTATIONS

**No contractual right to free public education.** The right and privilege to a free public education does not give rise to a contractual relationship for which an individual may sue for breach of contract.

## 22-8-2. Definitions.

As used in the Public School Finance Act:

A. "ADM" or "MEM" means membership;

B. "membership" means the total enrollment of qualified students on the current roll of a class or school on a specified day. The current roll is established by the addition of original entries and reentries minus withdrawals. Withdrawals of students, in addition to students formally withdrawn from the public school, include students absent from the public school for as many as ten consecutive school days; provided that withdrawals do not include students in need of early intervention



and habitual truants the school district is required to intervene with and keep in an educational setting as provided in Section 22-12-9 NMSA 1978;

C. "basic program ADM" or "basic program MEM" means the MEM of qualified students but excludes the full-time-equivalent MEM in early childhood education and three- and four-year-old students receiving special education services;

D. "cost differential factor" is the numerical expression of the ratio of the cost of a particular segment of the school program to the cost of the basic program in grades four through six;

E. "department" or "division" means the public education department;

F. "early childhood education ADM" or "early childhood education MEM" means the full-time-equivalent MEM of students attending approved early childhood education programs;

G. "full-time-equivalent ADM" or "full-time-equivalent MEM" is that membership calculated by applying to the MEM in an approved public school program the ratio of the number of hours per school day devoted to the program to six hours or the number of hours per school week devoted to the program to thirty hours;

H. "operating budget" means the annual financial plan and educational plan required to be submitted by a local school board or governing body of a state-chartered charter school;

I. "performance measure" means a quantitative indicator used to assess the output or outcome of an approved program;

J. "performance target" means the expected level of performance of a program's performance measure;

K. "program cost" is the product of the total number of program units to which a school district is entitled multiplied by the dollar value per program unit established by the legislature;

L. "program element" is that component of a public school system to which a cost differential factor is applied to determine the number of program units to which a school district is entitled, including MEM, full-time-equivalent MEM, teacher, classroom or public school;

M. "program unit" is the product of the program element multiplied by the applicable cost differential factor;

N. "public money" or "public funds" means all money from public or private sources received by a school district or state-chartered charter school or officer or employee of a school district or state-chartered charter school for public use;

O. "qualified student" means a public school student who:

- (1) has not graduated from high school;
- (2) is regularly enrolled in one-half or more of the minimum course requirements approved by the department for public school students; and
- (3) in terms of age and other criteria:
  - (a) is at least five years of age prior to 12:01 a.m. on September 1 of the school year;
  - (b) is at least three years of age at any time during the school year and is receiving special education services pursuant to rules of the department;
  - (c) except as provided in Subparagraph (d) of this paragraph, has not reached the student's twenty-second birthday on the first day of the school year; or
  - (d) has reached the student's twenty-second birthday on the first day of the 2019-2020 school year, is counted in a school district's or charter school's MEM on the third reporting date of the 2018-2019 school year, has been continuously enrolled in the same public school since that reporting date and is still enrolled in that school;

P. "rural population rate" means that proportion of the total population within a school district's geographic boundaries that lives in a rural area and not in an urban area as defined by the United States census bureau;

Q. "staffing cost multiplier" means:

- (1) for fiscal year 2019, the instructional staff training and experience index;
- (2) for fiscal year 2020, the weighted average of the instructional staff training and experience index at seventy-five percent and the teacher cost index at twenty-five percent;
- (3) for fiscal year 2021, the weighted average of the instructional staff training and experience index at fifty percent and the teacher cost index at fifty percent;
- (4) for fiscal year 2022, the weighted average of the instructional staff training and experience index at twenty-five percent and the teacher cost index at seventy-five percent; and



(5) for fiscal year 2023 and subsequent fiscal years, the teacher cost index; and

R. "state superintendent" means the secretary of public education or the secretary's designee.

**History:** 1953 Comp., § 77-6-2, enacted by Laws 1967, ch. 16, § 56; 1969, ch. 180, § 3; 1971, ch. 263, § 3; 1972, ch. 17, § 1; 1974, ch. 7, § 1; 1974, ch. 8, § 1; 1977, ch. 83, § 1; 1977, ch. 246, § 62; reenacted by Laws 1978, ch. 128, § 3; 1980, ch. 151, § 46; 1983, ch. 301, § 68; 1985, ch. 93, § 1; 1986, ch. 33, § 13; 1988, ch. 64, § 13; 1995, ch. 69, § 1; 1997, ch. 40, § 2; 2004, ch. 27, § 21; 2005, ch. 260, § 1; 2006, ch. 94, § 2; 2009, ch. 193, § 1; 2018, ch. 55, § 1; 2019, ch. 206, § 6; 2019, ch. 207, § 6.

**Cross references.** — For the secretary of public education, see 9-24-5 NMSA 1978 and N.M. Const., art. XII, § 6.

**The 2019 amendment,** effective June 14, 2019, defined "performance measure", "performance target", and "rural population", and revised the definitions of certain terms, as used in the Public School Finance Act; in Subsection H, after "financial plan", added "and educational plan"; added new Subsections I and J and redesignated former Subsections I through M as Subsections K through O, respectively; in Subsection O, in Paragraph O(3), after "age", added "and other criteria", in Subparagraph O(3)(c), added "except as provided in Subparagraph (d) of this paragraph", and after "school year", deleted "and is receiving special education services pursuant to rules of the department", and added new Subparagraph O(3)(d); and added new Subsection P and redesignated former Subsections N and O as Subsections Q and R, respectively.

Laws 2019, ch. 206, § 6 and Laws 2019, ch. 207, § 6, both effective June 14, 2019, enacted identical amendments to this section. The section is set out as amended by Laws 2019, ch. 207, § 6. See 12-1-8 NMSA 1978.

**Applicability.** — Laws 2019, ch. 206, § 29 provided that the provisions of Sections 2 through 19 of this act apply to the program cost calculation in fiscal year 2020 and subsequent fiscal years.

**Temporary provisions.** — Laws 2019, ch. 206, § 25 provided that any unexpended or unencumbered balances remaining in the K-3 plus fund on June 30, 2019 shall be transferred to the state-support reserve fund and up to three million dollars (\$3,000,000) shall be transferred to the public education department to implement the provisions of Section 26 of this 2019 act in fiscal year 2020.

**Temporary provisions.** — Laws 2019, ch. 206, § 26 provided that using funds provided in Section 25 of this 2019 act for fiscal year 2020, the public education department shall supplement a school district's or charter school's calculated program cost if for fiscal year 2020 the school district's or charter school's program cost is less than its final program cost in the previous fiscal year in an amount equal to one hundred percent of the reduction attributable to the implementation of Section 6 [22-8-2 NMSA 1978] of this 2019 act amending the age of a qualified student.

**The 2018 amendment,** effective July 1, 2018, defined "staffing cost multiplier" as used in the Public School Finance Act to establish a phased-in teacher cost index; and added a new Subsection N and redesignated former Subsection N as Subsection O.

**The 2009 amendment,** effective June 19, 2009, in Subsection B, in the second sentence, after "withdrawals do not include", deleted "truants" and added "students in need of early intervention"; and in Paragraph (3) of Subsection M, added "in terms of age".

**The 2006 amendment,** effective July 1, 2007, included governing body of a state-chartered charter school in Subsection H; and in Subsection L, changed "local school board" to "school district" and added state-chartered charter school.

**The 2005 amendment,** effective June 17, 2005, provided in Subsection B that withdrawals do not include truants and habitual truants that the school district is required to intervene with and keep in an educational setting pursuant to Section 22-12-9 NMSA 1978.

**The 2004 amendment,** effective May 19, 2004, changed "state department" to "department".

**The 1997 amendment,** effective July 1, 1997, made a stylistic change in Subsection B.

**The 1995 amendment,** effective June 16, 1995, inserted "or 'MEM'" and deleted "MEM" from the end in Subsection A; rewrote Subsection C; inserted "or 'division'" in Subsection E; inserted "or 'early childhood education MEM'" and substituted "MEM" for "ADM" in Subsection F; inserted "or 'full-time equivalent MEM'", deleted "average daily" preceding "membership" and substituted "MEM" for "ADM" in Subsection G; substituted "MEM" for "ADM" in two places in Subsection J; deleted "provided the provisions of this paragraph shall be effective with the 1987 - 1988 school year" at the end of Paragraph (3) of Subsection M; deleted former Subsection N which defined "special education ADM"; added Paragraphs (4) and (5) in Subsection M; redesignated former Subsection O as Subsection N; and made minor stylistic changes throughout the section.

**The 1988 amendment,** effective May 18, 1988, substituted "ADM means membership ('MEM') for 'ADM means average daily membership'" in Subsection A; in Subsection B, deleted "average daily" preceding "membership" in the first sentence, substituted "qualified students on the current roll of class or school on a specified day" for "students for each school day of the school year used, minus withdrawals of students, divided by the number of school days used", and added the next-to-last sentence; substituted present Subsection E for the provisions of the former subsection which defined "division"; added Subsection O and made related changes in Subsection N.

## 22-8-3. Office of education abolished; functions transferred.

The office of education in the department of finance and administration is abolished. On the effective date of this act, all powers and duties provided by law for the office of education are transferred to the state department of public education [public education department].

**History:** 1978 Comp., § 22-8-3, enacted by Laws 1988, ch. 64, § 14.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be

deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.



**Repeals and reenactments.** — Laws 1988, ch. 64, § 14 repealed former 22-8-3 NMSA 1978, relating to creation of the office of education, as amended by Laws 1983, ch. 301, § 69 and enacted the above section, effective May 18, 1988.

**Compiler's notes.** — The phrase "effective date of this act" means May 18, 1988, the effective date of Laws 1988, Chapter 64.

## 22-8-4. Department; duties.

In addition to other duties provided by law, the department shall:

- A. prescribe the forms for and supervise and control the preparation of all budgets of all public schools and school districts; and
- B. compile accurate information concerning public school finance and administration.

**History:** 1953 Comp., § 77-6-4, enacted by Laws 1967, ch. 16, § 58; 1969, ch. 180, § 4; 1974, ch. 8, § 2; 1978, ch. 127, § 2; 1979, ch. 305, § 1; 1988, ch. 64, § 15.

The 1988 amendment, effective May 18, 1988, substituted "Department" for "Public school finance division" in the catchline; substituted "department" for "division" in the introductory paragraph; deleted Subsection C, regarding advising and consulting with the state superintendent in regard to financial matters, and made a related change.

### ANNOTATIONS

**Discretionary substantive line item allocations.** — Supervision or control does not include grant of power to division or chief (now director) to make discretionary substantive line item allocations in estimated budgets, 1975 Op. Att'y Gen. No. 75-30.

## 22-8-5. Rules; procedures.

A. The department, in consultation with the state auditor, shall establish rules and procedures for a uniform system of accounting and budgeting of funds for all public schools and school districts of the state. The rules, including revisions or amendments, shall become effective upon filing with the state records center and archives and publication. A copy shall also be filed with the department of finance and administration.

B. All public schools and school districts shall comply with the rules and procedures prescribed and shall, upon request, submit additional reports concerning finances to the department, including an accounting of the costs of services related to providing a program included in the educational plan approved by the department. In addition, upon request, all public schools and school districts shall file reports with the department containing pertinent details regarding applications for federal money or federal grants-in-aid or regarding federal money or federal grants-in-aid received, including details of programs, matching funds, personnel requirements, salary provisions and program numbers, as indicated in the catalog of federal domestic assistance, of the federal funds applied for and of those received.

C. Upon request by the department of finance and administration, the legislative finance committee or the legislative education study committee, the department shall furnish information and data obtained from public schools and school districts and information compiled by the department related to public school finances within ten business days.

**History:** 1953 Comp., § 77-6-5, enacted by Laws 1967, ch. 16, § 59; 1976 (S.S.), ch. 28, § 3; 1988, ch. 64, § 16; 1999, ch. 291, § 1; 2003, ch. 273, § 23; 2019, ch. 206, § 7; 2019, ch. 207, § 7.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**Cross references.** — For filing with records center, see 14-4-4 NMSA 1978.

For state auditor, see 8-6-1 NMSA 1978.

For audit act, see 12-6-1 NMSA 1978.

For legislative education study committee, see 2-10-1 NMSA 1978.

**The 2019 amendment**, effective June 14, 2019, required all public schools and school districts, upon request, to submit to the public education department an accounting of costs of services related to providing a program included in the educational plan, and upon request from certain governmental entities, required the public education department to furnish, within ten business days, information related to public school finances; in Subsection A, after "upon", deleted "approval by the state board and", and after "records center", added "and archives"; in Subsection B, after "finances to the department", added "including an accounting of the costs of services related to providing a program included in the educational plan approved by the department"; and in Subsection C, after "the department shall", deleted "timely", after "school districts", deleted "pursuant to Subsection B of this section" and added "and



information compiled by the department related to public school finances within ten business days".

Laws 2019, ch. 206, § 7 and Laws 2019, ch. 207, § 7, both effective June 14, 2019, enacted identical amendments to this section. The section is set out as amended by Laws 2019, ch. 207, § 7. *See* 12-1-8 NMSA 1978.

**Applicability.** — Laws 2019, ch. 206, § 29 provided that the provisions of Sections 2 through 19 of this act apply to the program cost calculation in fiscal year 2020 and subsequent fiscal years.

**The 2003 amendment,** effective July 1, 2003, in Subsection A, inserted "in consultation with the state auditor" near the beginning and deleted "and the legislative finance committee" following "the state board".

**The 1999 amendment,** effective April 8, 1999, substituted references to rules and procedures for a uniform system of accounting and budgeting of funds for references to a manual of accounting and budgeting in the section heading and throughout the section, substituted "state board" for "state board of education" in Subsection A, deleted "but not limited to" after "grants-in-aid received, including" in Subsection B, and substituted "department" for "state department of public education" in Subsection C.

**The 1988 amendment,** effective May 18, 1988, substituted "department" for "division" throughout the section; in Subsection A, inserted "state board of education and the" in the second sentence, substituted "state records center" for "supreme court law librarian", and added the last sentence; and added Subsection C.

## 22-8-5.1. Procurement, travel and gas cards.

A. The department shall promulgate rules governing the use of procurement, travel and gas cards by school districts and charter schools. At a minimum, the rules shall require local school boards and governing bodies to adopt policies for the use of procurement, travel or gas cards, including placing limits on the amount and types of purchases that may be made on such cards and procedures to monitor, control and report expenditures.

B. As used in this section:

- (1) "charter school" means a school organized as a charter school pursuant to the provisions of the Charter Schools Act [Chapter 22, Article 8B NMSA 1978]; and
- (2) "governing body" means the governing structure of a charter school as set forth in the school's charter.

**History:** Laws 2011, ch. 12, § 2.

**Effective dates.** — Laws 2011, ch. 12 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

## 22-8-6. Operating budgets; educational plans; submission; failure to submit.

A. Prior to April 15 of each year, each local school board shall submit to the department an operating budget for the school district and any locally chartered charter school in the school district for the ensuing fiscal year.

B. The date for the submission of the operating budget for each school district and each charter school as required by this section may be extended to a later date fixed by the secretary.

C. The operating budget required by this section may include:

- (1) estimates of the cost of insurance policies for periods up to five years if a lower rate may be obtained by purchasing insurance for the longer term; or
- (2) estimates of the cost of contracts for the transportation of students for terms extending up to four years.

D. The operating budget required by this section shall include a budget for each charter school of the membership projected for each charter school, the total program units generated at that charter school and approximate anticipated disbursements and expenditures at each charter school.

E. For fiscal year 2021 and subsequent fiscal years, each school district's and each locally chartered or state-chartered charter school's educational plan shall include:

- (1) information on the instructional time offered by the school district or charter school, including the number of instructional days by school site and the number of hours in each instructional day and the frequency of early-release days;
- (2) a narrative explaining the identified services to improve the academic success of at-risk students;
- (3) a narrative explaining the services provided to students enrolled in the following programs:

(a) extended learning time programs, including a report of how the extended learning time is used to improve the academic success of students and professional learning of teachers; and

(b) K-5 plus programs;

(4) a narrative explaining the school district's or charter school's beginning teacher mentorship programs as well as class size and teaching load information;

(5) a narrative explaining supplemental programs or services offered by the school district or charter school to ensure that the Bilingual Multicultural Education Act [Chapter 22, Article 23 NMSA 1978], the Indian Education Act [Chapter 22, Article 23A NMSA 1978] and the Hispanic Education Act [Chapter 22, Article 23B NMSA 1978] are being implemented by the school district or charter school;

(6) a narrative describing the amount of program cost generated for services to students with disabilities and the spending of these revenues on services to students with disabilities, which shall include the following:

(a) program cost generated for students enrolled in approved special education programs;

(b) budgeted expenditures of program cost, for students enrolled in approved special education programs; on students with disabilities;

(c) the amount of program cost generated for personnel providing ancillary and related services to students with disabilities;

(d) budgeted expenditures of program cost for personnel providing ancillary and related services to students with disabilities, on special education ancillary and related services personnel; and

(e) a description of the steps taken to ensure that students with disabilities have access to a free and appropriate public education; and

(7) a common set of performance targets and performance measures, as determined by the department in consultation with the department of finance and administration, the legislative finance committee and the legislative education study committee.

F. In addition to the requirements of Subsection E of this section, a school district or charter school that receives federal or local revenue shall include in its educational plan a narrative explaining how the school district or charter school will use the federal or local revenue to improve outcomes for students or to improve the condition of a school building. No later than October 1 of each year, a school district or charter school that received federal or local revenue in the prior fiscal year shall report to the department on the actual uses of that revenue, including a comprehensive evaluation of how the programs and services provided with that revenue improved outcomes for students or how capital projects undertaken improved the condition of a school building. A school district or charter school that is required under federal law to consult with tribal entities as a condition of receiving impact aid funds shall include in its educational plan a detailed narrative of its consultations with tribal entities and the results of those consultations. The school district or charter school shall transmit the October 1 spending and outcomes report to the appropriate tribal authorities. No later than November 15 of each year, the department shall compile the federal and local revenue outcomes reports into a statewide report to the legislative education study committee and the legislative finance committee that includes an analysis and identification of effective programs and strategies that improve outcomes for students.

G. A school district or charter school operating budget and educational plan shall prioritize federal and local revenue for purposes relating to the Indian Education Act [Chapter 22, Article 23A NMSA 1978]; for capital expenditures authorized by the Public School Capital Outlay Act [Chapter 22, Article 24 NMSA 1978], the Public School Capital Improvements Act [Chapter 22, Article 25 NMSA 1978] or the Public School Buildings Act [Chapter 22, Article 26 NMSA 1978]; or for research-based or evidence-based social, emotional or academic interventions for which at-risk program units may be used.

H. If a local school board or governing board of a charter school fails to submit an operating budget pursuant to this section, the department shall prepare the operating budget for the school district or charter school for the ensuing fiscal year. A local school board or governing board of a



charter school shall be considered as failing to submit an operating budget pursuant to this section if the budget submitted exceeds the total projected resources of the school district or charter school or if the budget submitted does not comply with the law or with rules and procedures of the department.

I. As used in this section:

(1) "federal revenue" means seventy-five percent of the revenue derived from:

(a) federal forest reserve funds distributed in accordance with Section 22-8-33 NMSA 1978; or

(b) federal assistance to those areas affected by federal activity authorized in accordance with Title 20 of the United States Code, commonly known as "PL 874 funds" or "impact aid funds"; and

(2) "local revenue" means seventy-five percent of the revenue from a school district one-half mill school district property tax and revenue from the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978] and the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978].

**History:** 1953 Comp., § 77-6-6, enacted by Laws 1967, ch. 16, § 60; 1988, ch. 64, § 17; 1993, ch. 224, § 2; 1993, ch. 227, § 9; 1999, ch. 281, § 21; 1999, ch. 291, § 2; 2019, ch. 206, § 8; 2019, ch. 207, § 8; 2021, ch. 52, § 3.

**Cross references.** — For transfer of powers and duties of the former state superintendent, see 9-24-15 NMSA 1978.

**The 2021 amendment,** effective July 1, 2021, required school districts and charter schools that receive federal or local revenue to include proposed uses of the federal or local revenue in their educational plans, required school districts and charter schools to report to the public education department the actual uses of the federal or local revenue and report the student outcomes from the use of federal or local revenue, provided additional reporting duties for school districts and charter schools, and defined certain terms used in this section; in the section heading, after "submission", added "certain reports"; added new Subsections F and G and redesignated former Subsection F as Subsection H; and added Subsection I.

**The 2019 amendment,** effective June 14, 2019, provided additional requirements for the content of each school district's and each locally chartered or state-chartered school's education plan; in the section heading, added "Operating" preceding "budgets", and after "budgets", added "educational plans"; added new subsection designation "B." and redesignated former Subsections B and C as Subsections C and D, respectively; in Subsection B, after "operating budget", added "for each school district and each charter school"; added new Subsection E and redesignated former Subsection D as Subsection F; and in Subsection F, after each occurrence of "school board", added "or governing board

of a charter school" and after each occurrence of "school district", added "or charter school".

Laws 2019, ch. 206, § 8 and Laws 2019, ch. 207, § 8, both effective June 14, 2019, enacted identical amendments to this section. The section is set out as amended by Laws 2019, ch. 207, § 8. See 12-1-8 NMSA 1978.

**Applicability.** — Laws 2019, ch. 206, § 29 provided that the provisions of Sections 2 through 19 of this act apply to the program cost calculation in fiscal year 2020 and subsequent fiscal years.

**1999 Amendments.** — Laws 1999, ch. 291, § 2, effective April 8, 1999, substituted "operating budget" for "estimated budget" throughout the section; deleted "local" before "school district" in Subsection C; and substituted "with rules and procedures" for "the manual of accounting and budgeting" at the end of Subsection D.

Laws 1999, ch. 281, § 21, effective June 18, 1999, inserted "and any charter schools in the district" in the first sentence of Subsection A; and rewrote Subsection C.

**1993 amendments.** — Laws 1993, ch. 227, § 9, effective June 18, 1993, added a new Subsection C and redesignated former Subsection C as Subsection D.

**The 1988 amendment,** effective May 18, 1988, substituted "department" for "division" and "state superintendent" for "chief" throughout the section.

## ANNOTATIONS

**Legislative intent.** — The legislature obviously intended that a school board may purchase insurance policies not to exceed five years and, if prepayment of the entire premium in the initial policy year is necessary in order to obtain the insurance, then the school board may legally do so. 1975 Op. Att'y Gen. No. 75-03.

## 22-8-6.1. Charter school operating budgets; maximum MEM.

A. Each state-chartered charter school shall submit to the charter schools division of the department a school-based operating budget. The operating budget shall be submitted to the division for approval or amendment pursuant to the Public School Finance Act and the Charter Schools Act [Chapter 22, Article 8B NMSA 1978]. Thereafter, the operating budget shall be submitted to the commission for review.

B. Each locally chartered charter school shall submit to the local school board a school-based operating budget for approval or amendment. The approval or amendment authority of the local school board relative to the charter school operating budget is limited to ensuring that sound fiscal practices are followed in the development of the operating budget and that the charter school



operating budget is within the allotted resources. The local school board shall have no veto authority over individual line items within the charter school's proposed financial budget or over any item in the educational plan, but shall approve or disapprove the operating budget in its entirety. Upon final approval of the charter school operating budget by the local school board, the individual charter school operating budget shall be included separately in the budget submission to the department required pursuant to the Public School Finance Act and the Charter Schools Act.

C. For its first year of operation, a charter school's operating budget shall be based on the projected number of program units generated by the school and its students using the at-risk index and the staffing cost multiplier of the school district in which the charter school is located, and the charter school's operating budget shall be adjusted using the qualified MEM on the first reporting date of the current school year. For its second and subsequent fiscal years of operation, a charter school's operating budget shall be based on the number of program units generated by the charter school and its students using the average of the MEM on the second and third reporting dates of the prior year, the at-risk index of the school district in which the charter school is located and the charter school's staffing cost multiplier.

**History:** Laws 1993, ch. 227, § 8; 1999, ch. 281, § 22; 2006, ch. 94, § 3; 2009, ch. 213, § 1; 2010, ch. 116, § 2; 2015, ch. 108, § 4; 2018, ch. 55, § 2; 2019, ch. 206, § 9; 2019, ch. 207, § 9.

**The 2019 amendment**, effective June 14, 2019, clarified certain terms within the section; added "operating" preceding "budget" throughout the section; in Subsection B, after "financial budget", added "or over any item in the educational plan", and after "approval of the", deleted "local" and added "charter school operating"; and in Subsection C, added "charter" preceding each occurrence of "school".

Laws 2019, ch. 206, § 9 and Laws 2019, ch. 207, § 9, both effective June 14, 2019, enacted identical amendments to this section. The section is set out as amended by Laws 2019, ch. 207, § 9. See 12-1-8 NMSA 1978.

**Applicability.** — Laws 2019, ch. 206, § 29 provided that the provisions of Sections 2 through 19 of this act apply to the program cost calculation in fiscal year 2020 and subsequent fiscal years.

**The 2018 amendment**, effective July 1, 2018, revised the formula for calculating charter school budgets; in Subsection A, after the first sentence, deleted "For the first year of operation, the budget of every state-chartered charter school shall be based on the projected number of program units generated by that charter school and its students, using the at-risk index and the instructional staff training and experience index of the school district in which it is geographically located. For second and subsequent fiscal years of operation, the budgets of state-chartered charter schools shall be based on the number of program units generated using the average of the MEM on the second and third reporting dates of the prior year and its own instructional staff training and experience index and the at-risk index of the school district in which the state-chartered charter school is geographically located."; in Subsection B, after "a school-based budget", deleted "For the first year of operation, the budget of every locally chartered charter school shall be based on the projected number of program units generated by the charter school and its students, using the at-risk index and the instructional staff training and experience index of the school district in which it is geographically located. For second and subsequent fiscal years of operation, the budgets of locally chartered charter schools shall be based on the number of program units generated using the average of the MEM on the second and third reporting dates of the prior year and its own instructional staff training and experience index and the at-risk index of the school district in which the locally chartered charter school is geographically located. The budget shall be submitted to the local school board"; and in Subsection C, after "For",

deleted "the" and added "its", and after "first year of operation", deleted "after a locally chartered charter school converts to a state-chartered charter school or a state-chartered charter school converts to a locally chartered charter school, the charter school's budget shall be based on the number of program units generated using the average of the MEM on the second and third reporting dates of the prior year and the instructional staff training and experience index and the at-risk index of the school district in which it is geographically located. For second and subsequent fiscal years of operation, the charter school shall follow the provisions of Subsection A or B of this section, as applicable" and added the remainder of the subsection.

**The 2015 amendment**, effective July 1, 2015, required each charter school to submit its school-based budget to the public education commission for review following its submission to the charter schools division of the public education department; in Subsection A, added the last sentence; and deleted Subsection D relating to a charter school's instructional staff training and experience index.

**The 2010 amendment**, effective May 19, 2010, in Subsection A, in the third sentence, after "using the average of the", deleted "eightieth and one hundred twentieth day" and after "MEM", added "on the second and third reporting dates"; in Subsection B, in the third sentence, after "using the average of the", deleted "eightieth and one hundred twentieth day" and after "MEM", added "on the second and third reporting dates"; and in Subsection C, in the first sentence, after "using the average of the", deleted "eightieth and one hundred twentieth day" and after "MEM", added "on the second and third reporting dates".

**Temporary provisions.** — Laws 2010, ch. 116, § 9 provided that references in the Public School Code pertaining to the fortieth-day or forty-day report of public school membership or enrollment shall be deemed to be references to the first reporting date, which is the second Wednesday in October; references pertaining to the eightieth-day or eighty-day report of public school membership or enrollment shall be deemed to be references to the second reporting date, which is the second Wednesday in December; and references pertaining to the one-hundred twentieth-day or one-hundred twenty-day report of public school membership or enrollment shall be deemed to be references to the third reporting date, which is the second Wednesday in February.

As the public schools transition from former reporting dates to new reporting dates, the public education department may use any combination of former and new reporting dates as necessary to develop membership and cost projections and budgets for the 2010-2011 school year.

**The 2009 amendment**, effective June 19, 2009, in Subsection A, in the second sentence, after "For", deleted



"fiscal year 2008, and for" and after "first year of operation", deleted "in any fiscal year thereafter"; in Subsection B, in the second sentence, after "For", deleted "fiscal year 2008, and for" and after "first year of operation", deleted "in any fiscal year thereafter" and after "program units generated", deleted "using the average of the eighteenth and one hundred twentieth day MEM of the prior year" and added "by the charter school and its students"; in the second sentence, after "shall be based on the" added "number of program units generated using the average of the eighteenth and one hundred twentieth day MEM of the" and after "prior year" deleted "program units generated by that locally chartered charter school and its students"; and added Subsections C and D.

**The 2006 amendment**, effective July 1, 2007, in Subsection A, changed "charter school" to "state-chartered charter school"; changed "local school board" to "charter schools division of the department"; required budgets for every state-chartered charter school for fiscal year 2008 and the first year of operation in any fiscal year thereafter; provided for budgets for second and subsequent fiscal years and in Subsection B required locally chartered charter schools to submit budgets to local school boards and provided criteria for budgets for locally chartered charter school for fiscal year 2008 and for subsequent fiscal years.

**The 1999 amendment**, effective June 18, 1999, rewrote the section to the extent that a detailed comparison is impracticable.

## 22-8-7. Manner of budget submission.

All budgets submitted by a school district, locally chartered charter school or state-chartered charter school shall be in a manner specified by the department.

**History:** 1953 Comp., § 77-6-7, enacted by Laws 1967, ch. 16, § 61; 1969, ch. 180, § 5; 1999, ch. 291, § 3; 2006, ch. 94, § 4; 2015, ch. 108, § 5.

**The 2015 amendment**, effective July 1, 2015, provided that charter schools must submit budgets in a manner specified by the public education department; in the catchline, after the section number, deleted "Budgets; form" and added "Manner of budget submission"; and at the beginning of the section, after "submitted", deleted

"to the department", after "school district," added "locally chartered charter school", and after "shall be in a", deleted "form" and added "manner".

**The 2006 amendment**, effective July 1, 2007, added state-chartered charter schools.

**The 1999 amendment**, effective April 8, 1999, substituted "department" for "division" and for "manual of accounting and budgeting of the division".

### 22-8-7.1. Certain school district budgets.

A. The local school board of a school district with a total MEM of greater than thirty thousand shall develop a school-based budgeting plan for all schools in the district for presentation to the legislative education study committee by October 15, 1993. The plan shall describe the means by which teachers, parents and administrators will participate in the development of school-based budgets.

B. In those school districts with a total MEM of greater than thirty thousand each individual school may voluntarily submit to the local school board a school-based budget based upon the projected total MEM at that school and the projected number of program units generated by students at that school. If an individual school submits such a budget, the local school board may include it in the budget submission to the department required pursuant to the Public School Finance Act.

**History:** Laws 1993, ch. 224, § 1.

**Cross references.** — For the public education department, see 9-24-4 NMSA 1978.

## 22-8-8. Budgets; minimum student membership.

Without prior approval of the state superintendent [secretary], no local school board shall maintain or provide a budget allowance for a public school having an average daily membership of less than eight.

**History:** 1953 Comp., § 77-6-8, enacted by Laws 1967, ch. 16, § 62; 1988, ch. 64, § 18.

**Cross references.** — For transfer of powers and duties of the former state superintendent, see 9-24-15 NMSA 1978.

**The 1988 amendment**, effective May 18, 1988, substituted "state superintendent" for "chief".

## 22-8-9. Budgets; minimum requirements.

A. An operating budget for a school district shall not be approved by the department if the educational plan does not provide for:

- (1) a school year and school day as provided in Section 22-2-8.1 NMSA 1978; and
- (2) a pupil-teacher ratio or class or teaching load as provided in Section 22-10A-20 NMSA 1978.

B. The department shall, by rule, establish the requirements for an instructional day, the standards for an instructional hour and the standards for a full-time teacher and for the equivalent thereof.

**History:** 1953 Comp., § 77-6-9, enacted by Laws 1967, ch. 16, § 63; 1969, ch. 180, § 6; 1979, ch. 32, § 1; 1982, ch. 40, § 1; 1986, ch. 33, § 14; 1988, ch. 64, § 19; 1993, ch. 223, § 1; 1993, ch. 226, § 19; 1994, ch. 68, § 1; 1996, ch. 62, § 1; 1997, ch. 136, § 1; 2001, ch. 285, § 1; 2003, ch. 153, § 29; 2009, ch. 276, § 2; 2019, ch. 206, § 10; 2019, ch. 207, § 10.

**Cross references.** — For the public education department, see 9-24-4 NMSA 1978.

**The 2019 amendment**, effective June 14, 2019, provided that certain information must be included in the school district's educational plan prior to approval of the school district's operating budget; in Subsection A, deleted "A" and added "An operating", and after "department", deleted "that" and added "if the educational plan".

Laws 2019, ch. 206, § 10 and Laws 2019, ch. 207, § 10, both effective June 14, 2019, enacted identical amendments to this section. The section is set out as amended by Laws 2019, ch. 207, § 10. See 12-1-8 NMSA 1978.

**Applicability.** — Laws 2019, ch. 206, § 29 provided that the provisions of Sections 2 through 19 of this act apply to the program cost calculation in fiscal year 2020 and subsequent fiscal years.

**The 2009 amendment**, effective June 19, 2009, in Paragraph (1) of Subsection A, after "a school year", deleted "consisting of at least one hundred eighty full instructional days or the equivalent thereof; exclusive of any release time for in-service training"; and deleted "(2) a variable school year consisting of a minimum number of instructional hours established by the state board" and added the remainder of the sentence.

**Applicability.** — Laws 2009, ch. 276, § 3 provided that the provisions of Laws 2009, ch. 276, §§ 1 and 2 apply to the 2010-2011 and subsequent school years.

**The 2003 amendment**, effective April 4, 2003, deleted "of education" following "department" near the middle

of Subsection A; substituted "22-10A-20" for "22-2-8.2" following "Section" near the end of Subsection A(3); in Subsection B substituted "rule" for "regulation" following "shall, by" near the beginning, substituted "an instructional" for "a teaching" following "requirements for" near the middle and substituted "teacher" for "certified school instructor" following "a full-time" near the end; and deleted Subsection C.

**The 2001 amendment**, effective June 15, 2001, inserted "of education" following "department" in Subsection A; substituted "school instructor" for "classroom instructor" in Subsection B; and deleted Subsection D, which read "The provisions of Subsection C and Paragraph (2) of Subsection A of this section shall apply to school districts with a MEM of one thousand or fewer."

**The 1997 amendment**, effective June 20, 1997, deleted former Subsection A(4), which read: "effective July 1, 1997, a full-time, department-certified nurse for each fifty-five teachers employed by a school district or the equivalent part-time, department-certified nurse for less than fifty-five teachers" and in Subsection D, deleted "be construed to" following "shall" and deleted "only" following "apply".

**The 1996 amendment**, effective May 15, 1996, added Paragraph A(4) and made a stylistic change in Subsection D.

**The 1993 amendment**, effective July 1, 1993, deleted "effective with the 1987-88 school year" following "in-service training" in Paragraph (1) of Subsection A and substituted "a MEM" for "an ADM" in Subsection D.

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "division" near the beginning of Subsection A and "an ADM of 1,000 or fewer" for "an ADM of 500 or fewer" in Subsection D.

## 22-8-10. Budgets; fixing the operating budget.

A. Prior to June 20 of each year, each local school board and each governing board of a charter school shall, at a public hearing of which notice has been published by the local school board or governing board of a charter school, fix the operating budget for the school district or charter school for the ensuing fiscal year. At the discretion of the secretary or the local school board or governing body of a charter school, the department may participate in the public hearing.

B. Prior to the public hearing held to fix the operating budget for the school district or charter school, the local school board or governing body of a charter school shall give notice to parents explaining the budget process and inviting parental involvement and input in that process prior to the date for the public hearing. The educational plan submitted by the local school board or the governing body of a charter school to the department shall include information on parental involvement and input.

**History:** 1953 Comp., § 77-6-11, enacted by Laws 1967, ch. 16, § 65; 1988, ch. 64, § 20; 1989, ch. 225, § 1; 1993, ch. 41, § 1; 1999, ch. 291, § 4; 2019, ch. 206, § 11; 2019, ch. 207, § 11.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all

references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**The 2019 amendment**, effective June 14, 2019, provided that the educational plan submitted to the public education department by the local school board or the governing body of a charter school shall include information



on parental involvement and input, and made certain technical amendments; in Subsection A, after "each local school board", added "and each governing board of a charter school", after "by the local school board", added "or governing board of a charter school", after "school district", added "or charter school", and after "or the local school board", added "or governing body of a charter school"; and in Subsection B, after "school district", added "or charter school", after "local school board", added "or governing body of a charter school", and after "public hearing," added "The educational plan submitted by the local school board or the governing body of a charter school to the department shall include information on parental involvement and input."

Laws 2019, ch. 206, § 11 and Laws 2019, ch. 207, § 11, both effective June 14, 2019, enacted identical amendments to this section. The section is set out as amended by Laws 2019, ch. 207, § 11. *See* 12-1-8 NMSA 1978.

**Applicability.** — Laws 2019, ch. 206, § 29 provided that the provisions of Sections 2 through 19 of this act apply to the program cost calculation in fiscal year 2020 and subsequent fiscal years.

**The 1999 amendment**, effective April 8, 1999, substituted "operating budget" for "estimated budget" throughout the section.

**The 1993 amendment**, effective March 17, 1993, designated the formerly undesignated provisions as Subsection A and added Subsection B.

**The 1989 amendment**, effective June 16, 1989, deleted "and the department" preceding "shall" in the first sentence, and added the second sentence.

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "chief".

## 22-8-11. Budgets; approval of operating budget.

### A. The department shall:

(1) on or before July 1 of each year, approve and certify to each local school board and governing body of a charter school an operating budget for use by the school district or charter school;

(2) ensure that each program in a school district or charter school's operating budget meets the requirements of law and the department's rules and procedures and that no school district or charter school generates program units for a program not meeting the requirements of law and the department's rules or procedures;

(3) make corrections, revisions and amendments to the operating budgets fixed by the local school boards or governing bodies of charter schools and the secretary to conform the operating budgets to the requirements of law and to the department's rules and procedures; and

(4) ensure that a local school board or governing body of a charter school is prioritizing resources toward proven programs and methods that are linked to improved student achievement.

B. No school district or charter school or officer or employee of a school district or charter school shall make any expenditure or incur any obligation for the expenditure of public funds unless that expenditure or obligation is made in accordance with an operating budget approved by the department. This prohibition does not prohibit the transfer of funds pursuant to the department's rules and procedures.

C. The department shall not approve and certify an operating budget of any school district or charter school that fails to demonstrate that parental involvement in the budget process was solicited.

D. The department shall not approve and certify an operating budget of any school district or charter school that the secretary determines has failed to provide sufficient data and information to determine if the school district or charter school is meeting the requirements of law or the department's rules and procedures.

**History:** 1953 Comp., § 77-6-12, enacted by Laws 1967, ch. 16, § 66; 1978, ch. 128, § 4; 1988, ch. 64, § 21; 1993, ch. 41, § 2; 1999, ch. 291, § 5; 2006, ch. 94, § 5; 2011, ch. 10, § 5; 2015, ch. 108, § 6; 2019, ch. 206, § 12; 2019, ch. 207, § 12.

**Cross references.** — For transfer of powers and duties of former state superintendent, *see* 9-24-15 NMSA 1978.

**The 2019 amendment**, effective June 14, 2019, provided additional duties for the public education department related to the approval of school district's or charter school's operating budget; in Subsection A, added new Paragraph A(2) and redesignated former Paragraphs A(2) and A(3) as Paragraphs A(3) and A(4), respectively, and in Paragraph A(4), after "school board or", deleted "for a charter school the", after "prioritizing resources", deleted "of a public school rated D or F", and after "student achievement", deleted "until the public school earns a

grade of C or better for two consecutive years"; and added new Subsection D.

Laws 2019, ch. 206, § 12 and Laws 2019, ch. 207, § 12, both effective June 14, 2019, enacted identical amendments to this section. The section is set out as amended by Laws 2019, ch. 207, § 12. *See* 12-1-8 NMSA 1978.

**Applicability.** — Laws 2019, ch. 206, § 29 provided that the provisions of Sections 2 through 19 of this act apply to the program cost calculation in fiscal year 2020 and subsequent fiscal years.

**The 2015 amendment**, effective July 1, 2015, required the public education department to ensure that each governing body of a charter school with a D or F rating is prioritizing resources toward proven programs and methods linked to improved student achievement until the school earns a grade of C or better for two consecutive years, and removed "state-chartered" from each reference to "charter school"; in Paragraph (1) of Subsection A, after "governing



body of a", deleted "state-chartered", and after "school district or", deleted "state-chartered"; in Paragraph (2) of Subsection A, after "governing bodies of", deleted "state-chartered"; in Paragraph (3) of Subsection A, after "school board or," added "for a charter school, the", and after "governing body of", deleted "a" and added "the"; in Subsection B, after "No school district or", deleted "state-chartered", and after "employee of a school district or", deleted "state-chartered"; in Subsection C, after "any school district or", deleted "state-chartered".

**The 2011 amendment**, effective June 17, 2011, required the department to ensure that public schools that are rated D or F prioritize resources to improve student achievement.

**The 2006 amendment**, effective July 1, 2007, Paragraphs (1) and (2) of Subsection A, added the governing body of a state-chartered charter school; in Paragraphs (1) and (2) of Subsection A and in Subsection B, changed "school board" to "school district"; and in Paragraphs (1) and (2) of Subsection A and in Subsections B and C, added state-chartered charter school.

**The 1999 amendment**, effective April 8, 1999, substituted "approval of operating budget" for "temporary; final"

in the section heading; substituted "an operating budget" for "a temporary operating budget" in Subsections A(1) and C; deleted "pending approval by the department of a final budget" at the end of Subsection A(1); in Subsection A(2) substituted "operating budgets" for "estimated budgets" and "to the department's rules and procedures" for "to the manual of accounting and budgeting; and"; deleted Subsection A(3) which required that final budgets be approved and certified to local school boards and boards of county commissioners before the first Monday of September of each year; and in Subsection B, deleted "contractual" before "obligation is made" in the first sentence and substituted "pursuant to the department's rules and procedures" for "between line items within series of a budget" in the second sentence.

**The 1993 amendment**, effective March 17, 1993, added Subsection C.

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "division" and "state superintendent" for "director" throughout the section and made minor stylistic changes.

## 22-8-12. Operating budgets; amendments.

Operating budgets shall not be altered or amended after approval and certification by the department, except for the following purposes and according to the following procedure:

A. upon written request of a local school board or governing body of a state-chartered charter school, the secretary may authorize transfer within the budget, or provide for items not included, when the total amount of the budget will not be increased thereby;

B. upon written request of a local school board or governing body of a state-chartered charter school, the secretary, in conformance with the rules of the department, may authorize an increase in any budget if the increase is necessary because of the receipt of revenue that was not anticipated at the time the budget was fixed and if the increase is directly related to a special project or program for which the additional revenue was received. The secretary shall make a written report to the legislative finance committee of any such budget increase;

C. upon written request of a local school board or governing body of a state-chartered charter school, the secretary may authorize an increase in a budget of not more than one thousand dollars (\$1,000); or

D. upon written request of a local school board or governing body of a state-chartered charter school, the secretary, after notice and a public hearing, may authorize an increase in a school budget in an amount exceeding one thousand dollars (\$1,000). The notice of the hearing shall designate the school district that proposes to alter or amend its budget, together with the time, place and date of the hearing. The notice of the hearing shall be published at least once a week for two consecutive weeks in a newspaper of general circulation in the county in which the school district is situated. The last publication of the notice shall be at least three days prior to the date set for the hearing. The charter schools division shall establish how a state-chartered charter school notifies the parents of its students of proposed increases in a charter school budget.

**History:** 1953 Comp., § 77-6-13, enacted by Laws 1967, ch. 16, § 67; 1969, ch. 180, § 10; 1977, ch. 247, § 203; 1988, ch. 64, § 22; 1999, ch. 291, § 6; 2006, ch. 94, § 6.

**Cross references.** — For transfer of powers and duties of former state superintendent, see 9-24-15 NMSA 1978.

**The 2006 amendment**, effective July 1, 2007, added governing body of a state-chartered charter school in Subsections A through D and provided in Subsection D that the charter schools division shall establish how a state-chartered charter school notifies parents of its students of proposed increases in a budget.

**The 1999 amendment**, effective April 8, 1999, substituted the present section heading for "Final budgets; alterations or amendments", substituted "Operating budgets" for "Final budgets" at the beginning of the first paragraph, and substituted "rules of the department" for "regulations of the department" in Subsection B.

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "division" in the introductory paragraph; substituted "state superintendent" for "chief" throughout the section; and deleted "of finance and administration and with the approval of its secretary" following "regulations of the department" in the first sentence in Subsection B.



### 22-8-12.1. Membership projections and budget requests.

A. Each local school board or governing body of a state-chartered charter school shall submit annually, on or before October 15, to the department:

- (1) an estimate for the succeeding fiscal year of:
  - (a) the membership of qualified students to be enrolled in the basic program;
  - (b) the full-time-equivalent membership of students to be enrolled in approved early childhood education programs; and
  - (c) the membership of students to be enrolled in approved special education programs;
- (2) all other information necessary to calculate program costs; and
- (3) any other information related to the financial needs of the school district or state-chartered charter school as may be requested by the department.

B. All information requested pursuant to Subsection A of this section shall be submitted on forms prescribed and furnished by the department and shall comply with the department's rules and procedures.

C. The department shall:

- (1) review the financial needs of each school district or state-chartered charter school for the succeeding fiscal year; and
- (2) submit annually, on or before November 30, to the secretary of finance and administration the recommendations of the department for:
  - (a) amendments to the public school finance formula;
  - (b) appropriations for the succeeding fiscal year to the public school fund for inclusion in the executive budget document; and
  - (c) appropriations for the succeeding fiscal year for pupil transportation and instructional materials.

**History:** 1953 Comp., § 77-6-13.1, enacted by Laws 1978, ch. 128, § 5; 1980, ch. 151, § 48; 1988, ch. 64, § 23; 1993, ch. 226, § 20; 1999, ch. 291, § 7; 2006, ch. 94, § 7.

**Cross references.** — For transfer of powers and duties of former state board, see 9-24-15 NMSA 1978.

**The 2006 amendment,** effective July 1, 2007, added governing body of a state-chartered charter school in Subsection A and added state-chartered charter school in Paragraph (3) of Subsection A and Paragraph (1) of Subsection C.

**The 1999 amendment,** effective April 8, 1999, added "Membership projections and" to the beginning of the section heading, and substituted "department's rules and procedures" for "manual of accounting and budgeting published by the department" at the end of Subsection B.

**The 1993 amendment,** effective July 1, 1993, deleted "average daily" preceding "membership" in subparagraphs (a) to (c) of Paragraph (1) of Subsection A; deleted former Subsection B, pertaining to the budget request of

the state board for pupil transportation and textbooks; redesignated former Subsections C and D as Subsections B and C; added Subparagraph (c) of Paragraph (2) of Subsection C; and made a minor stylistic change.

**The 1988 amendment,** effective May 18, 1988, substituted "department" for "division" throughout the section; substituted "department" for "director of the public school finance division" in Subsection D; and in Subsection D(2), substituted "November 30" for "November 15" and "state board" for "public school finance division".

#### ANNOTATIONS

**Effect of actual costs exceeding program costs.**  
 — A charter school has no right to additional funding if capital expenditures or any other expenditure becomes so great that its actual costs far exceed its "program costs". *Taos Mun. Schs. Charter Sch. v. Davis*, 2004-NMCA-129, 136 N.M. 543, 102 P.3d 102, cert. denied, 2004-NMCERT-010, 136 N.M. 542, 101 P.3d 808.

### 22-8-12.2. Repealed.

**Repeals.** — Laws 1999, ch. 291, § 8 repealed 22-8-12.2 NMSA 1978, as enacted by Laws 1978, ch. 149, § 1, relating to budgets, earnings from investments and operational

funds for local school boards, effective April 8, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMOneSource.com*.

### 22-8-12.3. Local school board finance subcommittee; audit committee; membership; duties.

A. As used in this section, "local school board" includes the governing authority of a charter school.

B. Each local school board shall appoint at least two members of the board as a finance subcommittee to assist the board in carrying out its budget and finance duties.

C. The finance subcommittee shall:

- (1) make recommendations to the local school board in the following areas:
  - (a) financial planning, including reviews of the school district's revenue and expenditure projections;
  - (b) review of financial statements and periodic monitoring of revenues and expenses;
  - (c) annual budget preparation and oversight; and
  - (d) procurement; and
- (2) serve as an external monitoring committee on budget and other financial matters.

D. Except as otherwise provided in this section, each local school board shall appoint an audit committee that consists of two board members, one volunteer member who is a parent of a student attending that school district and one volunteer member who has experience in accounting or financial matters. The superintendent and the school district business manager shall serve as ex-officio members of the committee. A local school board with more than five members may appoint more than two board members to its audit committee. The audit committee shall:

- (1) evaluate the request for proposal for annual financial audit services;
- (2) recommend the selection of the financial auditor;
- (3) attend the entrance and exit conferences for annual and special audits;
- (4) meet with external financial auditors at least monthly after audit field work begins until the conclusion of the audit;
- (5) be accessible to the external financial auditors as requested to facilitate communication with the board and the superintendent;
- (6) track and report progress on the status of the most recent audit findings and advise the local school board on policy changes needed to address audit findings;
- (7) provide other advice and assistance as requested by the local school board; and
- (8) be subject to the same requirements regarding the confidentiality of audit information as those imposed upon the local school board by the Audit Act [12-6-1 through 12-6-14 NMSA 1978] and rules of the state auditor.

**History:** Laws 2010, ch. 115, § 1.

**Effective dates.** — Laws 2010, ch. 115 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

## 22-8-13. Reports.

- A. Each public school shall keep accurate records concerning membership in the public school.
- B. The dates for which MEM is reported are as follows:
  - (1) the first reporting date, the second Wednesday in October;
  - (2) the second reporting date, December 1 or the first working day in December; and
  - (3) the third reporting date, the second Wednesday in February.
- C. The superintendent of each school district or head administrator of a state-chartered charter school shall maintain the following reports for each reporting period:
  - (1) the basic program MEM by grade in each public school;
  - (2) the early childhood education MEM;
  - (3) the special education MEM in each public school in class C and class D programs as defined in Section 22-8-21 NMSA 1978;
  - (4) the number of class A and class B programs as defined in Section 22-8-21 NMSA 1978; and
  - (5) the full-time-equivalent MEM for bilingual multicultural education programs.
- D. The superintendent of each school district and the head administrator of each state-chartered charter school shall furnish all reports required by law or the department to the department within ten working days of the close of each reporting period. Failure of the department to approve timely submissions shall not cause a school district or charter school to be found noncompliant with the requirements of this section. For purposes of this section, "working day" means every calendar day excluding Saturdays, Sundays and legal holidays.
- E. All information required pursuant to this section shall be on forms prescribed and furnished by the department. A copy of any report made pursuant to this section shall be kept as



a permanent record of the school district or charter school and shall be subject to inspection and audit at any reasonable time.

F. The department may withhold up to one hundred percent of allotments of funds to any school district or state-chartered charter school where the superintendent or head administrator has failed to comply with the requirements of this section. Withholding may continue until the superintendent or head administrator complies with and agrees to continue complying with requirements of this section.

G. The provisions of this section may be modified or suspended by the department for any school district or school or state-chartered charter school operating under the Variable School Calendar Act [22-22-1 through 22-22-26 NMSA 1978]. The department shall require MEM reports consistent with the calendar of operations of such school district or school or state-chartered charter school and shall calculate an equivalent MEM for use in projecting school district or charter school revenue.

**History:** Laws 1967, ch. 16, § 68; 1953 Comp., § 77-6-14; Laws 1969, ch. 180, § 11; 1971, ch. 263, § 4; 1972, ch. 16, § 7; reenacted by Laws 1974, ch. 8, § 3; 1975, ch. 90, § 1; 1976 (S.S.), ch. 32, § 1; 1978, ch. 128, § 6; 1988, ch. 64, § 24; 1990, ch. 94, § 2; 2006, ch. 94, § 8; 2010, ch. 116, § 3; 2011, ch. 70, § 1.

**Cross references.** — For transfer of powers and duties of former state superintendent and former state board, see 9-24-15 NMSA 1978.

**The 2011 amendment,** effective June 17, 2011, designated December 1 or the first working day in December as the second reporting date and defined "working day".

**The 2010 amendment,** effective May 19, 2010, in Subsection A, after "Each public school", deleted "in a school district and each state-chartered charter school"; added Subsection B; in Subsection C, in the introductory sentence, after "reports for each", deleted "twenty-day"; in Subsection D, after "school shall furnish", added "all reports required by law or the department"; after "to the department", deleted "reports of the information required in Paragraph (1) through (5) of Subsection A of this section for the first forty days of the school year. The forty-day report and all other reports required by law or by the department shall be furnished within five", and added "within ten"; after "days of the close of", deleted "the" and added "each"; and added the last sentence; in Subsection F, in the first sentence, after "The department", deleted "shall" and added "may"; after "may withhold", added "up to one hundred percent of"; and after "has failed to comply", added the remainder of the sentence; and at the beginning of the second sentence, added "Withholding may continue" and in Subsection G, in the second sentence, after "projecting school district" added "or charter school".

**Temporary provisions.** — Laws 2010, ch. 116, § 9 provided that references in the Public School Code pertaining to the fortieth-day or forty-day report of public school membership or enrollment shall be deemed to be references to the first reporting date, which is the second Wednesday in October; references pertaining to the eightieth-day or eighty-day report of public school membership or enrollment shall be deemed to be references to the second reporting date, which is the second

Wednesday in December; and references pertaining to the one-hundred twentieth-day or one-hundred twenty-day report of public school membership or enrollment shall be deemed to be references to the third reporting date, which is the second Wednesday in February.

As the public schools transition from former reporting dates to new reporting dates, the public education department may use any combination of former and new reporting dates as necessary to develop membership and cost projections and budgets for the 2010-2011 school year.

**The 2006 amendment,** effective July 1, 2007, added state-chartered charter school and the head administrator of a state-chartered charter school in Subsection A; added the head administrator of a state-chartered charter school in Subsection B; added state-chartered charter school and the head administrator in Subsection D; and added state-chartered charter school in Subsection E.

**The 1990 amendment,** effective May 16, 1990, substituted "MEM" for "ADM" throughout the section and, in Subsection B, deleted "the first eighty days of the school year and for the entire school year" at the end of the first sentence, substituted "The forty-day report and all other reports required by law or by the state board" for "The reports for the first forty days and the first eighty days" at the beginning of the second sentence and deleted a third sentence which read "The report for the entire school year shall be furnished not later than fifteen days following the end of each school year".

**The 1988 amendment,** effective May 18, 1988, substituted "department" for "division" in Subsections B, D, and E; substituted "22-8-21 NMSA 1978" for "77-6-18.4 NMSA 1953" in Subsection A(3); added "as defined in Section 22-8-21 NMSA 1978" in Subsection A(4); deleted the last sentence of Subsection B regarding forty-day and eighty-day reports; and substituted "department" for "director" in Subsections D and E.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity of state or local government regulation requiring private school to report attendance and similar information to government - post-Yoder cases, 8 A.L.R.5th 875.

### 22-8-13.1. School district and charter school audits; sanctions for not submitting timely audit reports.

A. Each school district and charter school shall have an annual audit as required by the Audit Act [12-6-1 through 12-6-14 NMSA 1978] and rules of the state auditor that shall be completed and submitted to the state auditor by the date specified in rules of the state auditor. At the completion of the annual or any special audit, the school district or charter school shall submit a copy of the audit report to the department.

B. School districts and charter schools shall comply with due dates for annual audits specified by rule of the state auditor. Failure to submit a timely audit report shall subject a school district or charter school to progressive sanctions. A school district or charter school that does not submit an annual audit report:

(1) within ninety days from the due date, shall be required to submit monthly financial reports to the department until the department is satisfied that the school district or charter school is in compliance with all financial and audit requirements;

(2) after ninety days but within one hundred eighty days from the due date, may be withheld temporarily in an amount up to five percent of its current-year state equalization guarantee distribution;

(3) after one hundred eighty days but within two hundred seventy days, may be withheld temporarily in an amount up to seven percent of its current-year state equalization guarantee distribution and may be required to submit a corrective action plan to the secretary; and

(4) after two hundred seventy days, may be withheld temporarily in an amount up to seven percent of its current-year state equalization guarantee distribution and may be subject to the secretary's suspension of the local school board or governing body acting as a board of finance.

**History:** Laws 2009, ch. 273, § 2.

**Effective dates.** — Laws 2009, ch. 273, § 3 made Laws 2009, ch. 273, § 2 effective July 1, 2010.

## 22-8-13.2. Financial reporting.

A. Each local superintendent or person in charge of the fiscal management of a charter school shall provide quarterly reports on the financial position of the school district or charter school, as applicable, to the local school board of the school district or the governing body of the charter school for use in reviewing the financial status of the school district or charter school. The department shall develop the forms to be used for the financial reporting required under this section. The forms shall provide for at least the following:

(1) a report on the budget status of the local school district or charter school, including the approved operating budget for revenues and expenses compared with year-to-date actual revenue and expenses;

(2) a statement of any budget adjustment requests;

(3) cash reports, including revenue, expenses, temporary loans and cash balances for operational, state and federal grants, capital outlay and debt service funds;

(4) voucher reports, including a list of issued warrants or checks;

(5) reports listing procurement, travel or gas card expenses; and

(6) investment reports.

B. School districts and charter schools shall post the reports required under Subsection A of this section on the school district's or charter school's web site.

C. As used in this section:

(1) "charter school" means a school organized as a charter school pursuant to the provisions of the Charter Schools Act [Chapter 22, Article 8B NMSA 1978]; and

(2) "governing body" means the governing structure of a charter school as set forth in the school's charter.

**History:** Laws 2011, ch. 12, § 1.

**Effective dates.** — Laws 2011, ch. 12 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

## 22-8-13.3. Reporting system; reporting requirements.

A. No later than December 31, 2021, the department, with input from stakeholders, including school districts, charter school leaders, business managers and staff from the legislative finance committee and legislative education study committee, shall establish, implement and maintain a



statewide financial reporting system that is based on a standard chart of accounts. The department shall annually update the reporting system.

B. In designing, implementing and maintaining the reporting system pursuant to Subsection A of this section, the department shall adhere to the following guidelines:

(1) the reporting system shall be based on a standard chart of accounts that will enable comparisons between schools, between local education agencies and between regional education cooperatives;

(2) the reporting system shall allow for the display of administrative costs of every school site and local education agency;

(3) the reporting system shall make it possible to determine how school sites and local education agencies budget funds to support at-risk students, offer bilingual and multicultural educational services to students and support special education students;

(4) the reporting system shall make it possible to determine each local education agency's and regional education cooperative's actual expenditures, which shall include actual salary expenditures and actual benefit expenditures reported by job category specified in the standard chart of accounts at the local education agency level, at the school site level and, if applicable, at the regional education cooperative level;

(5) the reporting system shall report the expenditures for each of the major categories specified in the chart of accounts for school sites and local education agencies; and

(6) the reporting system shall make it possible to determine how school sites and local education agencies budget seventy-five percent of their federal impact aid and forest reserve revenue and seventy-five percent of their local revenue from the one-half mill school district property tax and revenue from the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978 ] and the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978].

C. The standard chart of accounts shall include the reporting of revenues received at all levels, including local, state and federal funds.

D. As used in this section:

- (1) "local education agency" means a school district or state-chartered charter school; and
- (2) "reporting system" means the statewide online financial reporting system.

**History:** Laws 2020, ch. 71, § 1; 2021, ch. 52, § 4.

The 2021 amendment, effective July 1, 2021, required that the statewide online financial reporting system make it possible to determine how school sites and local education agencies budget certain revenue; and in Subsection B, added Paragraph B(6).

**Appropriations.** — Laws 2020, ch. 71, § 2 provided that three million dollars (\$3,000,000) is appropriated

from the public education reform fund to the public education department for expenditure in fiscal years 2021 through 2023 to carry out the provisions of Laws 2020, ch. 71, § 1 and to provide training and technical assistance. Any unexpended or unencumbered balance remaining at the end of fiscal year 2023 shall revert to the public education reform fund.

## 22-8-14. Public school fund.

A. The "public school fund" is created.

B. The public school fund shall be distributed to school districts and state-chartered charter schools in the following parts:

- (1) state equalization guarantee distribution;
- (2) transportation distribution; and
- (3) supplemental distributions:
  - (a) out-of-state tuition to school districts;
  - (b) emergency; and
  - (c) program enrichment.

C. The distributions of the public school fund shall be made by the department within limits established by law. The balance remaining in the public school fund at the end of each fiscal year shall revert to the general fund, unless otherwise provided by law.

**History:** 1953 Comp., § 77-6-15, enacted by Laws 1967, ch. 16, § 69; 1969, ch. 180, § 12; 1971, ch. 263, § 5; 1972, ch. 87, § 1; 1973, ch. 351, § 1; 1974, ch. 8, § 4; 1975, ch. 342, § 1; 1988, ch. 64, § 25; 2006, ch. 94, § 9.

**Cross references.** — For state equalization guarantee distributions, see 22-8-25 NMSA 1978.

For transportation distributions, see 22-8-26 to 22-8-29 NMSA 1978.

For supplemental distributions, see 22-8-30 NMSA 1978.

For transfer of unencumbered balances in current school fund to public school fund, see 22-8-32 NMSA 1978.

For transfer of federal mineral leasing funds to public school fund, see 22-8-34 NMSA 1978.

**The 2006 amendment**, effective July 1, 2007, changed "this fund" to "the public school fund" and added state-chartered charter schools in Subsection B and added "to

school districts" in Subparagraph (a) of Paragraph (3) of Subsection B.

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "chief" in the first sentence in Subsection C.

#### ANNOTATIONS

**Proper entity to receive funding.** — Local school district within which Los Lunas hospital and training school is located is appropriate entity to receive funding pursuant to the Public School Finance Act for special education of exceptional children. 1977 Op. Att'y Gen. No. 77-04.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools § 99 et seq.

79 C.J.S. Schools and School Districts §§ 410 to 413.

## 22-8-15. Allocation limitation.

A. The department shall determine the allocations to each school district and charter school from each of the distributions of the public school fund, subject to the limits established by law.

B. The local school board in each school district with locally chartered charter schools shall allocate the appropriate distributions of the public school fund to individual locally chartered charter schools pursuant to each locally chartered charter school's school-based budget approved by the local school board and the department. The appropriate distribution of the public school fund shall flow to the locally chartered charter school within five days after the school district's receipt of the state equalization guarantee for that month.

**History:** 1953 Comp., § 77-6-16, enacted by Laws 1967, ch. 16, § 70; 1974, ch. 8, § 5; 1988, ch. 64, § 26; 1993, ch. 224, § 3; 1993, ch. 227, § 10; 1999, ch. 281, § 23; 2006, ch. 94, § 10.

**Cross references.** — For public school fund, see 22-8-14 NMSA 1978.

**The 2006 amendment**, effective July 1, 2007, changed "charter schools" to "locally chartered charter schools".

**The 1999 amendment**, effective June 18, 1999, in Subsection B, deleted "local" preceding "school district" and deleted the last sentence, which read "The local school board may retain an amount not to exceed the school

district's administrative cost relevant to that charter school", and rewrote Subsection C, which read "The local school board in each local school district with authorized charter schools shall establish an individual charter school account to receive public school fund disbursement for each charter school."

**The 1993 amendment**, effective June 18, 1993, designated the formerly undesignated provision as Subsection A and added Subsections B and C.

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "chief".

## 22-8-16. Payment to school districts.

The department shall make payments of each distribution of the public school fund by warrant of the department of finance and administration drawn against the public school fund upon vouchers issued by the department. When payments are made to county treasurers for school districts within the county, the county treasurer shall hold and allocate these funds solely for the use and benefit of the specific school district and purpose for which the allocation was made.

**History:** 1953 Comp., § 77-6-17, enacted by Laws 1967, ch. 16, § 71; 1974, ch. 8, § 6; 1988, ch. 64, § 27.

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "chief" twice in the first sentence.

## 22-8-17. Program cost determination; required information.

A. The program cost for each school district and charter school shall be determined by the department in accordance with the provisions of the Public School Finance Act.

B. The department is authorized to require from each school district and charter school the information necessary to make an accurate determination of the district's or charter school's program cost.



**History:** 1953 Comp., § 77-6-18, enacted by Laws 1969, ch. 180, § 18; reenacted by Laws 1974, ch. 8, § 7; 1988, ch. 64, § 28; 2006, ch. 94, § 11.

The 2006 amendment, effective July 1, 2007, added "charter school" in Subsections A and B.

The 1988 amendment, effective May 18, 1988, substituted "department" for "chief" once in each subsection.

## ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Determination of school attendance, enrollment, or pupil population for purpose of apportionment of funds, 80 A.L.R.2d 953.

Property taxes: validity of basing public school financing system on local property taxes, 41 A.L.R.3d 1220.

## 22-8-18. Program cost calculation; local responsibility.

A. The total program units for the purpose of computing the program cost shall be calculated by multiplying the sum of the program units itemized as Paragraphs (1) and (2) in this subsection by the staffing cost multiplier and adding the program units itemized as Paragraphs (3) through (16) in this subsection. The itemized program units are as follows:

- (1) early childhood education;
- (2) basic education;
- (3) special education, adjusted by subtracting the units derived from membership in class D special education programs in private, nonsectarian, nonprofit training centers;
- (4) bilingual multicultural education;
- (5) fine arts education;
- (6) elementary physical education;
- (7) size adjustment;
- (8) at-risk;
- (9) enrollment growth or new district adjustment;
- (10) special education units derived from membership in class D special education programs in private, nonsectarian, nonprofit training centers;
- (11) national board for professional teaching standards certification;
- (12) home school student;
- (13) home school student activities;
- (14) charter school student activities;
- (15) K-5 plus; and
- (16) extended learning time.

B. The total program cost calculated as prescribed in Subsection A of this section includes the cost of early childhood, special, bilingual multicultural, fine arts and vocational education and other remedial or enrichment programs. It is the responsibility of the local school board or governing body of a charter school to determine its priorities in terms of the needs of the community served by that board. Except as otherwise provided in this section, funds generated under the Public School Finance Act are discretionary to local school boards and governing bodies of charter schools; provided that the special program needs as enumerated in this section are met; and provided further that the department shall ensure that the local school board or governing body of a charter school is prioritizing resources for the public school toward proven programs and methods linked to improved student achievement.

**History:** 1953 Comp., § 77-6-18.1, enacted by Laws 1969, ch. 180, § 14; 1971, ch. 263, § 6; reenacted by 1974, ch. 8, § 8; 1976 (S.S.), ch. 32, § 2; 1977, ch. 244, § 1; 1986, ch. 33, § 15; 1990 (1st S.S.), ch. 3, § 4; 1993, ch. 237, § 1; 1997, ch. 40, § 3; 2003, ch. 144, § 1; 2003, ch. 152, § 7; 2005, ch. 206, § 1; 2006, ch. 94, § 12; 2007, ch. 347, § 1; 2007, ch. 348, § 2; 2007, ch. 365, § 1; 2011, ch. 10, § 6; 2014, ch. 61, § 1; 2015, ch. 108, § 7; 2018, ch. 55, § 3; 2019, ch. 206, § 13; 2019, ch. 207, § 13.

The 2019 amendment, effective June 14, 2019, added "K-5 plus" and "extended learning time" to the list of itemized program units for purposes of program cost calculation; in Subsection A after the subsection designation, deleted "For fiscal year 2019, the total program units for the

purpose of computing the program cost shall be calculated by multiplying the sum of the program units itemized as Paragraphs (1) through (6) in this subsection by the staffing cost multiplier and adding the program units itemized as Paragraphs (7) through (14) in this subsection. For fiscal year 2020 and subsequent fiscal years", after "Paragraphs (3) through", deleted "(14)" and added "(16)", and added new Paragraphs A(15) and A(16); and in Subsection B, after "provided further that", deleted "if a public school has been rated D or F for two consecutive years", and after "improved student achievement", deleted "until the public school earns a C or better for two consecutive years".

Laws 2019, ch. 206, § 13 and Laws 2019, ch. 207, § 13, both effective June 14, 2019, enacted identical



amendments to this section. The section is set out as amended by Laws 2019, ch. 207, § 13. See 12-1-8 NMSA 1978.

**Applicability.** — Laws 2019, ch. 206, § 29 provided that the provisions of Sections 2 through 19 of this act apply to the program cost calculation in fiscal year 2020 and subsequent fiscal years.

**Temporary provisions.** — Laws 2019, ch. 206, § 25 provided that any unexpended or unencumbered balances remaining in the K-3 plus fund on June 30, 2019 shall be transferred to the state-support reserve fund and up to three million dollars (\$3,000,000) shall be transferred to the public education department to implement the provisions of Section 26 of this 2019 act in fiscal year 2020.

**Temporary provisions.** — Laws 2019, ch. 206, § 26 provided that using funds provided in Section 25 of this 2019 act for fiscal year 2020, the public education department shall supplement a school district's or charter school's calculated program cost if for fiscal year 2020 the school district's or charter school's program cost is less than its final program cost in the previous fiscal year in an amount equal to one hundred percent of the reduction attributable to the implementation of Section 6 [22-8-2 NMSA 1978] of this 2019 act amending the age of a qualified student.

**The 2018 amendment,** effective July 1, 2018, revised the formula for calculating program cost; and in Subsection A, in the introductory paragraph, added "For fiscal year 2019", after "in this subsection by the", deleted "instructional staff training and experience index" and added "staffing cost multiplier", and added "For fiscal years 2020 and subsequent fiscal years, the total program units for the purpose of computing the program cost shall be calculated by multiplying the sum of the program units itemized as Paragraphs (1) and (2) in this subsection by the staffing cost multiplier and adding the program units itemized as Paragraphs (3) through (14) in this subsection".

**Temporary provisions.** — Laws 2018, ch. 55, § 7 provided that:

A. Using funds appropriated by the legislature for fiscal years 2020 through 2022, the public education department shall supplement a school district's or charter school's calculated program cost in each of those fiscal years:

(1) if, for the fiscal year, the school district's or charter school's calculated program cost is less than its final program cost in the previous fiscal year, not considering any supplement the school district or charter school receives under this subsection; and

(2) as follows:

(a) for fiscal year 2020, in an amount equal to one hundred percent of the reduction attributable to the implementation of this act or the difference between the calculated program cost and the final program cost in the previous fiscal year, whichever is less;

(b) for fiscal year 2021, in an amount equal to seventy-five percent of the reduction attributable to the implementation of this act or the difference between the calculated program cost and the final program cost in the previous fiscal year, whichever is less; and

(c) for fiscal year 2022, in an amount equal to fifty percent of the reduction attributable to the implementation of this act or the difference between the calculated program cost and the final program cost in the previous fiscal year, whichever is less; but

(3) if, in a fiscal year, the appropriation for the purpose of implementing this subsection is insufficient to supplement school districts and charter schools in accordance with Paragraphs (1) and (2) of this subsection, then in an amount equal to the school district's or charter school's prorated share of the total appropriation.

B. On or before February 1 of 2020 through 2022, the public education department shall submit a report to the legislative education study committee and the legislative finance committee that states, regarding the current fiscal year:

(1) the sum needed to supplement school districts and charter schools in accordance with this section;

(2) a list of the school districts and charter schools eligible to receive a supplement in accordance with this section; and

(3) the supplement amount of each of those school districts and charter schools.

**The 2015 amendment,** effective July 1, 2015, required each governing body of a charter school to determine its priorities in terms of the needs of the community served by the local school board and required the public education department to ensure that each governing body of a charter school with a D or F rating is prioritizing resources toward proven programs and methods linked to improved student achievement until the school earns a grade of C or better for two consecutive years; in Subsection B, after "responsibility of the local school board or," added "for a charter school, the", and after "ensure that the local school board or," added "for a charter school, the".

**The 2014 amendment,** effective May 21, 2014, incorporated the home school student program unit provision in the program cost calculation provisions of the Public School Finance Act; in Subsection A, added Paragraph (12); and in Subsection B, in the third sentence, after "enumerated in this section are met", added "and", and after "and provided", deleted "however" and added "further".

**The 2011 amendment,** effective June 17, 2011, required the department to ensure that public schools that are rated D or F prioritize resources to improve student achievement.

**The 2007 amendment,** effective June 15, 2007, added home school student activities into the program cost calculation.

**The 2006 amendment,** effective July 1, 2007, added the governing body of a charter school in Subsection B.

**The 2005 amendment,** effective June 17, 2005, added national board certification in the program cost calculation in Subsection A.

**The 2003 amendment,** effective June 20, 2003, in Subsection A, substituted "through (5) in this subsection by the instructional" for "through (4) in this subsection by the instruction" following "as Paragraphs (1)", substituted "Paragraphs (6) through (9)" for "Paragraphs (5) through (8)" following "units itemized as"; added Paragraph A(5) and redesignated former Paragraphs A(5) to (8) as present Paragraphs A(6) to (9); and added Paragraph A(10).

**The 1997 amendment,** effective July 1, 1997, in Subsection A, substituted "membership in class D special education programs" for "class D special education MEM" throughout the subsection, added Subparagraph (6) and redesignated the remaining subparagraphs accordingly, and made a stylistic change.

**The 1993 amendment,** effective June 18, 1993, added "or new district adjustment" at the end of Paragraph (6) of Subsection A.

**The 1990 (1st S.S.) amendment,** effective July 1, 1990, in Subsection A, substituted "Paragraphs (5) through (7)" for "Paragraphs (5) and (6)" in the first sentence, "special education MEM" for "special education ADM" in Paragraph (3), added present Paragraph (6), and redesignated former Paragraph (6) as present Paragraph (7), substituting therein "special education MEM" for "special education ADM".



## 22-8-19. Early childhood education program units.

A. The number of early childhood education program units is determined by multiplying the early childhood education MEM by the cost differential factor 1.44. Early childhood education students enrolled in half-day kindergarten programs shall be counted for 0.5 early childhood MEM. Early childhood education students enrolled in full-day kindergarten programs shall be counted for 1.0 early childhood education MEM.

B. For the purpose of calculating early childhood education program units, developmentally disabled three- and four-year-old students shall be counted in early childhood education membership. No developmentally disabled three- or four-year-old student shall be counted for more than 0.5 early childhood education MEM.

**History:** 1953 Comp., § 77-6-18.2, enacted by Laws 1969, ch. 180, § 15; reenacted by Laws 1974, ch. 8, § 9; 1976 (S.S.), ch. 32, § 3; 1990 (1st S.S.), ch. 3, § 5; 1997, ch. 40, § 4; 2000, ch. 107, § 2.

The 2000 amendment, effective May 17, 2000, changed how early childhood education students are counted for the early childhood education MEM from no more than 0.5 for all students to 0.5 for half-day kindergarten students and 1.0 for full-day students.

The 1997 amendment, effective July 1, 1997, added the Subsection A designation and added Subsection B.

The 1990 (1st S.S.) amendment, effective July 1, 1990, substituted "childhood education MEM" for "childhood education ADM" in both occurrences and "cost differential factor 1.44" for "cost differential factor 1.3".

### 22-8-19.1. Preschool programs; selected districts.

A. The children, youth and families department shall fund preschool programs for zero- to five-year-old children in selected school districts. The children, youth and families department shall distribute any appropriation for this purpose to local entities upon approval by that department of an application from an individual school district or community-based early childhood education program. The preschool programs shall collaborate, where possible, with existing headstart programs or with other appropriate early childhood education programs in the community, and the preschool programs shall use one of the following three models:

- (1) a community-based early childhood education program;
- (2) a school-based early childhood education program; or
- (3) a home-based early childhood education program.

B. School districts may choose to contract with licensed community-based early childhood education programs already in existence. School-based early childhood education programs may be housed in a school accredited by the public education department. A home-based early childhood education program may include a parents-as-teachers program, which supports parents in meeting the developmental learning and social growth needs of their young children.

C. Each preschool program shall have a strong parental involvement component, a staff development component and a procedural process to enable the children, youth and families department to monitor and evaluate the program. The curriculum for each program shall comprehensively address the total developmental needs of the child, including physical, cognitive, social and emotional needs, and shall include aspects of health care, nutrition, safety, the needs of the family and multicultural sensitivity, in coordination with other resources for families.

**History:** Laws 1992, ch. 83, § 1; 1993, ch. 47, § 1; 2012, ch. 14, § 1.

**Cross references.** — For transfer of powers and duties of former department of education, see 9-24-15 NMSA 1978.

The 2012 amendment, effective May 16, 2012, eliminated the office of child development and the child development board; assigned duties to the children, youth and families department; in Subsection A, in the second sentence, after "youth and families department", deleted "through the office of child development", and after "entities upon approval by", deleted "the children, youth and families" and added "that"; in Subsection B, changed "department of education" to "public education department"; and in Subsection C, in the first sentence, after

"procedural process to enable the", deleted "office of child development" and added "children, youth and families department".

The 1993 amendment, effective June 18, 1993, deleted "Temporary provision" at the beginning of the catchline; substituted "children, youth and families department" for "state department of public education" in the first sentence of Subsection A; inserted "children, youth and families" in two places in the second sentence of Subsection A; designated the former third, fourth, and fifth sentences of Subsection A as current Subsection B; added "of education" at the end of the second sentence in current Subsection B; redesignated former Subsection B as current Subsection C; and added "in coordination with other resources for families" at the end of the final sentence of Subsection C.

## 22-8-20. Basic program units.

The number of basic program units is determined by multiplying the basic program MEM in each grade by the corresponding cost differential factor as follows:

<u>Grades</u>	<u>Cost Differential Factor</u>
1	1.2
2 and 3	1.18
4 through 6	1.045
7 through 12	1.25.

**History:** 1978 Comp., § 22-8-20, enacted by Laws 1991, ch. 85, § 3; 1993, ch. 2, § 1; 1993, ch. 226, § 21; 1993, ch. 226, § 22; 1993, ch. 228, § 2; 1993, ch. 228, § 3.

**Repeals and reenactments.** — Laws 1991, ch. 85, § 3 repealed former 22-8-20 NMSA 1978, as amended by Laws 1991, ch. 85, § 2, and enacted a new section, effective July 1, 1992.

**1993 amendments.** — Laws 1993, ch. 2, § 1, effective June 18, 1993, substituted "1.26" for "1.42" as the Cost Differential Factor for Grade 1.

Identical amendments to this section were enacted by Laws 1993, ch. 226, § 21, effective July 1, 1993, and Laws 1993, ch. 228, § 2, effective June 18, 1993 until July 1, 1994, which, under the column "Cost Differential Factor" substituted "1.2" for "1.42" for grade 1 and "1.18" for "1.1" for grades 2 and 3.

Identical amendments to this section were enacted by Laws 1993, ch. 226, § 22 and Laws 1993, ch. 228, § 3, both effective July 1, 1994, substituting "1.045" for "1.0" under the column "Cost Differential Factor" for grades 4 through 6.

## 22-8-21. Special education program units.

A. For the purpose of the Public School Finance Act, special education programs for exceptional children are those approved by the department and classified as follows:

(1) class A programs, in which department certified individuals provide services to children whose individualized education programs require a minimal amount of special education and in which the ratio of students to professionals is regulated by the state board [department];

(2) class B programs, in which department certified individuals provide services to children whose individualized education programs require a moderate amount of special education and in which the ratio of students to professionals is regulated by the state board;

(3) class C programs, in which department certified individuals provide services to children whose individualized education programs require an extensive amount of special education and in which the ratio of students to professionals is regulated by the state board;

(4) class D programs, in which department certified individuals provide services to children whose individualized education programs require a maximum amount of special education and in which the ratio of students to professionals is regulated by the state board. Students in class D programs may be enrolled in private, nonsectarian, nonprofit educational training centers in accordance with the provisions of Section 22-13-8 NMSA 1978; and

(5) programs for developmentally disabled three- and four-year-old children meeting standards approved by the state board.

B. All students assigned to the programs for exceptional children classified in Subsection A of this section shall have been so assigned as a result of diagnosis and evaluation performed in accordance with the standards of the department before the students may be counted in the determination of special education program units as provided in Subsection C of this section.

C. The number of special education program units is the sum of the following:

(1) the MEM in approved class A and B programs as defined in Subsection A of this section multiplied by the cost differential factor .7;

(2) the MEM in approved class C programs as defined in Subsection A of this section multiplied by the cost differential factor 1.0;

(3) the MEM in approved class D programs as defined in Subsection A of this section multiplied by the cost differential factor 2.0;

(4) the MEM for developmentally disabled three- and four-year-old children as defined in Subsection A of this section multiplied by the cost differential factor 2.0; provided that no



developmentally disabled three- or four-year-old student shall be counted for additional ancillary service units; and

(5) for related services ancillary to providing special education, the number of full-time-equivalent certified or licensed ancillary service and diagnostic service personnel multiplied by the cost differential factor 25.0.

D. For the purpose of calculating membership in class C and class D programs, students shall be counted in actual grade placement or according to chronological age if not in actual grade placement.

**History:** 1953 Comp., § 77-6-18.4, enacted by Laws 1969, ch. 180, § 17; 1971, ch. 263, § 7; 1972, ch. 87, § 2; 1973, ch. 351, § 2; reenacted by 1974, ch. 8, § 11; 1976 (S.S.), ch. 32, § 5; 1980, ch. 35, § 1; 1987, ch. 149, § 1; 1992, ch. 75, § 1; 1992, ch. 84, § 1; 1997, ch. 40, § 5.

**Cross references.** — For transfer of powers and duties of former state board, see 9-24-15 NMSA 1978.

**The 1997 amendment,** effective July 1, 1997, in Subsection C, rewrote Paragraph (1), substituted "MEM in approved class" for "special education in class" in Paragraphs (2) and (3), substituted "2.0" for "3.5; and" in

Paragraph (3), in Paragraph (4), deleted "special education" preceding "MEM", deleted "Paragraph (5) of" preceding "Subsection A", substituted "2.0" for "3.5", and added "and" at the end of the paragraph and added Paragraph (5); and added Subsection D.

**The 1992 amendment,** effective May 20, 1992, deleted "of education" following "department" several times throughout the section; rewrote Subsections A(1) to A(4); deleted "to the division" following "certified" in Subsection C(1); and substituted "MEM" for "ADM" several times in Subsections C(2) to C(4).

## 22-8-22. Bilingual multicultural education program units.

The number of bilingual multicultural education program units is determined by multiplying the full-time-equivalent MEM in programs implemented in accordance with the provisions of the Bilingual Multicultural Education Act [Chapter 22, Article 23 NMSA 1978] by the cost differential factor 0.35, effective July 1, 1990; 0.4, effective July 1, 1991; .425, effective July 1, 1992; 0.45, effective July 1, 1993; and 0.5, effective July 1, 1994.

**History:** 1953 Comp., § 77-6-18.6, enacted by Laws 1974, ch. 8, § 13; 1976 (S.S.), ch. 32, § 6; 1990 (1st S.S.), ch. 3, § 6; 1992, ch. 75, § 2; 1993, ch. 238, § 1.

**The 1993 amendment,** effective June 18, 1993, inserted "0.45, effective July 1, 1993"; substituted "1994" for "1993" at the end of the section; and made minor stylistic changes.

**The 1992 amendment,** effective May 20, 1992, substituted ".425" for "0.45" near the end of the section.

**The 1990 (1st S.S.) amendment,** effective July 1, 1990, substituted "full-time-equivalent MEM" for "full-time-equivalent ADM" and "differential factor 0.35" for "differential factor 0.3" and added at the end the language beginning "effective July 1, 1990".

## 22-8-23. Size adjustment program units.

A. An approved public school, including a charter school, with a MEM of fewer than four hundred, including early childhood education full-time-equivalent MEM but excluding membership in class C and class D programs and excluding full-time-equivalent membership in three- and four-year-old developmentally disabled programs, that is geographically located in a school district with fewer than two thousand MEM, is eligible for additional program units. Separate schools established to provide special programs, including but not limited to vocational and alternative education, shall not be classified as public schools for purposes of generating size adjustment program units. The number of additional program units to which a school district or charter school is entitled under this subsection is the sum of elementary-junior high units and senior high units computed in the following manner:

Elementary-Junior High Units

$$\frac{200 - \text{MEM}}{200} \times 1.0 \times \text{MEM} = \text{Units}$$

where MEM is equal to the membership of an approved elementary or junior high school, including early childhood education full-time-equivalent membership but excluding membership in class

C and class D programs and excluding full-time-equivalent membership in three- and four-year-old developmentally disabled programs;

#### Senior High Units

$$\frac{200 - \text{MEM}}{200} \times 2.0 \times \text{MEM} = \text{Units}$$

or,

#### Senior High Units

$$\frac{400 - \text{MEM}}{400} \times 1.6 \times \text{MEM} = \text{Units}$$

whichever calculation for senior high units is higher, where MEM is equal to the membership of an approved senior high school excluding membership in class C and class D programs.

B. An approved public school with a MEM of fewer than four hundred, including early childhood education full-time-equivalent MEM but excluding MEM in class C and class D programs and excluding full-time-equivalent MEM in three- and four-year-old developmentally disabled programs, geographically located in a school district with two thousand MEM or more is eligible for additional program units computed in the following manner:

- (1) for fiscal year 2020, eighty percent of the sum of elementary-junior high units and senior high units as prescribed in Subsection A of this section;
- (2) for fiscal year 2021, sixty percent of the sum of elementary-junior high units and senior high units as prescribed in Subsection A of this section;
- (3) for fiscal year 2022, forty percent of the sum of elementary-junior high units and senior high units as prescribed in Subsection A of this section;
- (4) for fiscal year 2023, twenty percent of the sum of elementary-junior high units and senior high units as prescribed in Subsection A of this section; and
- (5) for fiscal year 2024 and subsequent fiscal years, no elementary-junior high units and senior high units as prescribed in Subsection A of this section.

C. A school district with total MEM of fewer than four thousand, including early childhood education full-time-equivalent MEM, is eligible for additional program units. The number of additional program units to which a school district is entitled under this subsection is the number of district units computed in the following manner:

#### District Units

$$\frac{4,000 - \text{MEM}}{4,000} \times 0.15 \times \text{MEM} = \text{Units}$$

where MEM is equal to the total district membership, including early childhood education full-time-equivalent membership.

D. A school district, as defined in Subsection R of Section 22-1-2 NMSA 1978, with a MEM of fewer than two hundred, including early childhood education full-time-equivalent MEM, is eligible for additional program units if the department certifies that the school district has implemented practices to reduce scale inefficiencies, including shared service agreements with regional education cooperatives or other school districts for noninstructional functions and distance education. The numbers of additional program units to which a school district is entitled under this subsection is the number of units computed in the following manner:

$$200 - \text{MEM} = \text{Units}$$

where MEM is equal to the total district MEM, including early childhood education full-time-equivalent MEM.



E. A school district with a rural population rate greater than forty percent or a charter school initially chartered before July 1, 2018 and geographically located in a school district with a rural population rate greater than forty percent is eligible for additional program units. The number of additional program units to which a school district or charter school is entitled pursuant to this subsection is determined by multiplying the full-time-equivalent MEM by the rural population rate and the cost differential factor of 0.03 for fiscal year 2020, 0.06 for fiscal year 2021, 0.09 for fiscal year 2022, 0.12 for fiscal year 2023 and 0.15 for fiscal year 2024 and subsequent fiscal years.

**History:** 1953 Comp., § 77-6-18.7, enacted by Laws 1974, ch. 8, § 14; reenacted by Laws 1975, ch. 119, § 1; 1976 (S.S.), ch. 32, § 7; 1977, ch. 82, § 1; 1979, ch. 276, § 1; 1981, ch. 87, § 1; 1989, ch. 221, § 1; 1991, ch. 85, § 4; 1993, ch. 87, § 1; 1997, ch. 40, § 6; 2014, ch. 57, § 1; 2019, ch. 206, § 14; 2019, ch. 207, § 14.

The 2019 amendment, effective June 14, 2019, made changes to the public school funding formula; in Subsection A, after "public school," added "including a charter school," after "disabled programs," added "that is geographically located in a school district with fewer than two thousand MEM," and after "school district," added "or charter school"; added new Subsection B and redesignated former Subsection B as Subsection C; deleted former Subsection C; and added new Subsection E.

Laws 2019, ch. 206, § 14 and Laws 2019, ch. 207, § 14, both effective June 14, 2019, enacted identical amendments to this section. The section is set out as amended by Laws 2019, ch. 207, § 14. See 12-1-8 NMSA 1978.

**Applicability.** — Laws 2019, ch. 206, § 29 provided that the provisions of Sections 2 through 19 of this act apply to the program cost calculation in fiscal year 2020 and subsequent fiscal years.

The 2014 amendment, effective July 1, 2014, provided additional operational funding formula units for school districts with a membership of less than two hundred students; and added Subsection D.

The 1997 amendment, effective July 1, 1997, rewrote the computations throughout the section; substituted "membership in class C and class D programs and excluding full-time-equivalent membership in three- and four-year-old developmentally disabled programs" for "special education

class C and class D membership" throughout Subsection A; deleted "and special education membership" following "full-time-equivalent membership" throughout Subsection B; and deleted former Subsections D through F, relating to school districts with membership greater than ten thousand but less than fifteen thousand, school districts with membership greater than fifteen thousand but less than thirty-five thousand, and school districts with membership greater than thirty-five thousand, respectively.

The 1993 amendment, effective June 18, 1993, deleted "early childhood education" following "not limited to" in the first sentence of Subsection A and made a minor stylistic change.

The 1991 amendment, effective July 1, 1991, in Subsection D, substituted "fifteen thousand" for "thirty-five thousand" near the beginning and ".15" for ".2" in the formula; added Subsection E; designated former Subsection E as Subsection F; and substituted ".023" for ".008" in the formula in Subsection F.

The 1989 amendment, effective July 1, 1991, substituted "MEM" for "ADM" and deleted "average daily" preceding "membership" several times throughout the section, added Subsections D and E, and made minor stylistic changes throughout the section.

#### ANNOTATIONS

School is only entitled to size adjustment program units if it meets the statutory criteria. *Taos Mun. Schs. Charter Sch. v. Davis*, 2004-NMCA-129, 136 N.M. 543, 102 P.3d 102, cert. denied, 2004-NMCERT-010, 136 N.M. 542, 101 P.3d 808.

### 22-8-23.1. Enrollment growth program units.

A. A school district or charter school with an increase in MEM equal to or greater than one percent, when compared with the immediately preceding year, is eligible for additional program units. The increase in MEM shall be calculated as follows:

$$\frac{(\text{Current Year MEM} - \text{Previous Year MEM})}{\text{Previous Year MEM} \times 100} = \text{Percent Increase.}$$

The number of additional program units shall be calculated as follows:

$$((\text{Current Year MEM} - \text{Previous Year MEM}) - (\text{Current Year MEM} \times .01)) \times 1.5 = \text{Units.}$$

B. In addition to the units calculated in Subsection A of this section, a school district or charter school with an increase in MEM equal to or greater than one percent, when compared with the immediately preceding year, is eligible for additional program units. The increase in MEM shall be calculated in the following manner:

$$\frac{(\text{Current Year MEM} - \text{Previous Year MEM})}{\text{Previous Year MEM} \times 100} = \text{Percent Increase.}$$

The number of additional program units to which an eligible school district or charter school is entitled under this subsection is the number of units computed in the following manner:

$$(\text{Current Year MEM} - \text{Previous Year MEM}) \times .50 = \text{Units.}$$

C. As used in this section:

- (1) "current year MEM" means MEM on the first reporting date of the current year;
- (2) "MEM" means the total school district or charter school membership, including early childhood education full-time-equivalent membership and special education membership, but excluding full-day kindergarten membership for the first year that full-day kindergarten is implemented in a school pursuant to Subsection D of Section 22-13-3.2 NMSA 1978; and
- (3) "previous year MEM" means MEM on the first reporting date of the previous year.

**History:** 1978 Comp., § 22-8-23.1, enacted by Laws 1990 (1st S.S.), ch. 3, § 7; 1990 (1st S.S.), ch. 3, § 8; 2003, ch. 156, § 1; 2003, ch. 386, § 1; 2006, ch. 94, § 13; 2010, ch. 116, § 4.

**The 2010 amendment,** effective May 19, 2010, in Paragraph (1) of Subsection C, after "means MEM on the", deleted "fortieth day" and added "first reporting date" and in Subsection C(3), after "means MEM on the", deleted "fortieth day" and added "first reporting date".

**Temporary provisions.** — Laws 2010, ch. 116, § 9 provided that references in the Public School Code pertaining to the fortieth-day or forty-day report of public school membership or enrollment shall be deemed to be references to the first reporting date, which is the second Wednesday in October; references pertaining to the eightieth-day or eighty-day report of public school membership or enrollment shall be deemed to be references to the second reporting date, which is the second

Wednesday in December; and references pertaining to the one-hundred twentieth-day or one-hundred twenty-day report of public school membership or enrollment shall be deemed to be references to the third reporting date, which is the second Wednesday in February.

As the public schools transition from former reporting dates to new reporting dates, the public education department may use any combination of former and new reporting dates as necessary to develop membership and cost projections and budgets for the 2010-2011 school year.

**The 2006 amendment,** effective July 1, 2007, added charter school and (Current Year MEM - Previous Year MEM) in Subsections A and B; added charter school and changed Section 22-2-19 NMSA 1978 to Section 22-13-3.2 NMSA 1978 in Paragraph (2) of Subsection C.

**The 2003 amendment,** effective June 20, 2003, rewrote the section to the extent that a detailed comparison is impracticable.

## 22-8-23.2. New district adjustment; additional program units.

A. A newly created school district is eligible for additional program units. The number of additional program units to which a newly created school district is entitled under this subsection is the number of units computed in the following manner:

$$(\text{MEM for current year}) \times .147 = \text{Units}$$

where MEM is equal to the total district membership, including early childhood education full-time equivalent membership and special education membership.

B. A school district whose membership decreases as a result of the establishment of a newly created school district is eligible for additional program units. The number of additional program units to which that district is entitled under this subsection is the number of units computed in the following manner:

$$(\text{MEM for prior year} - \text{MEM for current year}) \times .17 = \text{Units}$$

where MEM is equal to the total district membership, including early childhood education full-time equivalent membership and special education membership.

C. As used in this section, "newly created school district" means a local school district not in existence during the immediately preceding school year.

**History:** 1978 Comp., § 22-8-23.2, enacted by Laws 1993, ch. 237, § 2.



### 22-8-23.3. At-risk program units.

A. A school district is eligible for additional program units if it establishes within its department-approved educational plan identified services to assist students to reach their full academic potential. A school district receiving additional at-risk program units shall include a report of specified services implemented to improve the academic success of at-risk students. The report shall identify the ways in which the school district and individual public schools use funding generated through the at-risk index and the intended outcomes. For purposes of this section, "at-risk student" means a student who meets the criteria to be included in the calculation of the three-year average total rate in Subsection B of this section. The number of additional units to which a school district is entitled under this section is computed in the following manner:

$$\text{At-Risk Index} \times \text{MEM} = \text{Units}$$

where MEM is equal to the total district membership, including early childhood education, full-time-equivalent membership and special education membership and where the at-risk index is calculated in the following manner:

$$\text{Three-Year Average Total Rate} \times 0.30 = \text{At-Risk Index.}$$

B. To calculate the three-year average total rate, the department shall compute a three-year average of the school district's percentage of membership used to determine its Title 1 allocation, a three-year average of the percentage of membership classified as English language learners using criteria established by the office for civil rights of the United States department of education and a three-year average of the percentage of student mobility. The department shall then add the three-year average rates. The number obtained from this calculation is the three-year average total rate.

C. The department shall recalculate the at-risk index for each school district every year.

D. For purposes of this section, "services" means research-based or evidence-based social, emotional or academic interventions, such as:

- (1) case management, tutoring, reading interventions and after-school programs that are delivered by social workers, counselors, teachers or other professional staff;
- (2) culturally relevant professional and curriculum development, including those necessary to support language acquisition, bilingual and multicultural education;
- (3) additional compensation strategies for high-need schools;
- (4) whole school interventions, including school-based health centers and community schools;
- (5) educational programming intended to improve career and college readiness of at-risk students, including dual or concurrent enrollment, career and technical education, guidance counseling services and coordination with post-secondary institutions; and
- (6) services to engage and support parents and families in the education of students.

**History:** 1978 Comp., § 22-8-23.3, enacted by Laws 1997, ch. 40, § 7; 2002, ch. 68, § 1; 2014, ch. 55, § 1; 2018, ch. 55, § 4; 2019, ch. 206, § 15; 2019, ch. 207, § 15; 2020, ch. 23, § 1.

**The 2020 amendment**, effective July 1, 2020, changed the at-risk index calculation; and in Subsection A, after "Three-Year Average Total Rate x", deleted "0.25" and added "0.30".

**The 2019 amendment**, effective June 14, 2019, made changes to the formula for determining additional at-risk programs units, and defined "services" for purposes of this section; in Subsection A, deleted former Paragraphs A(1) through A(3), and after "Three-Year Average Total Rate x", deleted "0.150" and added "0.25"; in Subsection B, after "civil rights", added "of the United States department of education"; and added new Subsection D.

Laws 2019, ch. 206, § 15 and Laws 2019, ch. 207, § 15, both effective June 14, 2019, enacted identical

amendments to this section. The section is set out as amended by Laws 2019, ch. 207, § 15. See 12-1-8 NMSA 1978.

**Applicability.** — Laws 2019, ch. 206, § 29 and Laws 2019, ch. 207, § 29, provided that the provisions of Sections 2 through 19 of this act apply to the program cost calculation in fiscal year 2020 and subsequent fiscal years.

**The 2018 amendment**, effective July 1, 2018, made a phased-in adjustment to the at-risk index; and in Subsection A, added new Paragraphs A(1) through A(3), and after Paragraph A(3), added "Three-year Average Total Rate x 0.150 = At-Risk Index".

**The 2014 amendment**, effective July 1, 2015, modified the at-risk index; in Subsection A, in the first sentence, after "establishes within its", deleted "state board" and added "department", in the second sentence, after "report of specified services", deleted "in its annual accountability report pursuant to Section 22-1-6 NMSA 1978" and added



the remainder of the sentence, and added the third and fourth sentences; in Subsection A, in the formula, after "Total Rate x", changed "0.0915" to "0.106"; and in Subsection C, deleted the former second sentence, which provided that for the years 2002-2003 through 2004-2005, a school district shall not receive less than ninety percent of the at-risk funding generated in fiscal year 2001.

**The 2002 amendment**, effective May 15, 2002, substituted "Three-Year Average Total Rate x 0.0915" for

"Refined At-Risk Cluster x 0.015" in the formula at the end of Subsection A; rewrote Subsection B by deleting provisions relating to refined at-risk clusters and inserting references to calculations based on three-year average rates; and, in Subsection C, substituted "year" for "two years" at the end of the present first sentence and added the second sentence.

## 22-8-23.4. National board for professional teaching standards; certified teachers program units.

The number of program units for teachers certified by the national board for professional teaching standards is determined by multiplying by one and one-half the number of teachers certified by the national board for professional teaching standards employed by the school district or charter school on or before the first reporting date of the school year and verified by the department. Department approval of these units shall be contingent on verification by the school district or charter school that these teachers are receiving a one-time salary differential equal to or greater than the amount generated by the units multiplied by the program unit value during the fiscal year in which the school district or charter school will receive these units.

**History:** Laws 2003, ch. 144, § 2; 2003, ch. 152, § 9; 2006, ch. 94, § 14; 2010, ch. 116, § 5.

**The 2010 amendment**, effective May 19, 2010, in the first sentence, after "charter school on or before the", deleted "fortieth day" and added "first reporting date".

**Temporary provisions.** — Laws 2010, ch. 116, § 9 provided that references in the Public School Code pertaining to the fortieth-day or forty-day report of public school membership or enrollment shall be deemed to be references to the first reporting date, which is the second Wednesday in October; references pertaining to the eightieth-day or eighty-day report of public school membership or enrollment shall be deemed to be references to

the second reporting date, which is the second Wednesday in December; and references pertaining to the one-hundred twentieth-day or one-hundred twenty-day report of public school membership or enrollment shall be deemed to be references to the third reporting date, which is the second Wednesday in February.

As the public schools transition from former reporting dates to new reporting dates, the public education department may use any combination of former and new reporting dates as necessary to develop membership and cost projections and budgets for the 2010-2011 school year.

**The 2006 amendment**, effective July 1, 2007, added charter schools.

## 22-8-23.5. Fine arts education program units.

The number of fine arts education program units is determined by multiplying the full-time-equivalent MEM in programs implemented in accordance with the provisions of the Fine Arts Education Act [Chapter 22, Article 15D NMSA 1978] by the cost differential factor of 0.0166 for fiscal year 2004, 0.0332 for fiscal year 2005 and 0.05 for fiscal year 2006 and succeeding fiscal years.

**History:** Laws 2003, ch. 144, § 3 and by Laws 2003, ch. 152, § 8.

**Compiler's notes.** — Laws 2003, ch. 144, § 3 and Laws 2003, ch. 152, § 8, both effective June 20, 2003 enacted identical new sections.

## 22-8-23.6. Charter school student activities program unit.

The charter school student activities program unit for a school district is determined by multiplying the number of charter school students who are participating in school district activities governed by the New Mexico activities association by the cost differential factor of 0.1. The student activities program unit shall be paid to the school district in which it is generated. A charter school student is eligible to participate in school district activities at the public school in the attendance zone in which the student resides, according to the New Mexico activities association guidelines. If the student chooses to participate at a public school other than the one in the attendance zone in which the student resides, the student shall be subject to New Mexico activities association transfer guidelines.

**History:** Laws 2006, ch. 94, § 15.

**Effective dates.** — Laws 2006, ch. 94, § 61 made Laws 2006, ch. 94, § 15 effective July 1, 2007.



### 22-8-23.7. Elementary physical education program units.

A. The number of elementary physical education program units is determined by multiplying the number of students in elementary physical education by the cost differential factor of six one-hundredths.

B. As used in this section, "elementary physical education" means eligible physical education programs that serve students in kindergarten through grade six in a public school classified by the department as an elementary school.

**History:** Laws 2007, ch. 348, § 1.

**Effective dates.** — Laws 2007, ch. 348 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

### 22-8-23.8. Home school student activities program unit.

The home school student activities program unit for a school district is determined by multiplying the number of home school students who are participating in school district activities governed by the New Mexico activities association by the cost differential factor of 0.1. The home school student activities program unit shall be paid to the school district in which it is generated. A home school student is eligible to participate in up to three school district activities at the public school in the attendance zone in which the student resides, according to the New Mexico activities association guidelines. The school district shall verify each home school student's academic eligibility to participate in school district activities. As used in this section, "activities" means athletics, co-curricular and extracurricular activities sanctioned by the New Mexico activities association.

**History:** Laws 2007, ch. 365, § 2; 2009, ch. 93, § 1; 2012, ch. 23, § 1.

**The 2012 amendment**, effective May 16, 2012, eliminated the requirement that home school student activities program units be based on athletic activities; in the third sentence, after "school district", deleted "athletic"; in the fourth sentence, after "school district", deleted "athletic"; and added the last sentence.

**Applicability.** — Laws 2012, ch. 23, § 2 provided that the provisions of Laws 2012, ch. 23, § 1 apply to the 2012-2013 school year and subsequent school years.

**The 2009 amendment**, effective June 19, 2009, increased the number of school district activities in which a home school student may participate from one athletic activity to three athletic activities.

### 22-8-23.9. Home school student program units.

Notwithstanding the provision in Section 22-8-2 NMSA 1978 defining a qualified student as one who is regularly enrolled in one-half or more of the minimum course requirements approved by the department for public school students, home school students may take one or more classes at public schools and, if so, shall generate program units as provided in this section. The home school student program unit for a school district is determined by multiplying the number of home school students who are enrolled in one or more classes by the cost differential factor 0.25 per class per home school student up to the enrollment required for the home school student to meet the definition of "qualified student". The home school student program units shall be paid to the school district in which they are generated. A home school student is eligible to enroll in a public school in the attendance zone in which the student resides or in another public school outside the attendance zone as provided in Section 22-1-4 NMSA 1978. The school district shall verify each home school student's academic and other eligibility to enroll in the class.

**History:** Laws 2013, ch. 113, § 1; 2014, ch. 61, § 2.

**The 2014 amendment**, effective May 21, 2014, changed "home schooled" to "home school" throughout the section.

**Applicability.** — Laws 2013, ch. 113, § 2 provided that Laws 2013, ch. 113, § 1 applies to the 2014-2015 school year and subsequent school years.

## 22-8-23.10. Extended learning time program.

A. A school district or charter school is eligible for additional program units if it establishes within its department-approved educational plan a schoolwide extended learning time program that meets the requirements of this section.

B. Program eligibility requires:

(1) except as provided in Subsections C and D of this section, a minimum of one hundred ninety instructional days per school year or ten additional instructional days per school year, whichever requires the addition of the fewest number of instructional days, with at least five and one-half instructional hours per instructional day for kindergarten through sixth grade and at least six instructional hours per day for seventh through twelfth grade;

(2) after-school program opportunities for academic learning, extracurricular or enrichment programming for students that do not supplant federally funded programs; and

(3) a minimum of eighty noninstructional hours per school year for professional development for instructional staff.

C. An extended learning time program in a school district operating a four-day school week in fiscal year 2019 or in a school district with fewer than one thousand MEM operating a four-day school week may include:

(1) a minimum of one hundred sixty instructional days per school year or eight additional instructional days per school year, whichever requires the addition of the fewest number of instructional days, with at least six and one-half hours per instructional day for kindergarten through sixth grade and at least seven instructional hours per instructional day for seventh through twelfth grade;

(2) after-school program opportunities for academic learning, extracurricular or enrichment programming for students that do not supplant federally funded programs; and

(3) a minimum of eighty noninstructional hours per school year for professional development for instructional staff.

D. With department approval, an elementary school that qualifies for extended learning time program units that also has a qualifying K-5 plus program may structure the school year to provide the additional instructional days required pursuant to the applicable subsection of this section by extending the total number of instructional hours provided by the elementary school by no fewer than fifty-five additional instructional hours.

E. The additional instructional days required for an extended learning time program shall be implemented for all students in a participating public school and shall be considered an extended school calendar for all students in each participating school.

F. A school district or charter school that qualified for extended learning time program units in the prior fiscal year shall not be required to add more instructional days in the current school year than it did in the prior school year to qualify for program units in the current school year if the school district or charter school provides the same or more total instructional days and total instructional hours than it provided in the prior school year.

G. The number of additional units to which a school district or charter school is entitled under this section is computed in the following manner:

$$\text{MEM} \times 0.11,$$

**History:** Laws 2019, ch. 206, § 16; 2019, ch. 207, § 16; 2021, ch. 134, § 1.

The 2021 amendment, effective June 18, 2021, revised program eligibility requirements for extended learning time programs, required elementary schools and extended learning time programs to add instructional days to the calendar, and provided an exception for certain school districts or charter schools; in Subsection A, after "department-approved educational plan", deleted "an" and added "a schoolwide", and after "extended" deleted "Subsection B, C or D of"; in Subsection B, in the introductory clause, deleted "An extended learning time program shall include" and added "Program eligibility

requires", in Paragraph B(1), added "except as provided in Subsections C and D of this section", after "one hundred ninety", added "instructional", and after "days per school year", added "or ten additional instructional days per school year, whichever requires the addition of the fewest number of instructional days", in Paragraph B(2), after "enrichment", deleted "to" and added "programming for"; in Subsection C, in the introductory clause, after the second occurrence of "four-day school week", changed "shall" to "may", in Paragraph C(1), after "one hundred sixty", added "instructional", after "days per school year", added "or eight additional instructional days per school year, whichever requires the addition of the fewest number



of instructional days", and in Paragraph C(2), after "enrichment", deleted "to" and added "programming for"; in Subsection D, after "elementary school that", deleted "has an extended learning time program that", after "program units", deleted "pursuant to Subsection B or C of this section", after "qualifying K-5 plus program", deleted "pursuant to the K-5 Plus Act", after "additional instructional", changed "time" to "days", and after "by extending", deleted "existing instructional days" and added "the total number

of instructional hours provided by the elementary school by no fewer than fifty-five additional instructional hours"; and added new Subsections E and F and redesignated former Subsection E as Subsection G.

**Applicability.** — Laws 2019, ch. 206, § 29 provided that the provisions of Sections 2 through 19 of this act apply to the program cost calculation in fiscal year 2020 and subsequent fiscal years.

## 22-8-23.11. K-5 plus program units.

The number of K-5 plus program units is determined by multiplying the MEM in department-approved K-5 plus schools by the cost differential factor of 0.3; provided that the cohort of students in a K-5 plus public school that spans two fiscal years shall be funded for participation in the required additional instructional days in a single fiscal year.

**History:** Laws 2019, ch. 206, § 17, 2019, ch. 207, § 17; 2021, ch. 194, § 2.

**The 2021 amendment,** effective June 18, 2021, specified how the number of K-5 plus program units is calculated for K-5 plus programs; and after "department-approved K-5 plus", changed "programs" to "schools", and after "differential factor of 0.3", deleted "For each reporting date, MEM in K-5 plus programs shall be equal to the number of qualified students on a reporting date chosen

by the department" and added "provided that the cohort of students in a K-5 plus public school that spans two fiscal years shall be funded for participation in the required additional instructional days in a single fiscal year".

**Applicability.** — Laws 2019, ch. 206, § 29 provided that the provisions of Sections 2 through 19 of this act apply to the program cost calculation in fiscal year 2020 and subsequent fiscal years.

## 22-8-23.12. New program funding.

For the first year of programs operating pursuant to the K-5 Plus Act, the Bilingual Multicultural Education Act [Chapter 22, Article 23 NMSA 1978], the Fine Arts Education Act [Chapter 22, Article 15D NMSA 1978] or for extended learning time programs, a school district or charter school shall generate the applicable program units. A school district's or charter school's budget shall be based on the projected number of program units for the program's first year of operation and shall be adjusted using the qualified MEM on the first reporting date of the current school year.

**History:** Laws 2019, ch. 206, § 18 and Laws 2019, ch. 207, § 18.

**Duplicate laws.** — Laws 2019, ch. 206, § 18 and Laws 2019, ch. 207, § 18, both effective June 14, 2019, enacted identical new sections. The section is set out as enacted by Laws 2019, ch. 207, § 18. See 12-1-8 NMSA 1978.

**Applicability.** — Laws 2019, ch. 206, § 29 provided that the provisions of Sections 2 through 19 of this act apply to the program cost calculation in fiscal year 2020 and subsequent fiscal years.

## 22-8-23.13. Public education reform fund created.

A. The "public education reform fund" is created as a nonreverting fund in the state treasury and consists of appropriations; unspecified gifts, grants and donations to the fund; and income from investment of the fund.

B. Subject to legislative appropriation, money in the fund is appropriated to the department for the purposes of implementing evidence-based public education initiatives related to high-quality teaching and school leadership, extended learning opportunities for students, educational interventions for at-risk students, effective and efficient school administration or promoting public education accountability.

**History:** Laws 2019, ch. 206, § 19 and Laws 2019, ch. 207, § 19.

**Duplicate laws.** — Laws 2019, ch. 206, § 19 and Laws 2019, ch. 207, § 19, both effective June 14, 2019, enacted identical new sections. The section is set out as amended by Laws 2019, ch. 207, § 19. See 12-1-8 NMSA 1978.

**Applicability.** — Laws 2019, ch. 206, § 29 provided that the provisions of Sections 2 through 19 of this act apply to the program cost calculation in fiscal year 2020 and subsequent fiscal years.

## 22-8-24. Instructional staff training and experience index; definitions; factors; calculations.

A. For the purpose of calculating the instructional staff training and experience index, the following definitions and limitations shall apply:

(1) "instructional staff" means the personnel assigned to the instructional program of the school district, excluding principals, substitute teachers, instructional aides, secretaries and clerks;

(2) the number of instructional staff to be counted in calculating the instructional staff training and experience index is the actual number of full-time equivalent instructional staff on the October payroll;

(3) the number of years of experience to be used in calculating the instructional staff training and experience index is that number of years of experience allowed for salary increment purposes on the salary schedule of the school district; and

(4) the academic degree and additional credit hours to be used in calculating the instructional staff training and experience index is the degree and additional semester credit hours allowed for salary increment purposes on the salary schedule of the school district.

B. The factors for each classification of academic training by years of experience are provided in the following table:

Academic Classification	Years of Experience				
	0 - 2	3 - 5	6 - 8	9 - 15	Over 15
Bachelor's degree or less	.75	.90	1.00	1.05	1.05
Bachelor's degree plus 15 credit hours	.80	.95	1.00	1.10	1.15
Master's degree or bachelor's degree plus 45 credit hours	.85	1.00	1.05	1.15	1.20
Master's degree plus 15 credit hours	.90	1.05	1.15	1.30	1.35
Post-master's degree or master's degree plus 45 credit hours	1.00	1.15	1.30	1.40	1.50

C. The instructional staff training and experience index for each school district shall be calculated in accordance with instructions issued by the state superintendent [secretary]. The following calculations shall be computed:

(1) multiply the number of full-time equivalent instructional staff in each academic classification by the numerical factor in the appropriate "years of experience" column provided in the table in Subsection B of this section;

(2) add the products calculated in Paragraph (1) of this subsection; and

(3) divide the total obtained in Paragraph (2) of this subsection by the total number of full-time equivalent instructional staff.

D. In the event that the result of the calculation of the training and experience index is 1.0 or less, the district's factor shall be no less than 1.0.

E. In the event that a new school district is created, the training and experience index for that district is 1.12.

**History:** 1953 Comp., § 77-6-18.8, enacted by Laws 1974, ch. 8, § 15; 1975, ch. 119, § 2; 1976 (S.S.), ch. 32, § 8; 1993, ch. 91, § 1; 1993, ch. 237, § 3.

**Cross references.** — For transfer of powers and duties of former state superintendent, see 9-24-15 NMSA 1978.

**1993 amendments.** — Laws 1993, ch. 91, § 1, effective June 18, 1993, substituted "state superintendent" for

"chief" in the first sentence of Subsection C and "1.0" for ".95" in two places in Subsection D, was approved March 31, 1993. Laws 1993, ch. 237, § 3, effective June 18, 1993, substituted "state superintendent" for "chief" in Subsection C, substituted "1.0" for ".95" in two places in Subsection D and added Subsection E. This section was set out as amended by Laws 1993, ch. 237, § 3. See 12-1-8 NMSA 1978.



# ANNOTATIONS

**Superintendent's interpretation of section entitled to deference.** — Subsection B is ambiguous; however, the superintendent's interpretation that interim credit hours

are lost once a higher degree is conferred would be accorded substantial weight and deference. *Board of Educ. v. N.M. State Dep't of Pub. Educ.*, 1999-NMCA-156, 128 N.M. 398, 993 P.2d 112, cert. denied, 128 N.M. 148, 990 P.2d 822.

## 22-8-25. State equalization guarantee distribution; determination of amount.

A. To determine the amount of the state equalization guarantee distribution, the department shall:

(1) calculate the number of program units to which each school district or charter school is entitled using an average of the MEM on the second and third reporting dates of the prior year; or

(2) calculate the number of program units to which a school district or charter school operating under an approved year-round school calendar is entitled using an average of the MEM on appropriate dates established by the department; or

(3) calculate the number of program units to which a school district or charter school with a MEM of two hundred or less is entitled by using an average of the MEM on the second and third reporting dates of the prior year or the MEM on the first reporting date of the current year, whichever is greater; provided that the calculation of program units using the MEM on the first reporting date of the current school year shall exclude enrollment growth program units;

(4) using the results of the calculations in Paragraph (1), (2) or (3) of this subsection and the staffing cost multiplier from the October report of the prior school year, establish a total program cost of the school district or charter school;

(5) deduct the total amount of guaranteed energy savings contract payments that the department determines will be made to the school district from the public school utility conservation fund during the fiscal year for which the state equalization guarantee distribution is being computed; and

(6) deduct ninety percent of the amount certified for the school district by the department pursuant to the Energy Efficiency and Renewable Energy Bonding Act [Chapter 6, Article 21D NMSA 1978].

B. Reduction of a school district's state equalization guarantee distribution shall cease when the school district's cumulative reductions equal its proportional share of the cumulative debt service payments necessary to service the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act [Chapter 6, Article 21D NMSA 1978].

C. The amount of the state equalization guarantee distribution to which a school district is entitled is the balance remaining after the deductions made in Paragraphs (5) and (6) of Subsection A of this section.

D. The amount of the state equalization guarantee distribution to which a state-chartered charter school is entitled is the difference between the state-chartered charter school's program cost and the two percent withheld by the department for administrative services.

E. The state equalization guarantee distribution shall be distributed prior to June 30 of each fiscal year. In the event that a school district or charter school has received more state equalization guarantee funds than its entitlement, a refund shall be made by the school district or charter school to the state general fund.

**History:** 1953 Comp., § 77-6-19, enacted by Laws 1969, ch. 180, § 19; 1971, ch. 263, § 9; 1972, ch. 90, § 1; reenacted by Laws 1974, ch. 8, § 16; 1975, ch. 119, § 3; 1979, ch. 268, § 2; 1979, ch. 278, § 1; reenacted by Laws 1981, ch. 176, §§ 3, 4, 5; 1986, ch. 32, § 20; 1986, ch. 33, § 16; 1988, ch. 63, § 1; 1988, ch. 64, § 29; 1989, ch. 258, § 1; 1990, ch. 94, § 3; 1993, ch. 226, § 23; 1993, ch. 231, § 14; 1997, ch. 40, § 8; 1999, ch. 275, § 1; 2002, ch. 63, § 1; 2005, ch. 176, § 12; 2005, ch. 291, § 1; 2006, ch. 94, § 16; 2010, ch. 116, § 6; 2017, ch. 78, § 1; 2018, ch. 55, § 6; 2021, ch. 52, § 5.

**Repeals.** — Laws 2006, ch. 94, § 60 repealed Laws 2005, ch. 176, § 12, effective July 1, 2007.

**Cross references.** — For state-support reserve fund, see 22-8-31 NMSA 1978.

For PL 874 funds, see 20 USCS § 7701 et seq.

**The 2021 amendment**, effective July 1, 2021, eliminated local and federal credits when determining the state equalization guarantee distribution; after "distribution", deleted "definitions"; deleted Subsections A through C and redesignated former Subsections D through F as Subsections A through C, respectively; in Subsection A, Paragraph A(3), after "prior year or the", deleted "fortieth



day" and added "MEM on the first reporting date", after "whichever is greater", deleted "and" and added "provided that the calculation of program units using the MEM on the first reporting date of the current school year shall exclude enrollment growth program units", deleted former Paragraphs (5) and (6) and redesignated former Paragraphs (7) and (8) as Paragraph A(5) and A(6), respectively; in Subsection C, after "Paragraphs", changed "(6) through (8)" to "(5) and (6)"; added new Subsection D and redesignated former Subsection G as Subsection E; and in Subsection E, after "fiscal year", deleted "The calculation shall be based on the local and federal revenues specified in this section received from June 1 of the previous fiscal year through May 31 of the fiscal year for which the state equalization guarantee distribution is being computed".

**The 2018 amendment**, effective July 1, 2018, revised the formula for determining the amount of the state equalization guarantee distribution; and in Paragraph D(4), after "this subsection and the", deleted "instructional staff training and experience index" and added "staffing cost multiplier".

**Temporary provisions.** — Laws 2018, ch. 55, § 7 provided that:

A. Using funds appropriated by the legislature for fiscal years 2020 through 2022, the public education department shall supplement a school district's or charter school's calculated program cost in each of those fiscal years:

(1) if, for the fiscal year, the school district's or charter school's calculated program cost is less than its final program cost in the previous fiscal year, not considering any supplement the school district or charter school receives under this subsection; and

(2) as follows:

(a) for fiscal year 2020, in an amount equal to one hundred percent of the reduction attributable to the implementation of this act or the difference between the calculated program cost and the final program cost in the previous fiscal year, whichever is less;

(b) for fiscal year 2021, in an amount equal to seventy-five percent of the reduction attributable to the implementation of this act or the difference between the calculated program cost and the final program cost in the previous fiscal year, whichever is less; and

(c) for fiscal year 2022, in an amount equal to fifty percent of the reduction attributable to the implementation of this act or the difference between the calculated program cost and the final program cost in the previous fiscal year, whichever is less; but

(3) if, in a fiscal year, the appropriation for the purpose of implementing this subsection is insufficient to supplement school districts and charter schools in accordance with Paragraphs (1) and (2) of this subsection, then in an amount equal to the school district's or charter school's prorated share of the total appropriation.

B. On or before February 1 of 2020 through 2022, the public education department shall submit a report to the legislative education study committee and the legislative finance committee that states, regarding the current fiscal year:

(1) the sum needed to supplement school districts and charter schools in accordance with this section;

(2) a list of the school districts and charter schools eligible to receive a supplement in accordance with this section; and

(3) the supplement amount of each of those school districts and charter schools.

**The 2017 amendment**, effective June 16, 2017, required the public education department to take credit for certain state-chartered charter schools' impact aid receipts; in Subsection C, in the introductory clause, after the first occurrence of "school district", added "or state-chartered charter school"; and in Subsection D, Paragraph

D(5), after "school districts", added "and state-chartered charter schools".

**The 2010 amendment**, effective May 19, 2010, in Subsection D(1), after "average of the MEM on the", deleted "eightieth and one-hundred twentieth days" and added "second and third reporting dates"; and in Subsection D(3), after "average of the MEM on the", deleted "eightieth and one-hundred twentieth days" and added "second and third reporting dates".

**Temporary provisions.** — Laws 2010, ch. 116, § 9 provided that references in the Public School Code pertaining to the fortieth-day or forty-day report of public school membership or enrollment shall be deemed to be references to the first reporting date, which is the second Wednesday in October; references pertaining to the eightieth-day or eighty-day report of public school membership or enrollment shall be deemed to be references to the second reporting date, which is the second Wednesday in December; and references pertaining to the one-hundred twentieth-day or one-hundred twenty-day report of public school membership or enrollment shall be deemed to be references to the third reporting date, which is the second Wednesday in February.

As the public schools transition from former reporting dates to new reporting dates, the public education department may use any combination of former and new reporting dates as necessary to develop membership and cost projections and budgets for the 2010-2011 school year.

**The 2006 amendment**, effective July 1, 2007, provided for the state equalization guarantee distribution for state-chartered charter schools in Subsection A; added charter schools in Paragraphs (1) through (5) of Subsection D and in Subsection G and deleted condition that required the enactment of House Bill 32 or similar legislation of the first session of the forty-seventh legislature in Paragraph (8) of Subsection D and in Subsection E.

**The 2005 amendments**, effective July 1, 2005, deleted the former provision of Subsection B which provided that the school district shall budget and expend twenty percent of the total revenue receipts for capital outlay; deleted the former provision of Subsection C(1) which provided that the school district shall budget and expend twenty percent of the total forest reserve receipts for capital outlay; deleted the former provision of Subsection C(2) that the school district shall budget and expend twenty percent of the grant receipts for capital outlay; deleted the former provision in Subsection D(3) that the number of program units be calculated using the average MEM on the fortieth day of the prior year; added Subsection D(8) to provide that to determine the amount of the state equalization guarantee distribution, the department shall deduct ninety percent of the amount certified for the school district by the department pursuant to the Energy Efficiency and Renewal Energy Bonding Act, if the act becomes law pursuant to House Bill 32 of similar legislation of the first session of the forty-seventh legislature; and added Subsection E to provide that reduction of a district's state equalization guarantee distribution shall cease when the district's cumulative reductions equal its proportional share of cumulative debt service payments to service the bonds issued pursuant to the Efficiency and Renewal Energy Bonding Act, if the act became law pursuant to House Bill 32 or similar legislation of the first session of the forty-seventh legislature; and changed "state superintendent" and "state board" to "department".

**The 2002 amendment**, effective July 1, 2002, deleted "as defined in the manual of accounting and budgeting provided in Section 22-8-5 NMSA 1978" at the end of Subsections B, C(1), and C(2); in Subsection D, deleted provisions for calculating program units effective between July 1, 1999 and July 1, 2000 in Paragraph (1), substituted "an average of the MEM on appropriate dates" for "the basic program membership on an appropriate date"



in Paragraph (2); and, in Paragraph (3), substituted "an average of the MEM on the fortieth, eightieth and one hundred twentieth days of the prior year or the fortieth day of the current year" for "the basic program membership on the fortieth day of either the prior or the current year", and deleted a proviso relating to special education program units.

**The 1999 amendment**, effective June 18, 1999, re-wrote the section, changing the percentage of local revenue credit calculated in the state equalization guarantee distribution from ninety-five percent to seventy-five percent, and requiring the use of prior year average enrollment counts on certain days for the calculation of program units for distribution of the state equalization funds.

**The 1997 amendment**, effective July 1, 1997, in Subsection D, substituted "basic program membership of the fortieth day for all programs; provided that special education program units shall be calculated using the membership in special education programs on December 1" for "membership of the fortieth day of the school year, except for school districts with a MEM of 200 or less where the number of program units shall be calculated on the fortieth day membership of either the prior year or the current year, whichever is greater, for all programs except special education, which shall be calculated by using the membership on December 1 of the school year" in Paragraph (1); inserted "basic program" in Paragraph (2); added Paragraph (3) and redesignated the remaining paragraphs accordingly; inserted "distribution is being computed" in Subsection G; and made stylistic changes throughout the section.

**The 1993 amendment**, effective June 18, 1993, added Paragraph (6) in Subsection D; substituted "deductions made in Paragraphs (5) and (6)" for "deduction made in Paragraph (5)" in Subsection E; and inserted the language beginning "and then reduced by the total" and ending "distribution is being computed," following "Oil and Gas Production Equipment Ad Valorem Tax Act" in Subsection G.

**The 1990 amendment**, effective May 16, 1990, substituted "on December 1 of the school year" for "the fortieth or eightieth day of the school year whichever is greater" at the end of Paragraph (1) of Subsection D.

**The 1989 amendment**, effective June 16, 1989, inserted "upon the assessed value of equipment in the school district as determined under" near the end of Subsection B; substituted "a MEM" for "an ADM" near the middle of Subsection D(1); added present Subsection D(2); redesignated former Subsections D(2) through D(4) as present Subsections D(3) through D(5); in present Subsection D(3) inserted "or (2)"; in present Subsection D(5) substituted "Paragraph (4)" for "Paragraph (3)" and "Paragraph (3)" for "Paragraph (2)"; and in Subsection G substituted "Paragraphs (1) or (2) and (3)" for "Paragraphs (1) and (2)" near the middle of the first paragraph and inserted "upon

the assessed value of equipment in the school district as determined under" near the end of that paragraph.

**The 1988 amendment**, effective July 1, 1988, amended Subsections C(1), and C(2); deleted Subsection C(3) regarding grants from the federal government to public secondary schools; and substituted "state superintendent" for "director of the office of education" in Subsection D.

## ANNOTATIONS

**Federal impact aid deductions.** — Where the New Mexico public education department (department) reduced state equalization guarantee (SEG) distribution payments to the Zuni public school district based on anticipated federal impact aid payments prior to certification from the secretary of the United States department of education (DOE), the district court erred in finding that the deductions were authorized under state law, because, under state and federal law, the state may not take into consideration impact aid payments, whether anticipated or actually received, prior to obtaining certification from the DOE secretary, and the department may not reduce SEG distribution payments to an impacted district prior to certification, but once the state has received its certification from the DOE secretary, the certification shall apply retroactively to any impact aid payments received by the district during the entire fiscal year. *N.M. Pub. Educ. Dep't v. Zuni Pub. Sch. Dist.* #89, 2018-NMSC-029.

**Deductions of federal impact aid funds from state equalization guarantee distribution.** — Where the Zuni public school district (Zuni) petitioned the district court for a writ of mandamus, declaratory relief, and injunctive relief, claiming that the New Mexico department of education (department) violated the Public School Finance Act (the act) by deducting federal impact aid funds it anticipated that Zuni was going to receive from funds it was otherwise entitled to under the act's share of school funding prior to the federal department of education (DOE) secretary certifying New Mexico's school funding system, the district court erred in granting the department's motion for summary judgment because under federal law, the department was prohibited from taking into account Zuni's federal impact aid payments before the DOE secretary issued its certification. *Zuni Pub. Sch. Dist. #89 v. N.M. Pub. Educ. Dep't*, 2017-NMCA-003, cert. granted.

**Law reviews.** — For note, "Indirect Funding of Sectarian Schools: A Discussion of the Constitutionality of State School Voucher Programs Under Federal and New Mexico Law After *Zelman v. Simmons-Harris*," see 34 N.M.L. Rev. 194 (2004).

For article, "No Cake For Zuni: The Constitutionality of New Mexico's Public School Capital Finance System," see 37 N.M.L. Rev. 307 (2007).

## 22-8-25.1. Additional per unit distribution from public school fund.

The legislature shall maintain each year in the public school fund an amount equal to the amount of revenue produced by all school districts pursuant to Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978 for which credit is required to be taken pursuant to Section 22-8-25 NMSA 1978. Each year the department shall distribute to each school district an amount determined by the department on a per program unit basis which shall be included within the state equalization guarantee distribution made pursuant to the general appropriation act.

**History:** 1953 Comp., § 22-8-25.1, enacted by Laws 1985 (1st S.S.), ch. 15, § 17; 1988, ch. 64, § 30.

**Cross references.** — For the public school fund, see 22-8-14 NMSA 1978.

**The 1988 amendment**, effective May 18, 1988, in the second sentence, substituted "department" for "director of the office of education" at the first occurrence of that word, "department" for "director" at the second occurrence, and "included within" for "in addition to".



## 22-8-26. Transportation distribution.

A. Money in the transportation distribution of the public school fund shall be used only for the purpose of making payments to each school district or state-chartered charter school for the to-and-from school transportation costs of students in grades kindergarten through twelve attending public school within the school district or state-chartered charter school and of three- and four-year-old children who meet the department approved criteria and definition of developmentally disabled and for transportation of students to and from their regular attendance centers and the place where vocational education programs are being offered.

B. In the event a school district's or state-chartered charter school's transportation allocation exceeds the amount required to meet obligations to provide to-and-from transportation, three- and four-year-old developmentally disabled transportation and vocational education transportation, fifty percent of the remaining balance shall be deposited in the transportation emergency fund.

C. Of the excess amount retained by the school district or state-chartered charter school, at least twenty-five percent shall be used for to-and-from transportation-related services, excluding salaries and benefits, and up to twenty-five percent may be used for other transportation-related services, excluding salaries and benefits as defined by rule of the department.

D. In the event the sum of the proposed transportation allocations to each school district or state-chartered charter school exceeds the amounts in the transportation distribution, the allocation to each school district or state-chartered charter school shall be reduced in the proportion that the school district or state-chartered charter school allocation bears to the total statewide transportation distribution.

E. A local school board or governing body of a state-chartered charter school, with the approval of the state transportation director, may provide additional transportation services pursuant to Section 22-16-4 NMSA 1978 to meet established program needs.

F. Nothing in this section prohibits the use of school buses to transport the general public pursuant to the Emergency Transportation Act [22-17-1 through 22-17-4 NMSA 1978].

**History:** 1953 Comp., § 77-6-22, enacted by Laws 1967, ch. 16, § 76; 1969, ch. 180, § 21; 1974, ch. 73, § 1; 1975, ch. 342, § 2; 1976 (S.S.), ch. 20, § 1; 1978, ch. 127, § 3; 1979, ch. 67, § 1; 1979, ch. 289, § 1; 1979, ch. 305, § 2; 1987, ch. 149, § 2; 1988, ch. 64, § 31; 1995, ch. 208, § 1; 1999 (1st S.S.), ch. 11, § 1; 2001, ch. 48, § 1; 2006, ch. 94, § 17.

**Cross references.** — For transportation of students generally, see 22-16-1 NMSA 1978 et seq.

For transfer of powers and duties of the former state board, see 9-24-15 NMSA 1978.

For other divisions of the public education department, see 9-24-4 NMSA 1978.

For the transportation emergency fund, see 22-8-29.6 NMSA 1978.

**The 2006 amendment**, effective July 1, 2007, added state-chartered charter schools in Subsections A through D and added governing body of a state-chartered charter school in Subsection E.

**The 2001 amendment**, effective June 15, 2001, added Subsection F.

**The 1999 amendment**, effective May 21, 1999, substituted "fifty percent of the remaining balance shall be deposited in the transportation emergency fund" for "the district shall revert remaining transportation funds to the

transportation distribution in the department" in Subsection B; added Subsection C and redesignated the subsequent subsections accordingly; updated a section reference in Subsection E; and made a minor stylistic change.

**The 1995 amendment**, effective July 1, 1995, rewrote Subsections A and B, deleted former Subsection C relating to an objective allocation formula developed by the transportation director and superintendent, rewrote and redesignated former Subsection D as Subsection C, deleted former Subsection E relating to negotiation of school bus contracts, and redesignated former Subsection F as Subsection D.

**The 1988 amendment**, effective May 18, 1988, deleted "of instruction" following "superintendent" at the end of Subsection C.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Buses: constitutionality, under state constitutional provision forbidding financial aid to religious sects, of public provision of schoolbus service for private school pupils, 41 A.L.R.3d 344.

Free transportation: nature and extent of transportation that must be furnished under statute requiring free transportation of school pupils, 52 A.L.R.3d 1036.

## 22-8-27. Transportation equipment.

A. The department shall establish a systematic program for the purchase of necessary school bus transportation equipment.



B. In establishing a system for the replacement of school-district-owned buses, the department shall provide for the replacement of school buses on a twelve-year cycle. School districts requiring additional buses to accommodate growth in the school district or to meet other special needs may petition the department for additional buses. Under exceptional circumstances, school districts may also petition the department for permission to replace buses prior to the completion of a twelve-year cycle or to use buses in excess of twelve years contingent upon satisfactory annual safety inspections.

C. In establishing a system for the use of contractor-owned buses by school districts or state-chartered charter schools, the department shall establish a schedule for the payment of rental fees for the use of contractor-owned buses. The department shall establish procedures to ensure the systematic replacement of buses on a twelve-year replacement cycle. School districts requiring additional buses to accommodate growth in the school district or to meet other special needs may petition the department for additional buses. Under exceptional circumstances, school districts may also petition the department for permission to replace buses prior to the completion of a twelve-year cycle or to use buses in excess of twelve years contingent upon satisfactory annual safety inspections.

D. The school district shall file a lien on every contractor-owned school bus under the contract, which lien shall have priority second only to a lien securing a purchase-money obligation. The school district shall perfect its lien on each contractor-owned school bus by filing the lien with the motor vehicle division of the taxation and revenue department. The lien shall be recorded on the title of the school bus. A school bus contractor shall not refinance or use a school bus on which a school district has a lien as collateral for any other loan without prior written permission of the department. A school bus lien shall be collected and enforced as provided in Chapter 55, Article 9 NMSA 1978. The school district shall release its lien on a school bus:

(1) when the department authorizes a replacement of the school bus; or

(2) when the contractor has reimbursed the school district the amount calculated pursuant to Subsection E of this section if the school bus service contract is terminated or not renewed and the contractor owes the school district as provided in that subsection.

E. No school district shall pay rental fees for any one bus for a period in excess of five years. In the event a school bus service contract is terminated or not renewed by either party, the department shall calculate the remaining number of years that a bus could be used based on a twelve-year replacement cycle and calculate a value reflecting that use. The school district shall deduct an amount equal to that value from any remaining amount due on the contract, or if no balance remains on the contract, the contractor shall reimburse the school district an amount equal to the value calculated.

F. If the school district fails to take action to collect money owed to it when a school bus contract is terminated or not renewed, the department may deduct the amount from the school district's transportation distribution.

**History:** 1953 Comp., § 77-6-23, enacted by Laws 1967, ch. 16, § 77; 1988, ch. 64, § 32; 1993, ch. 226, § 24; 1995, ch. 208, § 2; 2006, ch. 94, § 18; 2009, ch. 92, § 1; 2015, ch. 46, § 1.

**Cross references.** — For transfer of powers and duties of former state superintendent to secretary of public education, see 9-24-15 NMSA 1978.

**The 2015 amendment**, effective July 1, 2015, required school districts to file liens on every contractor-owned school bus that is under contract; in Subsection D, after "contract", deleted "on which the contractor owes money", and after "securing", deleted "the" and added "a".

**The 2009 amendment**, effective June 19, 2009, added Subsection D; in Subsection E, after "is terminated", added "or not renewed by either party"; and added Subsection F.

**Applicability.** — Laws 2009, ch. 92, § 3 provided that the provisions of Laws 2009, ch. 92, §§ 1 and 2 apply to contracts, including contract renewals, entered into on or after June 19, 2009.

**The 2006 amendment**, effective July 1, 2007, changed "state superintendent" to "department" in Subsections A through C; and added state-chartered charter school in Subsection C.

**The 1995 amendment**, effective July 1, 1995, deleted "Local school boards may, with the approval of the state transportation director and" from the beginning of the section, designated the existing provisions as Subsection A, inserted "shall" in Subsection A, deleted "from the annual budget allocation for school transportation within the school district" from the end of Subsection A, and added Subsections B and C.

**The 1993 amendment**, effective July 1, 1993, rewrote the catchline, which formerly read "Transportation of students; additional budget allowance; purchase of equipment"; deleted former Subsections A and B, pertaining to authorization for an additional budget allowance for the cost of transporting students where special equipment is necessary or where special physical conditions exist; and deleted the subsection designation "C".



The 1988 amendment, effective May 18, 1988, substituted "state superintendent" for "chief" in Subsection C.

#### ANNOTATIONS

**Reimbursement of rental fees.** — A local school district is entitled to reimbursement from a school bus operator of unearned rental fees paid to the operator for bus

purchases at the termination of the school bus service contract without distinction as to the reason for or the time of termination of the contract. *Gladden Motor Co., Inc. v. Eunice Sch. Bd.*, 2007-NMCA-118, 142 N.M. 483, 167 P.3d 931, cert. denied, 2007-NMCERT-009, 142 N.M. 715, 169 P.3d 408.

## 22-8-28. Repealed.

**Repeals.** — Laws 1995, ch. 208, § 16 repealed 22-8-28 NMSA 1978, as amended by Laws 1979, ch. 305, § 3, relating to the submission of school bus cost reports, effective

July 1, 1995. For provisions of former section, see the 1994 NMSA 1978 on *NMOneSource.com*.

## 22-8-29. Transportation distributions; reports; payments.

A. On the second reporting date and the third reporting date of each year, each local school board of a school district and governing body of a state-chartered charter school shall report to the state transportation director, upon forms furnished by the state transportation director, the following information concerning the school district's or state-chartered charter school's operation on each respective reporting date of the current year:

- (1) the number and designation of school bus routes in operation in the school district;
- (2) the number of miles traveled by each school bus on each school bus route, showing the route mileage in accordance with the type of road surface traveled;
- (3) the number of students, including special education students, transported on each reporting date of the current year and adjusted for special education students on December 1;
- (4) the projected number of students to be transported in the next school year;
- (5) the seating capacity, age and mileage of each bus used in the school district for student transportation; and
- (6) the number of total miles traveled for each school district's or state-chartered charter school's per capita feeder routes.

B. Each local school board of a school district and governing body of a state-chartered charter school maintaining a school bus route shall make further reports to the state transportation director at other times specified by the state transportation director.

C. The state transportation director shall certify to the secretary that the allocations from the transportation distributions to each school district and state-chartered charter school are based upon the transportation distribution formula established in the Public School Code [Chapter 22 NMSA 1978], calculated and distributed for the entire school year using an average of the amounts reported pursuant to Subsection A of this section on the second reporting date and third reporting date of the prior school year, and are subject to audit and verification; provided that for fiscal years 2022 and 2023, the state transportation director shall use an average of the amounts reported pursuant to Subsection A of this section on the second and third reporting dates of fiscal year 2020.

D. The department shall make periodic installment payments to school districts and state-chartered charter schools during the school year from the transportation distributions, based upon the allocations certified by the state transportation director.

**History:** 1953 Comp., § 77-6-24, enacted by Laws 1967, ch. 16, § 78; 1974, ch. 73, § 2; 1978, ch. 127, § 5; 1979, ch. 305, § 4; 1988, ch. 64, § 33; 1995, ch. 208, § 3; 1999 (1st S.S.), ch. 11, § 2; 2006, ch. 94, § 19; 2010, ch. 116, § 7; 2015, ch. 57, § 1; 2021, ch. 130, § 1; 2022, ch. 9, § 1.

**Repeals.** — Laws 2001, ch. 350, § 2, repealed Laws 1999 (1st S.S.), ch. 11, § 7, effective June 15, 2001, which would have repealed 22-8-29 on July 1, 2001.

**Cross references.** — For transportation of students generally, see 22-16-1 NMSA 1978 et seq.

For transfer of powers and duties of the former state superintendent, see 9-24-15 NMSA 1978.

For the program support and student transportation division of the public education department, see 9-24-4 NMSA 1978.

The 2022 amendment, effective May 18, 2022, adjusted school districts' and charter schools' fiscal year 2023 transportation distribution calculations; and allowed state-chartered charter schools that operated a transportation program in fiscal year 2022 but did not operate a program in fiscal year 2019 or fiscal year 2020 to receive transportation funding based on fiscal year 2022 data; and in Subsection C, after "provided that for fiscal",



deleted "year" and added "years", and after "2022", added "and 2023".

**Temporary provisions.** — Laws 2022, ch. 9, § 3 provided that notwithstanding the provisions of the Public School Finance Act, for a state-chartered charter school that did not operate a to-and-from school transportation program in fiscal year 2019 or 2020 but did operate a to-and-from school transportation program in fiscal year 2022, the public education department shall use data from fiscal year 2022 to calculate the transportation distribution for fiscal year 2023.

**The 2021 amendment**, effective June 18, 2021, required the fiscal year 2022 calculation for the school transportation distribution be based on fiscal year 2020 transportation data; in Subsection C, after "amounts reported", added "pursuant to Subsection A of this section", and added "provided that for fiscal year 2022, the state transportation director shall use an average of the amounts reported pursuant to Subsection A of this section on the second and third reporting dates of fiscal year 2020".

**The 2015 amendment**, effective July 1, 2015, changed the dates for reporting school transportation information to the public education department and changed the basis for determining transportation distribution allocations; in the introductory sentence of Subsection A, deleted "Prior to November 15 of each year" and added "On the second reporting date and the third reporting date of each year", and after "operation on", deleted "the first" and added "each respective"; in Subsection A, Paragraph (3), after "the number of students", added "including special education students"; and in Subsection C, after "Public School Code", deleted "The allocations for the first six months of a school year shall be based upon the tentative transportation budget of the school district or state-chartered charter school for the current fiscal year. Allocations to a school district or state-chartered charter school for the remainder of the school year shall adjust the amount received by the school district or state-chartered charter school so that it equals the amount the school district or state-chartered charter school is entitled to receive for the entire school year based upon the November 15 report" and added "calculated and distributed for the entire school year using an average of the amounts reported on the second reporting date and third reporting date of the prior school year."

**Temporary provisions.** — Laws 2015, ch. 57, § 2 provided that notwithstanding the provisions of Laws 2015, ch. 57, for the transportation distribution for fiscal year 2016, the allocation shall be based upon the tentative transportation budget of the school district or state-chartered charter school for fiscal year 2016. Allocations

to a school district or state-chartered charter school for the remainder of the school year shall adjust the amount received by the school district or state-chartered charter school so that it equals the amount the school district or state-chartered charter school is entitled to receive based upon the number of students transported on the first reporting date of fiscal year 2016 and adjusted for special education students on December 1, and subject to audit and verification.

**The 2010 amendment**, effective May 19, 2010, in Subsection A, in the introductory sentence after "operation on the", deleted "fortieth day of school" and added "first reporting date of the current year"; and in Subsection A(3), after "transported on the", deleted "fortieth day of school" and added "first reporting date of the current year".

**The 2006 amendment**, effective July 1, 2007, added the governing body of a state-chartered charter school in Subsections A and B and added state-chartered schools in Subsection A, Paragraph (6) of Subsection A, and in Subsections C and D.

**The 1999 amendment**, effective May 21, 1999, in Subsection A added "and adjusted for special education students on December 1" at the end of Paragraph (3), deleted former Paragraph (5), which read "the percentage of unpaved or unimproved roads utilized by school buses in the school district; and" and redesignated the subsequent paragraph accordingly, substituted "used" for "utilized" in Paragraph (5), and added Paragraph (6).

**The 1995 amendment**, effective July 1, 1995, in Subsection A, in the introductory paragraph, deleted "maintaining a school bus route" following "school district" and substituted "the district's operation on the fortieth day of school" for "the school year to and including October 30"; deleted "which have been approved by the state transportation director" from the end of Paragraph (1), deleted former Paragraph (2) relating to the number and capacity of the buses operating on the district, redesignated former Paragraphs (3) and (4) as Paragraphs (2) and (3), substituted "on the fortieth day of school" for "on each school bus route" in Paragraph (3), and added Paragraphs (4) to (6); deleted "concerning the information required by this section" following the first "director" in Subsection B, and rewrote Subsection C.

**The 1988 amendment**, effective May 18, 1988, deleted the last sentence of Subsection B regarding required periods for reporting; in Subsection C, substituted "state superintendent" for "director" near the beginning of the first sentence and "state superintendent" for "director of the public school finance division" at the end of the first sentence; and substituted "department" for "director" and deleted "to him" following "certified" in Subsection D.

## 22-8-29.1. Calculation of transportation allocation.

### A. As used in this section:

(1) "annual variables" means the coefficients calculated by regressing the total operational expenditures from two years prior to the current school year for each school district and state-chartered charter school using the number of students transported and the numerical value of site characteristics; provided that for fiscal years 2022 and 2023, the coefficients shall be calculated by regressing the total operational expenditures from fiscal year 2019;

(2) "base amount" means the fixed amount that is the same for all school districts and an amount established by rule for state-chartered charter schools;

(3) "total operational expenditures" means the sum of all to-and-from school transportation expenditures, excluding expenditures incurred in accordance with the provisions of Section 22-8-27 NMSA 1978; and



(4) "variable amount" means the sum of the product of the annual variables multiplied by each school district's or state-chartered charter school's numerical value of the school district's and state-chartered charter school's site characteristics multiplied by the number of days of operation for each school district or state-chartered charter school.

B. The department shall calculate the transportation allocation for each school district and state-chartered charter school.

C. The base amount is designated as product A. Product A is the constant calculated by regressing the total operational expenditures from the two years prior to the current school year for school district or state-chartered charter school operations using the numerical value of site characteristics approved by the department. The legislative education study committee and the legislative finance committee may review the site characteristics developed by the state transportation director prior to approval by the department.

D. The variable amount is designated as product B. Product B is the predicted additional expenditures for each school district or state-chartered charter school based on the regression analysis using the site characteristics as predictor variables multiplied by the number of days.

E. The allocation to each school district and state-chartered charter school shall be equal to product A plus product B. The adjustment factor shall be applied to the calculation.

F. For the 2001-2002, 2002-2003 and 2003-2004 school years, the transportation allocation for each school district shall not be less than ninety-five percent or more than one hundred five percent of the prior school year's transportation expenditure.

**History:** Laws 1995, ch. 208, § 10; 1999 (1st S.S.), ch. 11, § 3; 2001, ch. 350, § 1; 2006, ch. 94, § 20; 2021, ch. 130, § 2; 2022, ch. 9, § 2.

**Cross references.** — For the legislative education study committee, see 2-10-1 NMSA 1978.

For the legislative finance committee, see 2-5-1 NMSA 1978.

For references to the former state board, see 9-24-15 NMSA 1978.

For the program support and student transportation division of the department, see 9-24-4 NMSA 1978.

**The 2022 amendment,** effective May 18, 2022, adjusted school districts' and charter schools' fiscal year 2023 transportation distribution calculations, and allowed state-chartered charter schools that operated a transportation program in fiscal year 2022 but did not operate a program in fiscal year 2019 or fiscal year 2020 to receive transportation funding based on fiscal year 2022 data; and in Subsection A, Paragraph A(1), after "provided that for fiscal", deleted "year" and added "years", and after "2022", added "and 2023".

**Temporary provisions.** — Laws 2022, ch. 9, § 3 provided that notwithstanding the provisions of the Public School Finance Act, for a state-chartered charter school that did not operate a to-and-from school transportation program in fiscal year 2019 or 2020 but did operate a to-and-from school transportation program in fiscal year 2022, the public education department shall use data from fiscal year 2022 to calculate the transportation distribution for fiscal year 2023.

**The 2021 amendment,** effective June 18, 2021, required the fiscal year 2022 calculation for the school transportation distribution be based on fiscal year 2019

transportation expenditure data; in Subsection A, Paragraph A(1), after "characteristics", added "provided that for fiscal year 2022, the coefficients shall be calculated by regressing the total operational expenditures from fiscal year 2019"; in Subsection E, after "product B", added "The adjustment factor shall be applied to the calculation"; and deleted Subsection G.

**The 2006 amendment,** effective July 1, 2007, added state-chartered charter schools in Paragraphs (1) and (4) of Subsection A and Subsections B through E; and added an amount established by rule for state-chartered charter schools in Paragraph (2) of Subsection A.

**The 2001 amendment,** effective June 15, 2001, in Subsection F, deleted "1999-2000, 2000-2001 and", inserted "2002-2003 and 2003-2004" substituted "ninety-five percent" for "one hundred percent" and "one hundred five percent" for "one hundred fifteen percent", and substituted "prior" for "1998-1999".

**The 1999 amendment,** effective May 21, 1999, added present Subsections A, C through E, and G and redesignated subsequent subsections accordingly; in Subsection B deleted "in the following manner" from the end of the introductory language and deleted Paragraphs (1) through (7), which set out the manner for calculating the transportation allocation for each school district; deleted former Subsection C, relating to determination of the transportation allocation by districts transporting less than 75 students; and in Subsection F substituted "1999-2000, 2000-2001 and 2001-2002 school years" for "1997-98, 1998-99 and 1999-2000 school years"; "one hundred percent" for "ninety-five percent", "of the 1998-1999" for "of the 1996-97", and "expenditure" for "allocation".

## 22-8-29.2. Repealed.

**Repeals.** — Laws 1999 (1st S.S.), ch. 11, § 6 repealed 22-8-29.2 NMSA 1978, as enacted by Laws 1995, ch. 208, § 11, relating to grouping of districts, calculation of average square miles served per student transported, and

calculation of average operational expenditure per student, effective May 21, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMOneSource.com*.



### 22-8-29.3. Repealed.

**Repeals.** — Laws 1999 (1st S.S.), ch. 11, § 6 repealed 22-8-29.3 NMSA 1978, as enacted by Laws 1995, ch. 208, § 12, relating to the calculation of average operational expenditure per student, effective May 21, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMOneSource.com*.

### 22-8-29.4. Transportation distribution adjustment factor.

A. The department shall establish a transportation distribution adjustment factor. The adjustment factor shall be calculated as follows:

(1) calculate the unadjusted transportation allocation for each school district and state-chartered charter school, designated in Section 22-8-29.1 NMSA 1978 as product A plus product B;

(2) the sum total of product A plus product B in all school districts and state-chartered charter schools added together equals product C; and

(3) subtract product C from the total operational transportation distribution for the current year and divide the result by product C and then add 1 in the following manner: "[total operational transportation distribution - C] ÷ C] + 1". The result is the transportation distribution adjustment factor.

B. As used in this section, "total operational transportation distribution" means the total legislative appropriation for the transportation distribution minus amounts included for capital outlay expenses.

**History:** Laws 1995, ch. 208, § 13; 1999 (1st S.S.), ch. 11, § 4; 2006, ch. 94, § 21.

**Cross references.** — For transfer of powers and duties of former state superintendent, see 9-24-15 NMSA 1978.

For the public education department, see 9-24-4 NMSA 1978.

**The 2006 amendment**, effective July 1, 2007, changed "state superintendent" to "department" in Subsection

A; added state-chartered charter schools in Paragraphs (1) and (2) of Subsection A; and added the reference to Section 22-8-29.1 NMSA 1978 in Paragraph (1) of Subsection A.

**The 1999 amendment**, effective May 21, 1999, in Subsection A, in Paragraphs (1) and (2), inserted "product A plus product" and "school", and in Paragraphs (2) and (3), inserted "product" preceding "C".

### 22-8-29.5. Repealed.

**Repeals.** — Laws 1999 (1st S.S.), ch. 11, § 6 repealed 22-8-29.5 NMSA 1978, as enacted by Laws 1995, ch. 208, § 14, relating to calculation of a mileage supplement for

each local school district, effective May 21, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMOneSource.com*.

### 22-8-29.6. Transportation emergency fund.

A. The "transportation emergency fund" is created in the state treasury. Money in the fund shall not revert to the general fund at the end of any fiscal year. Money in the fund is appropriated to the department for the purpose of funding transportation emergencies, including fuel price increases. The secretary shall make distributions to ensure the safety of students receiving to-and-from transportation services.

B. The secretary shall account for all transportation emergency distributions and shall make full reports to the governor, the legislative education study committee and the legislative finance committee of payments made.

**History:** Laws 1995, ch. 208, § 15; 1999 (1st S.S.), ch. 11, § 5; 2014, ch. 23, § 1.

**The 2014 amendment**, effective May 21, 2014, permitted fuel price increases to be deemed a transportation emergency; and in Subsection A, in the third sentence, after "funding transportation emergencies", added "including fuel price increases", in the fourth sentence, after

"The", deleted "state superintendent" and added "secretary", and after "shall make distributions", deleted "only"; and in Subsection B, after "The", deleted "state superintendent" and added "secretary".

**The 1999 amendment**, effective May 21, 1999, rewrote this section to the extent that a detailed comparison would be impracticable.

## 22-8-30. Supplemental distributions.

A. The department shall make supplemental distributions only for the following purposes:

(1) to pay the out-of-state tuition of students subject to the Compulsory School Attendance Law [Chapter 22, Article 12 NMSA 1978] who are attending school out-of-state because school facilities are not reasonably available in the school district of their residence;

(2) to make emergency distributions to school districts or state-chartered charter schools in financial need, but no money shall be distributed to any school district or state-chartered charter school having cash and invested reserves, or other resources or any combination thereof, equaling five percent or more of the school district's or state-chartered charter school's operational budget;

(3) to make program enrichment distributions in the amount of actual program expense to school districts and state-chartered charter schools for the purpose of providing specific programs to meet particular educational requirements that cannot otherwise be financed;

(4) a special vocational education distribution to area vocational schools or state-supported schools with department-approved vocational programs to reimburse those schools for the cost of vocational education programs for those students subject to the Compulsory School Attendance Law who are enrolled in such programs; and

(5) to make emergency capital outlay distributions to school districts or state-chartered charter schools that have experienced an unexpected capital outlay emergency demanding immediate attention.

B. The department shall account for all supplemental distributions and shall make full reports to the governor, legislative education study committee and legislative finance committee of payments made as authorized in Subsection A of this section.

C. The department may divert any unused or unneeded balances in any of the distributions made under the supplementary distribution authority to make any other distribution made pursuant to the same authority.

**History:** 1953 Comp., § 77-6-29, enacted by Laws 1967, ch. 16, § 83; 1969, ch. 180, § 22; 1971, ch. 263, § 12; reenacted by 1974, ch. 8, § 17; 1978, ch. 148, § 1; 1988, ch. 64, § 34; 2006, ch. 94, § 22.

**Cross references.** — For references to the former state superintendent, see 9-24-15 NMSA 1978.

For the public education department, see 9-24-4 NMSA 1978.

**The 2006 amendment**, effective July 1, 2007, changed "state superintendent" to "department" in Subsections A through C; added state-chartered charter schools in

Paragraphs (2), (3) and (5) of Subsection A; changes "state board" to "department" in Paragraph (4) of Subsection A.

**The 1988 amendment**, effective May 18, 1988, substituted "state superintendent" for "director" in Subsections A and C; deleted "with the approval of the state superintendent" at the beginning of Subsections A(3), (4) and (5); in Subsection B, deleted "and director" following "state superintendent" and substituted "legislative education study committee" for "legislative school study committee"; and deleted "directors" preceding "supplementary distribution authority" in Subsection C.

### 22-8-30.1. Recompiled.

**Recompilation.** — Laws 2004, ch. 27, § 28 recompiled former 22-8-30.1 NMSA 1978, relating to creation of adult

basic education fund, as 21-1-27.5 NMSA 1978, effective May 19, 2004.

### 22-8-30.2. Recompiled.

**Recompilation.** — Laws 2004, ch. 27, § 28 recompiled former 22-8-30.2 NMSA 1978, relating to distribution of

adult basic education fund, as 21-1-27.6 NMSA 1978, effective May 19, 2004.

## 22-8-31. State-support reserve fund.

A. The "state-support reserve fund" is created.

B. The state-support reserve fund shall be used only to augment the appropriations for the state equalization guarantee distribution in order to ensure, to the extent of the amount undistributed in the fund, that the maximum figures for such distribution established by law shall not be reduced.

C. The undistributed money in the state-support reserve fund shall be invested by the state treasurer in interest-bearing securities of the United States government or in certificates of deposit



in qualified banks and in savings and loan associations whose deposits are insured with an agency of the United States. The state treasurer may deposit money from the state-support reserve fund or any other fund in one or more accounts with any such bank or federally insured savings and loan association, but the state treasurer, in any official capacity, shall not deposit money from that fund or any other fund in any one federally insured savings and loan association the aggregate of which would exceed the amount of federal savings and loan insurance corporation insurance for a single public account. Income from these investments shall be periodically credited to the general fund.

D. At least forty-five days before the money is needed, the chief shall notify the state treasurer in writing of the amount that will be needed for distribution.

E. It is the intent of the legislature that the state-support reserve fund be reimbursed in the amount of the yearly distribution by appropriation in the year following the distribution so that the fund at the beginning of each fiscal year shall have a credit balance of at least ten million dollars (\$10,000,000).

F. Distribution from the state-support reserve fund shall be made in the same manner and on the same basis as the state equalization guarantee distribution.

**History:** 1953 Comp., § 77-6-30, enacted by Laws 1967, ch. 16, § 84; 1968, ch. 18, § 10; 1969, ch. 180, § 23; 1974, ch. 8, § 18; 1975, ch. 157, § 8; 1976 (S.S.), ch. 32, § 9; 2021, ch. 52, § 6.

**Compiler's notes.** — The public school finance division of the department of finance and administration was abolished by Laws 1977, ch. 246, § 69. Laws 1977, ch. 246, § 3, established the public school finance division of the educational finance and cultural affairs department. Laws 1977, ch. 246, § 63, compiled as 22-8-3 NMSA 1978, designated the administrative and executive head of the public school finance division of the educational finance and cultural affairs department as the director of public school finance.

**Cross references.** — For reference to the former chief of public school finance, see 9-6-3.1 and 9-24-15 NMSA 1978 and reorganization notes.

For secretary of public education, see 9-24-5 NMSA 1978.

For state equalization guarantee distribution generally, see 22-8-25 NMSA 1978.

**The 2021 amendment**, effective July 1, 2021, removed a provision related to using money from the state-support reserve fund when there is a delay in receiving local or federal revenues; deleted former Subsection E and redesignated former Subsections F and G as Subsections E and F, respectively; and in Subsection F, after "from", deleted "this" and added "the state-support reserve".

## 22-8-32. Current school fund; receipts; disposition.

A. As they are received, the state treasurer shall deposit into the current school fund revenue received from the following sources:

- (1) all fines and forfeitures collected under general laws;
- (2) the net proceeds of property that may come to the state by escheat; and
- (3) all other revenue which by law is to be credited to the current school fund.

B. At the end of each month, the state treasurer shall transfer the amount in the common school current fund, also known as the common school income fund, to the current school fund.

C. At the end of each month, after the transfer authorized in Subsection B of this section, the state treasurer shall transfer any unencumbered balance in the current school fund to the public school fund.

**History:** 1953 Comp., § 77-6-32, enacted by Laws 1967, ch. 16, § 86; 1972, ch. 90, § 2; 1976, ch. 7, § 1.

**Cross references.** — For public school fund generally, see 22-8-14 NMSA 1978.

## 22-8-33. Distribution of certain revenue.

There shall be distributed to the credit of each school district in a county, according to the proportion that the forty-day average daily membership of the school district bears to the forty-day average daily membership of the entire county, all revenue received by the county for public school purposes from the forest reserve funds distributed pursuant to Section 6-11-3 NMSA 1978.

**History:** 1953 Comp., § 77-6-35, enacted by Laws 1967, ch. 16, § 89; 1969, ch. 180, § 24; 1972, ch. 90, § 3; 1985 (1st S.S.), ch. 15, § 18.

## 22-8-34. Federal mineral leasing funds.

A. Money received by the state pursuant to the provisions of the federal Mineral Leasing Act shall be distributed to the public school fund, except as follows:

- (1) an annual appropriation to the instructional material fund;
- (2) an annual appropriation to the board of regents of the New Mexico institute of mining and technology for the bureau of geology and mineral resources;
- (3) the distribution made pursuant to Subsection B of this section; and
- (4) the distribution made pursuant to Section 3 [9-29A-3 NMSA 1978] of this 2020 act.

B. Money received by the state as its share of a prepayment of royalties pursuant to 30 U.S.C. 1726(b), as that section may be amended or renumbered, shall be distributed as follows:

- (1) a portion of the receipts, estimated by the taxation and revenue department to be equal to the amount that the state would have received as its share of royalties in the same fiscal year if the prepayment had not been made, shall be distributed to the public school fund; and
- (2) the remainder shall be distributed to the common school permanent fund.

**History:** 1953 Comp., § 77-6-36, enacted by Laws 1967, ch. 16, § 90; 1974, ch. 8, § 19; 1999, ch. 43, § 1; 1999, ch. 253, § 1; 2001, ch. 246, § 2; 2020, ch. 3, § 7.

**Cross references.** — For the federal Mineral Leasing Act, see 30 U.S.C. For public school fund generally, see 22-8-14 NMSA 1978.

For instructional material fund generally, see 22-15-5 NMSA 1978 et seq.

For New Mexico institute of mining and technology generally, see 21-11-1 NMSA 1978 et seq.

**The 2020 amendment**, effective July 1, 2020, provided for distributions to the early childhood education and care fund from money received by the state pursuant to the provisions of the federal Mineral Leasing Act; in Subsection A, in the introductory paragraph, deleted "Except for an annual appropriation to the instructional material fund and to the bureau of geology and mineral resources of the New Mexico institute of mining and technology,

and except as provided in Subsection B of this section, all other", after "federal Mineral", deleted "Lands", after "Leasing Act", deleted "30 USCA 181, et seq.", and after "public school fund", added "except as follows", and added Paragraphs A(1) through A(4); and in Subsection B, in the introductory paragraph, deleted "All", and after "30 U.S.C. 1726(b)", added "as that section may be amended or renumbered".

**The 2001 amendment**, effective June 15, 2001, substituted "bureau of geology" for "bureau of mines" in Subsection A.

**The 1999 amendment**, effective June 18, 1999, rewrote the former section.

### ANNOTATIONS

**Law reviews.** — For article, "New Mexican Nationalism and the Evolution of Energy Policy in New Mexico," see 17 Nat. Resources J. 283 (1977).

## 22-8-35. Tax anticipation certificates.

A. For operating expenses, a local school board with the consent of the chief [secretary] may anticipate the collection of taxes for which tax levies have been made by issuing and selling certificates of indebtedness. These certificates shall be issued on the faith and credit of the school district issuing the certificates. The certificates shall not bear interest in excess of six percent a year. The total unpaid certificates outstanding shall not exceed the budget allowance for operating expenses of the school district for a period of ninety days. The certificates shall be paid out of the money first credited thereafter to the operating fund of the school district.

B. For school building construction, repair or both, a local school board with consent of the chief [secretary] may anticipate the collection of taxes for which tax levies have been made for that purpose by issuing and selling certificates of indebtedness. These certificates shall be issued on the faith and credit of the school district issuing the certificates. The certificates shall not bear interest in excess of six percent a year. The certificates shall be paid out of the money first received under the tax levy.

**History:** 1953 Comp., § 77-6-39, enacted by Laws 1967, ch. 16, § 93.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For transfer of powers of the former chief of public school finance to the state superintendent, and from the state superintendent to the secretary of public education, see 9-6-3.1 and 9-24-15 NMSA 1978.

For general obligation bonds of school districts, see 22-18-1 NMSA 1978 et seq.

For school revenue bonds, see 22-19-1 NMSA 1978 et seq.

For public school emergency capital outlays, see 22-24-1 NMSA 1978 et seq.

For public school capital improvements, see 22-25-1 NMSA 1978 et seq.



## 22-8-36. Certification of allocations; fund accounts.

The chief [secretary] shall certify periodically to each county treasurer the allocations of funds to each school district in the county. The chief [secretary] shall certify to the county treasurer the names and purposes of the separate funds the county treasurer shall establish and maintain for each school district.

**History:** 1953 Comp., § 77-6-40, enacted by Laws 1967, ch. 16, § 94.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For transfer of powers of the former chief of public school finance to the state superintendent, and from the state superintendent to the secretary of public education, see 9-6-3.1 and 9-24-15 NMSA 1978.

## 22-8-37. Public school funds.

Except for money received for a cafeteria or for an activity fund, all money for public school purposes distributed to a school district, or collected by a county, school district or public school authorities for a school district, shall be delivered to and kept by a county treasurer or a board of finance of a school district in funds approved by the division. Disbursements from these funds shall only be made for matured debts by voucher and warrants or checks of the local school board. In no event shall any money be expended or debts incurred except as authorized by the Public School Finance Act. Money for a cafeteria or for an activity fund shall be deposited in a bank, or in a savings and loan association whose deposits are insured by an agency of the United States, or may be deposited in a credit union, as long as the credit union deposit is insured by an agency of the United States, approved by the local school board. The local school board may deposit any cafeteria funds, any activity funds or any other funds in one or more accounts with any such bank or insured savings and loan association in its county, but no local school board, in any official capacity, shall deposit any cafeteria funds, any activity funds or any other funds in any one such savings and loan association the aggregate of which would exceed the amount of federal savings and loan insurance corporation insurance for a single public account. As used in this section, "deposit" includes share, share certificate and share draft.

**History:** 1953 Comp., § 77-6-41, enacted by Laws 1967, ch. 16, § 95; 1968, ch. 18, § 11; 1975, ch. 157, § 9; 1978, ch. 128, § 7; 1987, ch. 79, § 22.

**Disposition of school revenue.** — If local school board has not been designated a board of finance, the county treasurer is to keep all school revenue. 1967 Op. Att'y Gen. No. 67-144.

## 22-8-38. Boards of finance; designation.

A. Upon written application to and approval of the department, a local school board may be designated a board of finance for public school funds of the school district. A local school board designated as a board of finance may require all funds distributed to, allocated to or collected for the school district or the public schools under its jurisdiction to be deposited with it. The department shall designate a local school board as a board of finance if:

- (1) the local school board shows to the satisfaction of the department that it has personnel properly trained to keep accurate and complete fiscal records;
- (2) the local school board agrees to consult with the department on any matters not covered by the manual of accounting and budgeting before taking any action relating to funds held by it as a board of finance;
- (3) the persons handling these funds are adequately bonded to protect the funds entrusted to them from loss; and
- (4) the local school board making application has not been suspended and not reinstated as a board of finance within the past year.

B. A charter school applicant requesting a charter from the commission shall submit a plan detailing how its governing body will qualify for designation as a board of finance for public school funds of the charter school. The governing body of a proposed state-chartered charter school shall

qualify as a board of finance before the first year of operation of the charter school. The governing body of a state-chartered charter school designated as a board of finance may require all funds distributed to, allocated to or collected for the state-chartered charter school to be deposited with the governing body. The commission shall designate the governing body of a state-chartered charter school as a board of finance if:

- (1) the governing body shows to the satisfaction of the commission that it has personnel properly trained to keep accurate and complete fiscal records;
- (2) the governing body agrees to consult with the division on any matters not covered by the manual of accounting and budgeting before taking any action relating to funds held by it as a board of finance;
- (3) the persons handling these funds are adequately bonded to protect the funds entrusted to them from loss; and
- (4) the governing body was not a governing body of a charter school or does not have a member who was a member of a governing body of a charter school that was suspended and not reinstated as a board of finance.

C. Failure of the governing body of a proposed state-chartered charter school to qualify for designation as a board of finance constitutes good and just grounds for denial, nonrenewal or revocation of its charter.

**History:** 1953 Comp., § 77-6-42, enacted by Laws 1967, ch. 16, § 96; 1988, ch. 64, § 35; 2006, ch. 94, § 23.

**The 2006 amendment**, effective July 1, 2007, changed "state superintendent" to "department" in Subsection A and in Paragraphs (1) and (2) of Subsection A; added Subsection B to provide for the designation of boards of finance for charter schools and state-chartered charter schools and the criteria for designation of the governing body of a state-chartered charter school as a board of

finance; and added Subsection C to provide that failure of a governing body of a state-chartered charter school to qualify as a board of finance is grounds for denial, nonrenewal or revocation of its charter.

**The 1988 amendment**, effective May 18, 1988, substituted "state superintendent" for "chief" throughout the section; deleted "of the division" following "manual of accounting and budgeting" in Subsection B; and made a minor stylistic change in Subsection C.

## 22-8-39. Boards of finance; suspension.

The department may at any time suspend a local school board or governing body of a state-chartered charter school from acting as a board of finance if the department reasonably believes there is mismanagement, improper recording or improper reporting of public school funds under the local school board's or governing body of a state-chartered charter school's control. When a local school board or governing body of a state-chartered charter school is suspended from acting as a board of finance, the department shall:

- A. immediately take control of all public school funds under the control of the local school board or governing body of a state-chartered charter school acting as a board of finance;
- B. immediately have an audit made of all funds under the control of the local school board or governing body of a state-chartered charter school acting as a board of finance and charge the cost of the audit to the school district or state-chartered charter school;
- C. act as a fiscal agent for the school district or state-chartered charter school and take any action necessary to conform the fiscal management of funds of the school district or state-chartered charter school to the requirements of law and good accounting practices;
- D. report any violations of the law to the proper law enforcement officers;
- E. act as fiscal agent for the school district or state-chartered charter school until the department determines that the local school board or governing body of a state-chartered charter school is capable of acting as a board of finance or until the department determines that the county treasurer should act as fiscal agent for the school district or state-chartered charter school;
- F. inform the local school board or governing body of a state-chartered charter school in writing of the department's determination as to who is to act as board of finance or fiscal agent for the school district or state-chartered charter school and also inform the county treasurer in writing if it determines that the county treasurer should act as fiscal agent for the school district or state-chartered charter school; and



G. consider commencing proceedings before the commission to suspend, revoke or refuse to renew the charter of the state-chartered charter school in the case of a state-chartered charter school that has engaged in serious or repeated mismanagement, improper recording or improper reporting of public school funds under its control.

**History:** 1953 Comp., § 77-6-43, enacted by Laws 1967, ch. 16, § 97; 1988, ch. 64, § 38; 2006, ch. 94, § 24.

**Cross references.** — For transfer of powers and duties of the former state superintendent to the secretary of public education, *see* 9-24-15 NMSA 1978.

**The 2006 amendment,** effective July 1, 2007, changed "state superintendent" to "department" and added the governing body of a state-chartered charter school; and

added Subsection G to provide for proceedings to suspend, revoke or refuse to renew a charter of a state-chartered charter school in cases of mismanagement or improper recording or reporting of school funds.

**The 1988 amendment,** effective May 18, 1988, substituted "state superintendent" for "chief" twice in the introductory paragraph and made a minor stylistic change.

## 22-8-40. Deposit of public school funds; distribution; interest.

A. All public money in the custody of school districts or state-chartered charter schools that have been designated as boards of finance shall be deposited in qualified depositories in accordance with the terms of this section.

B. Deposits of funds of the school district or state-chartered charter school may be made in noninterest-bearing checking accounts in one or more banks, savings and loan associations or credit unions, as long as the credit union deposits are insured by an agency of the United States, located within the geographical limits of the school district.

C. Deposits of funds of the school district or state-chartered charter school may be made in interest-bearing checking accounts, commonly known as "NOW" accounts, in one or more banks, savings and loan associations or credit unions, as long as the credit union deposits are insured by an agency of the United States, located within the geographical limits of the school district.

D. Public money placed in interest-bearing deposits, in banks and savings and loan associations, other than interest-bearing checking accounts as defined in Subsection C of this section, shall be equitably distributed among all banks and savings and loan associations having their main or manned branch offices within the geographical boundaries of the school district that have qualified as public depositories by reason of insurance of the account by an agency of the United States or by depositing collateral security or by giving bond as provided by law in the proportion that each such bank's or savings and loan association's net worth bears to the total net worth of all banks and savings and loan associations having their main office or a manned branch office within the geographical boundaries of the school district. The net worth of the main office of a savings and loan association and its manned branch offices within the geographical boundaries of a school district is the total net worth of the association multiplied by the percentage that deposits of the main office and the manned branch offices located within the geographical boundaries of the school district are of the total deposits of the association. The net worth of each manned branch office or aggregate of manned branch offices of a savings and loan association located outside the geographical boundaries of the school district in which the main office is located is the total net worth of the association multiplied by the percentage that deposits of the branch or aggregate of branches located outside the geographical boundaries of the school district in which the main office is located are of the total deposits of the association. The director of the financial institutions division of the regulation and licensing department shall promulgate a formula for determining the net worth of banks' main offices and branches for the purposes of distribution of public money as provided for by this section. "Net worth" means assets less liabilities as reported by such banks and savings and loan associations on their most recent semiannual reports to the state or federal supervisory authority having jurisdiction.

E. Notwithstanding the provisions of Subsection D of this section, public money may be placed in interest-bearing deposits, other than interest-bearing checking accounts as defined in Subsection C of this section, at the discretion of the board of finance, in credit unions having their main or manned branch offices within the geographical boundaries of the school district to the extent such deposits are insured by an agency of the United States.

F. The rate of interest for all public money deposited in interest-bearing accounts in banks, savings and loan associations and credit unions shall be set by the state board of finance, but in no case shall the rate of interest be less than one hundred percent of the asked price on United States treasury bills of the same maturity on the date of deposit. Any bank or savings and loan association that fails to pay the minimum rate of interest at the time of deposit provided for herein for any respective deposit forfeits its right to an equitable share of that deposit under this section. If the deposit is part or all of the proceeds of a bond issue and the interest rate prescribed in this subsection materially exceeds the rate of interest of the bonds, the interest rate prescribed by this subsection shall be reduced on the deposit to an amount not materially exceeding the interest rate of the bonds if the bond issue would lose its tax exempt status under Section 103 of the United States Internal Revenue Code of 1954, as amended.

G. Public money in excess of that for which banks and savings and loan associations within the geographical boundaries of the school district have qualified may be deposited in qualified depositories, including credit unions, in other areas within the state under the same requirements for payment of interest as if the money were deposited within the geographical boundaries of the school district.

H. The board of finance of the school district or state-chartered charter school may temporarily invest money held in demand deposits and not immediately needed for the operation of the school district or state-chartered charter school. Such temporary investments shall be made only in securities that are issued by the state or by the United States government, or by their departments or agencies, and that are either direct obligations of the state or the United States or are backed by the full faith and credit of those governments.

I. The department of finance and administration may monitor the deposits of public money by school districts or state-chartered charter schools to assure full compliance with the provisions of this section.

**History:** 1953 Comp., § 77-6-44, enacted by Laws 1967, ch. 16, § 98; 1968, ch. 18, § 12; 1975, ch. 157, § 10; 1975, ch. 304, § 3; reenacted by 1977, ch. 136, § 2; 1978, ch. 128, § 8; 1980, ch. 151, § 49; 1981, ch. 332, § 18; 1983, ch. 191, § 2; 1987, ch. 79, § 23; 2006, ch. 94, § 25.

**Cross references.** — For state board of finance generally, see 6-1-1 NMSA 1978 et seq.

For the director of the financial institutions division, see 9-16-11 NMSA 1978.

For Section 103 of the Internal Revenue Code, see 26 U.S.C. § 103.

**The 2006 amendment**, effective July 1, 2007, changed "local school boards" to "school districts" in Subsections A through D and I, and added state-chartered charter schools in Subsections A through C and H and I.

### **22-8-40.1. Deposit of public school funds; providing exception on interest rate limitation for "NOW" accounts.**

Notwithstanding the provisions of Subsection E of Section 22-8-40 NMSA 1978, the requirement for a rate of interest of not less than one hundred percent of the asked price on United States treasury bills of the same maturity on the day of deposit shall not apply to interest-bearing checking accounts.

**History:** 1978 Comp., § 22-8-40.1, enacted by Laws 1981, ch. 341, § 1.

### **22-8-41. Restriction on operational funds; emergency accounts; cash balances.**

A. A school district shall not expend money from its operational fund for the acquisition of a building site or for the construction of a new structure, unless the school district has bonded itself to practical capacity or the secretary determines and certifies to the legislative finance committee that the expending of money from the operational fund for this purpose is necessary for an adequate public educational program and will not unduly hamper the school district's current operations.

B. A school district or charter school may budget out of cash balances carried forward from the previous fiscal year an amount not to exceed five percent of its proposed operational fund



expenditures for the ensuing fiscal year as an emergency account. Money in the emergency account shall be used only for unforeseen expenditures incurred after the annual budget was approved and shall not be expended without the prior written approval of the secretary.

C. In addition to the emergency account, school districts or charter schools may also budget operational fund cash balances carried forward from the previous fiscal year for operational expenditures, exclusive of salaries and payroll, upon specific prior approval of the secretary. The secretary shall notify the legislative finance committee in writing of the secretary's approval of such proposed expenditures.

D. Notwithstanding any provision of this section to the contrary, the secretary shall reduce school districts' and charter schools' fiscal year 2017 state equalization guarantee distributions as credit for excess fiscal year 2016 operational fund cash balances in accordance with Section 2 of this 2017 act, and a school district or charter school whose distribution is accordingly reduced shall apply in the amount of that credit its audited fiscal year 2016 operational fund cash balance toward the school district's or charter school's fiscal year 2017 operations.

**History:** 1953 Comp., § 77-6-45, enacted by Laws 1967, ch. 16, § 99; 1983, ch. 56, § 1; 1985 (1st S.S.), ch. 15, § 19; 1988, ch. 64, § 37; 2003, ch. 155, § 1; 2004, ch. 60, § 1; 2006, ch. 85, § 2; 2007, ch. 122, § 1; 2011, ch. 39, § 1; 2017, ch. 3, § 1.

**Cross references.** — For the secretary of public education, see 9-24-5 NMSA 1978.

For public school emergency capital outlays, see 22-24-1 NMSA 1978 et seq.

For public school capital improvements, see 22-25-1 NMSA 1978 et seq.

For the legislative finance committee, see 2-5-1 NMSA 1978.

**The 2017 amendment**, effective January 31, 2017, limited certain school districts' and charter schools' fiscal year 2016 cash balances by taking credits against those schools' fiscal year 2017 state equalization guarantee distributions; in Subsection C, deleted "For fiscal years 2004 and 2005, with the approval of the secretary, a school district or charter school may budget so much of its operational cash balance as is needed for nonrecurring expenditures, including capital outlay."; and added a new Subsection D.

**Temporary provisions.** — Laws 2017, ch. 3, § 2, provided that the secretary of public education shall:

A. apply as a credit against the fiscal year 2017 state equalization guarantee distribution of each school district and charter school that does not receive an emergency supplemental distribution in fiscal year 2017 and whose audited fiscal year 2016 operational fund cash balance is greater than three percent of its fiscal year 2016 program cost an amount equal to the result of the following calculation or, if, using that result, the applied credit would leave the school district's or charter school's audited fiscal year 2016 operational fund cash balance below three percent of its fiscal year 2016 program cost, then equal to the portion of that result that will leave the school district's or charter school's audited fiscal year 2016 operational fund cash balance at three percent of its fiscal year 2016 program cost:

(1) fifty million dollars (\$50,000,000) divided by the fiscal year 2016 program costs for all school districts and charter schools; and

(2) that quotient multiplied by the school district's or charter school's fiscal year 2016 program cost;

B. promptly after January 31, 2017, notify each school district and charter school of the amount of its credit; and

C. for each school district and charter school that does not receive an emergency supplemental distribution in fiscal year 2017 and whose audited fiscal year 2016 operational fund cash balance is greater than three percent of its fiscal year 2016 program cost, reduce by the amount

of its credit the school district's or charter school's state equalization guarantee distributions evenly over the period remaining in fiscal year 2017.

**The 2011 amendment**, effective April 4, 2011, permitted school districts to keep their cash balances for emergency or operational expenditures by eliminating the former limitation on allowable operational cash balances, the reduction of the state equalization guarantee distribution, and the prohibition against budgeting cash balances.

**Applicability.** — Laws 2011, ch. 39, § 2 provided that Laws 2011, ch. 39, § 1 applies to cash balances realized from the appropriations in fiscal year 2011 and subsequent fiscal years.

**The 2007 amendment**, effective June 15, 2007, made cash balance credits proportional to the amount of the excess cash balance.

**The 2006 amendment**, effective March 6, 2006, in Subsection D, deleted the provision at the beginning of the sentence, which provided that notwithstanding the provisions of Subsection G and changed "2006" to "2007"; in Paragraph (1) of Subsection E, changed "nine" to "fifteen"; in Paragraph (2) of Subsection E, changed "seven and one-half" to "twelve"; in Paragraph (3) of Subsection E, added "or more" after ten million dollars; in Paragraph (4) of Subsection E, added "or more" after twenty-five million dollars and changed "four and one-half" to "seven"; in Paragraph (5) of Subsection E, deleted the former provision that provided for fiscal year 2005, two and one-half percent of the budgeted expenditures and for subsequent fiscal years three percent and added five percent; in Paragraphs (1) and (2) of Subsection F, deleted "unrestricted, unreserved operational cash balance and the emergency reserve" and inserted "limit"; and added Subsection I to provide for waiver of the reduction required by Subsection F.

**The 2004 amendment**, effective May 19, 2004, amended Subsections A, B, C, D, E, F, G and H to change "state superintendent" to "secretary" and amended Subsection F to delete in Paragraph (1) "limit calculated pursuant to Subsection E of this section" and insert in its place: "unrestricted, unreserved operational cash balance and the emergency reserve" and to insert "unrestricted, unreserved operational cash balance and the emergency reserve" in two places in Paragraphs (1) and (2).

**The 2003 amendment**, effective April 4, 2003, substituted "A school" for "No school" at the beginning of Subsection A; inserted "or charter school" in the first sentence of Subsections B and C; added the last sentence in Subsection C; and added Subsections D to K.

**The 1988 amendment**, effective May 18, 1988, substituted "state superintendent" for "director" throughout the section.

## 22-8-42. Violation of act; penalties.

A. Any person violating any provision of the Public School Finance Act is guilty of a petty misdemeanor.

B. Any person diverting or expending any public school money contrary to the approved budget is, in addition to being subject to any other civil or criminal action, liable along with his sureties to the state for the amount diverted or expended.

C. Any person diverting any public school funds from the purpose for which the funds were raised or acquired, or embezzling public school funds, shall be removed from office by the court imposing the criminal penalty.

D. Any person falsifying any record, account or report required to be kept or filed pursuant to the Public School Finance Act or knowingly using any money budgeted or appropriated for public school use or for any other purposes than that provided in the appropriation or budget is guilty of a petty misdemeanor and shall, in addition to all other civil or criminal penalties, forfeit his office or employment.

E. Legal proceedings for violation of the Public School Finance Act shall be instituted by the state superintendent [secretary].

F. A certified school instructor or certified school administrator guilty of any of the violations provided by this section shall, upon conviction, have his certificate revoked by the state board [department].

G. Nothing in this section shall be interpreted to prevent the enforcement of any provision of the Public School Finance Act by means of mandamus or injunction.

**History:** 1953 Comp., § 77-6-46, enacted by Laws 1967, ch. 16, § 100; 1977, ch. 247, § 204; 1988, ch. 64, § 38.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**The 1988 amendment,** effective May 18, 1988, substituted "state superintendent" for "secretary of finance and administration" in Subsection E, and, in Subsection F, inserted "certified school" and substituted "revoked" for "cancelled".

### ANNOTATIONS

**One need not be found guilty of felony to forfeit and be disqualified from office** under the New Mexico constitution and Subsection D of this section. *State ex rel. Martinez v. Padilla*, 1980-NMSC-064, 94 N.M. 431, 612 P.2d 223.

**Forfeiture of office required for approval of violative expenditures.** — Sale of gasoline to school district vehicles by school board member, purchase of airplane ticket for board member's wife and payment to board member and board member's wife for services not rendered are each a violation of this section and require the forfeiture of office of those members who approved the expenditures. *State ex rel. Martinez v. Padilla*, 1980-NMSC-064, 94 N.M. 431, 612 P.2d 223.

## 22-8-43. Public school reading proficiency fund; created.

The "public school reading proficiency fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants and donations. The fund shall be administered by the department, and money in the fund is appropriated to the department to distribute awards to public middle, junior and senior high schools that implement innovative, scientifically based reading programs. The department shall develop procedures and rules for the application and award of money from the fund, including criteria upon which to evaluate innovative, scientifically based reading programs. Public schools receiving funds shall show evidence that they are using quality, scientifically based reading research to improve reading proficiency and shall develop individualized reading plans for students who fail to meet grade level reading proficiency standards. Disbursements of the fund shall be made by warrant of the department of finance and administration pursuant to vouchers signed by the secretary or the secretary's authorized representative. Any unexpended or unencumbered balance remaining in the fund at the end of any fiscal year shall not revert but shall remain to the credit of the fund.

**History:** Laws 2000 (2nd S.S.), ch. 14, § 2; 2001, ch. 289, § 2; 1978 Comp., § 22-2-6.12, amended and

recompiled as § 22-8-43 by Laws 2003, ch. 153, § 30; 2007, ch. 307, § 5; 2007, ch. 308, § 5.



**Recompilations.** — Laws 2003, ch. 153, § 30 recom-  
piled former 22-2-6.12 NMSA 1978 as 22-8-43 NMSA  
1978, effective April 4, 2003.

**Cross references.** — For transfer of powers and du-  
ties of the state superintendent to the secretary of public  
education, *see* 9-24-15 NMSA 1978.

**The 2007 amendment**, effective July 1, 2007, autho-  
rized the use of the fund for awards to middle, junior and  
senior high schools. Laws 2007, ch. 307, § 5 and Laws  
2007, ch. 308, § 5 enacted identical amendments to this  
section. The section was set out as amended by Laws  
2007, ch. 308, § 5. *See* 12-1-8 NMSA 1978.

**The 2003 amendment**, effective April 4, 2003, de-  
leted "of education" following "department" twice; sub-  
stituted "public" for "local" preceding "schools" near the  
middle of the section; substituted "scientifically based" for  
"research-based" three times; and substituted "research"  
for "programs" following "reading" near the middle of the  
fifth sentence.

**The 2001 amendment**, effective June 15, 2001, substi-  
tuted "department of education" for "state department of  
public education" in two places; added the fifth sentence;  
and substituted "state superintendent" for "superinten-  
dent of public instruction" in the sixth sentence.

## 22-8-44. Educator licensure fund; distribution; appropriation.

A. The "educator licensure fund" is created in the state treasury and shall be administered by the department. The fund shall consist of money collected from application fees for licensure or for renewal of licensure by the department.

B. Subject to legislative appropriation, money in the fund is appropriated to the department for the following purposes:

- (1) to fund the educator background check program;
- (2) to enforce educator ethics requirements; and
- (3) to process applications for licensure or for renewal of licensure, including review of professional development dossiers.

C. Money in the fund and any interest that may accrue to the fund shall not revert at the end of the fiscal year but shall remain to the credit of the fund.

**History:** Laws 1997, ch. 238, § 6; 1978 Comp., § 22-  
10-4.1, recompiled and amended as § 22-8-44 by  
Laws 2003, ch. 153, § 31; 2009, ch. 63, § 1.

**Recompilations.** — Laws 2003, ch. 153, § 31 recom-  
piled former 22-10-4.1 NMSA 1978 as 22-8-44 NMSA  
1978, effective April 4, 2003.

**The 2009 amendment**, effective July 1, 2009, in Sub-  
section A, changed "state board" to "department"; in Sub-  
section B, added "Subject to legislative appropriation" and  
"for the following purposes"; and added Paragraphs (2)  
and (3) of Subsection B.

**The 2003 amendment**, effective April 4, 2003, sub-  
stituted "licensure" for "certification" in the catchline; in  
Subsection A, substituted "licensure" for "certification"  
three times, deleted "state" preceding "department" near  
the end of the first sentence, and deleted "of public educa-  
tion" at the end of the first sentence; and in Subsection  
B, deleted "state" preceding "department" near the begin-  
ning and substituted "to fund" for "of public education for  
the purpose of funding" near the middle.

## 22-8-45. Teacher professional development fund.

A. The "teacher professional development fund" is created in the state treasury to provide funding for professional development programs and projects for public school teachers. The fund consists of appropriations, gifts, grants, donations and income from investment of the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year. The fund shall be administered by the department of education [public education department] and money in the fund is appropriated to the department to carry out the purposes of the fund.

B. The department of education [public education department] shall evaluate the success of each professional development program or project funded and report its findings to the legislative education study committee each year.

**History:** Laws 2003, ch. 157, § 1.

**Bracketed material.** — The bracketed material was  
inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references  
to the superintendent of public instruction shall be  
deemed references to the secretary of public education

and all references to the former state board of education  
or state department of education shall be deemed refer-  
ences to the public education department. *See* 9-24-15  
NMSA 1978.

**Cross references.** — For the public education depart-  
ment, *see* 9-24-4 NMSA 1978.

### 22-8-45.1. Beginning teacher mentorship fund; created.

The "beginning teacher mentorship fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants and donations. Money in the fund is subject to appropriation by the legislature to provide funding to school districts and charter schools for their beginning teacher mentorship programs. The fund shall be administered by the public education department, and expenditures from the fund shall be by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of public education or the secretary's authorized representative.

**History:** Laws 2020, ch. 24, § 1.

**Effective dates.** — Laws 2020, ch. 24 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 20, 2020, 90 days after adjournment of the legislature.

### 22-8-46. Repealed.

**Repeals.** — Laws 2018, ch. 55, § 8 repealed 22-8-46 NMSA 1978, as enacted by Laws 2005, ch. 49, §1, relating to funding formula study task force created, membership,

duties, effective July 1, 2018. For provisions of former section, see the 2017 NMSA 1978 on *NMOneSource.com*.

### 22-8-47. New Mexico government education fund.

- A. The "New Mexico government education fund" is created in the state treasury.
- B. The New Mexico government education fund shall consist of appropriations by the legislature, gifts, grants and donations.
- C. The New Mexico government education fund shall be administered by the department. Money in the fund is appropriated to the department to contract for annual, week-long, high school civics courses focusing on New Mexico state government for boys and girls to be held at varying post-secondary educational institutions in New Mexico.
- D. Disbursements from the New Mexico government education fund shall be made by warrant of the department of finance and administration pursuant to vouchers signed by the secretary.
- E. Any unexpended or unencumbered balance remaining in the fund at the end of a fiscal year shall not revert but shall remain to the credit of the New Mexico government education fund.

**History:** Laws 2005, ch. 207, § 1.

**Effective dates.** — Laws 2005, ch. 207 contained no effective date provision, but, pursuant to N.M. Const.,

art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

### 22-8-48. New school development fund; distribution.

- A. The "new school development fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants, donations and bequests made to the fund. Income from the fund shall be credited to the fund, and money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year. Money in the fund is appropriated to the department for the purposes of making distributions pursuant to Subsection B of this section. Expenditures from the fund shall be made on warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary.
- B. Upon application to the department by a school district and subject to the availability of funds, the department may approve a distribution to the school district from the new school development fund to supplement district funds needed to pay for supplies, equipment and operating costs unique to the first year of operation of a new school, provided that the department shall not approve a distribution unless it determines that there are no other reasonably available federal, private or other public sources for the needed funding.

**History:** 1978 Comp. § 22-24-11, as enacted by Laws 2006, ch. 95, § 3; recompiled as § 22-8-48 by Laws 2007, ch. 366, § 25.

**Recompilations.** — Laws 2007, ch. 366, § 25 recompiled former 22-24-11 NMSA 1978 as 22-8-48 NMSA 1978, effective July 1, 2007.



## 22-8-49. Teacher cost index; licensure-experience factor; report.

A. The teacher cost index for each school district or charter school shall be calculated in accordance with instructions issued by the department. The teacher cost index for a school district in its first year of operations is 1.0. The teacher cost index for a school district or charter school in its second or subsequent year of operations is the greater of 1.0 or the average of the licensure-experience factors of all full-time-equivalent teachers on the school district's or charter school's payroll in October of that year who are assigned classroom teaching responsibilities. The licensure-experience factor of a teacher corresponds to the teacher's licensure level and years of experience and is as follows:

### Licensure Level

### Years of Experience

	0 to 2	3 to 5	6 to 8	9 to 15	Over 15
1	0.755	0.785	0.800		
2		0.994	1.023	1.050	1.123
3			1.184	1.208	1.277

B. Beginning in 2021, the department, legislative education study committee staff and legislative finance committee staff shall jointly prepare and submit a report by November 1 of each year to the governor, the legislative education study committee and the legislative finance committee that includes:

- (1) data on the relationship of licensure-experience factors to actual teacher costs;
- (2) an analysis of the relationships among a teacher's licensure level, educational attainment, years of experience and salary; and
- (3) recommended changes, if any, to this section of the Public School Finance Act.

C. As used in this section:

- (1) "licensure level" is the teaching licensure level as defined in the School Personnel Act [Chapter 22, Article 10A NMSA 1978]; and
- (2) "years of experience" is as defined by department rule.

**History:** Laws 2018, ch. 55, § 5.

**Effective date.** — Laws 2018, ch. 55, § 9 made Laws 2018, ch. 55, § 5 effective July 1, 2018.

## ARTICLE 8A

### Charter Schools

(Repealed by Laws 1999, ch. 281, § 25.)

### 22-8A-1. Repealed.

**Repeals.** — Laws 1999, ch. 281, § 25 repealed 22-8A-1 NMSA 1978, as enacted by Laws 1993, ch. 227, § 1, relating to charter schools, effective June 18, 1999. For

provisions of former sections, see the 1998 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, see 22-8B-1 NMSA 1978 et seq.

### 22-8A-2. Repealed.

**Repeals.** — Laws 1999, ch. 281, § 25 repealed 22-8A-2 NMSA 1978, as enacted by Laws 1993, ch. 227, § 2, relating to charter schools, effective June 18, 1999. For

provisions of former sections, see the 1998 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, see 22-8B-1 NMSA 1978 et seq.

### 22-8A-3. Repealed.

**Repeals.** — Laws 1999, ch. 281, § 25 repealed 22-8A-3 NMSA 1978, as enacted by Laws 1993, ch. 227, § 3, relating to charter schools, effective June 18, 1999. For

provisions of former sections, see the 1998 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, see 22-8B-1 NMSA 1978 et seq.

## 22-8A-4. Repealed.

**Repeals.** — Laws 1999, ch. 281, § 25 repealed 22-8A-4 NMSA 1978, as enacted by Laws 1993, ch. 227, § 4, relating to charter schools, effective June 18, 1999. For

provisions of former sections, *see* the 1998 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, *see* 22-8B-1 NMSA 1978 et seq.

## 22-8A-5. Repealed.

**Repeals.** — Laws 1999, ch. 281, § 25 repealed 22-8A-5 NMSA 1978, as enacted by Laws 1993, ch. 227, § 5, relating to charter schools, effective June 18, 1999. For

provisions of former sections, *see* the 1998 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, *see* 22-8B-1 NMSA 1978 et seq.

## 22-8A-6. Repealed.

**Repeals.** — Laws 1999, ch. 281, § 25 repealed 22-8A-6 NMSA 1978, as enacted by Laws 1993, ch. 227, § 6, relating to charter schools, effective June 18, 1999. For

provisions of former sections, *see* the 1998 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, *see* 22-8B-1 NMSA 1978 et seq.

## 22-8A-7. Repealed.

**Repeals.** — Laws 1999, ch. 281, § 25 repealed 22-8A-7 NMSA 1978, as enacted by Laws 1993, ch. 227, § 7, relating to charter schools, effective June 18, 1999. For

provisions of former sections, *see* the 1998 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, *see* 22-8B-1 NMSA 1978 et seq.

# ARTICLE 8B

## Charter Schools

Sec.

- 22-8B-1. Short title.
- 22-8B-2. Definitions.
- 22-8B-3. Purpose.
- 22-8B-4. Charter schools' rights and responsibilities; operation.
- 22-8B-4.1. Charter schools' enrollment procedures.
- 22-8B-4.2. Charter school facilities; standards.
- 22-8B-5. Charter schools; status; local school board authority.
- 22-8B-5.1. Governing body training.
- 22-8B-5.2. Governing body conflicts of interest.
- 22-8B-5.3. Chartering authority; powers; duties; liability.
- 22-8B-5.4. Governing body authority over who may carry a firearm on charter school property.
- 22-8B-6. Charter school requirements; application process; authorization; state board of finance designation required; public hearings; subcommittees.
- 22-8B-7. Appeal of denial, nonrenewal, suspension or revocation; procedures.
- 22-8B-8. Charter application; contents.
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Sec.

- 22-8B-9.1. Performance framework.
- 22-8B-10. Charter schools; employees.
- 22-8B-11. Charter schools; maximum number established.
- 22-8B-12. Charter schools; term; oversight and corrective actions; site visits; renewal of charter; grounds for nonrenewal or revocation.
- 22-8B-12.1. Charter school closure; chartering authority protocols; chartering authority duties; distribution of assets.
- 22-8B-12.2. Charter schools; proposals to open or close a public school on tribal land; consultation with tribal leaders and members and families of students.
- 22-8B-13. Charter school financing.
- 22-8B-14. Charter schools stimulus fund created.
- 22-8B-14.1. Repealed.
- 22-8B-15. Repealed.
- 22-8B-16. Public education commission; powers and duties.
- 22-8B-17. Charter schools division; duties.
- 22-8B-17.1. Division; annual report.

## 22-8B-1. Short title.

Chapter 22, Article 8B NMSA 1978 may be cited as the "Charter Schools Act".

**History:** Laws 1999, ch. 281, § 1; 2005, ch. 221, § 1; 2006, ch. 94, § 26.

**The 2006 amendment,** effective July 1, 2007, changed "1999 Charter Schools Act" to "Charter Schools Act".

**The 2005 amendment,** effective July 1, 2005, changed the statutory reference to the act.



## 22-8B-2. Definitions.

As used in the Charter Schools Act:

- A. "charter school" means a conversion school or start-up school authorized by the chartering authority to operate as a public school;
- B. "chartering authority" means either a local school board or the commission;
- C. "commission" means the public education commission;
- D. "conversion school" means an existing public school within a school district that was authorized by a local school board to become a charter school prior to July 1, 2007;
- E. "division" means the charter schools division of the department;
- F. "enrollment preference" means filling a charter school's openings with students, or siblings of students, who have already been admitted to the school through an appropriate admission process or are continuing through subsequent grades;
- G. "governing body" means the governing structure of a charter school as set forth in the school's charter;
- H. "governing body training" means the training required pursuant to Section 22-8B-5.1 NMSA 1978 to educate governing body members and ensure compliance with all applicable laws, which training may be obtained from any source, individual or entity that has been approved by the department;
- I. "management" means authority over the hiring, termination and day-to-day direction of a school's employees or contractors, whether they are licensed or not;
- J. "material violation" means the act of failing to accomplish a requirement of a law, rule or contract or a charter school's bylaws that substantially affects the charter school's employees' or students' rights or privileges;
- K. "nondiscretionary waiver" means a waiver of requirements or rules and the provisions of the Public School Code that the department shall grant pursuant to Section 22-8B-5 NMSA 1978 and for which a charter school shall not require separate approval by the department;
- L. "performance indicator" means a measurement tool that enables selected issues or conditions to be monitored over time for the purposes of evaluating progress toward or away from a desired direction;
- M. "performance target" means the specific rating to which the data from a school's performance indicators shall be compared to determine whether the school exceeds, meets, does not meet or falls far below that rating;
- N. "siblings" means:
  - (1) students living in the same residence at least fifty percent of the time in a permanent or semipermanent situation, such as long-term foster care placements; or
  - (2) students related to each other by blood, marriage or cohabitation; and
- O. "start-up school" means a public school developed by one or more parents, teachers or community members authorized by the chartering authority to become a charter school.

**History:** Laws 1999, ch. 281, § 2; 2006, ch. 94, § 27; 2015, ch. 108, § 8.

The 2015 amendment, effective July 1, 2015, added numerous definitions to the definitions section of the Charter Schools Act; added new Subsection F and redesignated former Subsection F as Subsection G; in Subsection G, after "charter," deleted "and"; and added new Subsections H through N and redesignated former Subsection G as Subsection O.

The 2006 amendment, effective July 1, 2007, in Subsection A, deleted the qualification that a charter school

be located within a school district authorized by the local school board to operate as a charter school and added the qualification that a charter school be authorized by the chartering authority to operate as a public school; added Subsection B to define chartering authority; added Subsection C to define commission; provided in Subsection D (former Subsection B) that a conversion school is a school that was authorized to become a charter school prior to July 1, 2007; added a new Subsection E to define division and changed "local school board of the school district" to "chartering authority" in Subsection G (formerly Subsection D).

## 22-8B-3. Purpose.

The Charter Schools Act is enacted to enable individual schools to structure their educational curriculum to encourage the use of different and innovative teaching methods that are based on reliable research and effective practices or have been replicated successfully in schools with

diverse characteristics; to allow the development of different and innovative forms of measuring student learning and achievement; to address the needs of all students, including those determined to be at risk; to create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site; to improve student achievement; to provide parents and students with an educational alternative to create new, innovative and more flexible ways of educating children within the public school system; to encourage parental and community involvement in the public school system; to develop and use site-based budgeting; and to hold charter schools accountable for meeting the department's educational standards and fiscal requirements.

**History:** Laws 1999, ch. 281, § 3; 2006, ch. 94, § 28.

The 2006 amendment, effective July 1, 2007, changed "restructure" to "structure"; changed "state board" to

"department" and deleted the requirement that charter schools meet minimum educational standards and financial requirements.

## **22-8B-4. Charter schools' rights and responsibilities; operation.**

A. A charter school shall be subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, physical or mental handicap, serious medical condition, race, creed, color, sex, gender identity, sexual orientation, spousal affiliation, national origin, religion, ancestry or need for special education services and shall not allow for the imposition of discipline, discrimination or disparate treatment against a student based on the student's race, religion or culture or because of the student's use of protective hairstyles or cultural or religious headdresses.

B. A charter school shall be governed by a governing body in the manner set forth in the charter contract; provided that a governing body shall have at least five members; and provided further that no member of a governing body for a charter school that is initially approved on or after July 1, 2005 or whose charter is renewed on or after July 1, 2005 shall serve on the governing body of another charter school. No member of a local school board shall be a member of a governing body for a charter school or employed in any capacity by a locally chartered charter school located within the local school board's school district during the term of office for which the member was elected or appointed.

C. A charter school shall be responsible for:

- (1) its own operation, including preparation of a budget, subject to audits pursuant to the Audit Act [12-6-1 to 12-6-15 NMSA 1978]; and
- (2) contracting for services and personnel matters.

D. A charter school may contract with a school district, a university or college, the state, another political subdivision of the state, the federal government or one of its agencies, a tribal government or any other third party for the use of a facility, its operation and maintenance and the provision of any service or activity that the charter school is required to perform in order to carry out the educational program described in its charter contract. Facilities used by a charter school shall meet the standards required pursuant to Section 22-8B-4.2 NMSA 1978.

E. A conversion school chartered before July 1, 2007 may choose to continue using the school district facilities and equipment it had been using prior to conversion, subject to the provisions of Subsection F of this section.

F. A school district that has available land or one or more available facilities not currently used for other educational purposes shall make facilities and may make land available for lease, lease-purchase or purchase to the charter schools located in the school district for the charter schools' operations and shall notify the charter schools of that availability no later than May 1 of each year. The public school facilities authority shall annually ensure that each school district with available land or one or more available facilities has provided that notification. A school district may develop a facility prioritization plan that identifies which charter schools may lease, lease-purchase or purchase available school district facilities. School-district-owned land shall not be considered available to a charter school if the school district has justified future use of that land through its five-year facilities master plan. An agreement for the use of school district facilities by a charter school may provide for reasonable lease payments; provided that the payments do not exceed the sum of



the lease reimbursement rate provided in Paragraph (1) of Subsection I of Section 22-24-4 NMSA 1978 plus any reimbursement for actual direct costs incurred by the school district in providing the facilities; and provided further that any lease payments received by a school district may be retained by the school district and shall not be considered to be cash balances in any calculation pursuant to Section 22-8-41 NMSA 1978. The available facilities provided by a school district to a charter school shall meet all occupancy standards as specified by the public school capital outlay council. As used in this subsection, "other educational purposes" includes health clinics, daycare centers, teacher training centers, school district administration functions and other ancillary services related to a school district's functions and operations.

G. A locally chartered charter school may pay the costs of operation and maintenance of its facilities or may contract with the school district to provide facility operation and maintenance services.

H. Locally chartered charter school facilities are eligible for state and local capital outlay funds and shall be included in the school district's five-year facilities plan.

I. A locally chartered charter school shall negotiate with a school district to provide transportation to students eligible for transportation under the provisions of the Public School Code [Chapter 22 NMSA 1978]. The school district, in conjunction with the charter school, may establish a limit for student transportation to and from the charter school site not to extend beyond the school district boundary.

J. A charter school shall be a nonsectarian, nonreligious and non-home-based public school.

K. Except as otherwise provided in the Public School Code, a charter school shall not charge tuition or have admission requirements.

L. With the approval of the chartering authority, a single charter school may maintain separate facilities at two or more locations within the same school district; but, for purposes of calculating program units pursuant to the Public School Finance Act [Chapter 22, Article 8 NMSA 1978], the separate facilities shall be treated together as one school.

M. A charter school shall be subject to the provisions of Section 22-2-8 NMSA 1978 and the Assessment and Accountability Act [Chapter 22, Article 2C NMSA 1978].

N. Within constitutional and statutory limits, a charter school may acquire and dispose of property; provided that, upon termination of the charter, all assets of the locally chartered charter school shall revert to the local school board and all assets of the state-chartered charter school shall revert to the state, except that, if all or any portion of a state-chartered charter school facility is financed with the proceeds of general obligation bonds issued by a local school board, the facility shall revert to the local school board.

O. The governing body of a charter school may accept or reject any charitable gift, grant, devise or bequest; provided that no such gift, grant, devise or bequest shall be accepted if subject to any condition contrary to law or to the terms of the charter. The particular gift, grant, devise or bequest shall be considered an asset of the charter school to which it is given.

P. The governing body may contract and sue and be sued. A local school board shall not be liable for any acts or omissions of the charter school.

Q. A charter school shall comply with all state and federal health and safety requirements applicable to public schools, including those health and safety codes relating to educational building occupancy.

R. A charter school is a public school that may contract with a school district or other party for provision of financial management, food services, transportation, facilities, education-related services or other services. The governing body shall not contract with a for-profit entity for the management of the charter school.

S. To enable state-chartered charter schools to submit required data to the department, an accountability data system shall be maintained by the department.

T. A charter school shall comply with all applicable state and federal laws and rules related to providing special education services. Charter school students with disabilities and their parents retain all rights under the federal Individuals with Disabilities Education Act and its implementing state and federal rules. Each charter school is responsible for identifying, evaluating and offering a free appropriate public education to all eligible children who are accepted for enrollment in that charter school. The state-chartered charter school, as a local educational agency, shall assume



responsibility for determining students' needs for special education and related services. The division may promulgate rules to implement the requirements of this subsection.

U. As used in this section:

- (1) "cultural or religious headdresses" includes hijabs, head wraps or other headdresses used as part of an individual's personal cultural or religious beliefs;
- (2) "protective hairstyles" includes such hairstyles as braids, locs, twists, tight coils or curls, cornrows, bantu knots, afros, weaves, wigs or head wraps; and
- (3) "race" includes traits historically associated with race, including hair texture, length of hair, protective hairstyles or cultural or religious headdresses.

**History:** Laws 1999, ch. 281, § 4; 2000, ch. 82, § 2; 2001, ch. 348, § 1; 2003, ch. 153, § 32; 2005, ch. 221, § 2; 2006, ch. 94, § 31; 2007, ch. 366, § 16; 2011, ch. 14, § 1; 2021, ch. 19, § 2; 2021, ch. 37, § 2; 2022, ch. 19, § 2.

**Cross references.** — For the Human Rights Act, see 28-1-1 NMSA 1978.

For the Public School Facilities Authority, see 22-20-1 NMSA 1978.

For the Public School Capital Outlay Act, see 22-24-1 NMSA 1978.

For the Public School Capital Improvements Act, see 22-25-1 NMSA 1978.

For Public School Buildings Act, see 22-26-1 NMSA 1978.

For the federal Individuals with Disabilities Education Act, see 20 U.S.C. § 1400.

**The 2022 amendment**, effective May 18, 2022, required school districts to notify charter schools of property available for the charter schools' educational operations, and authorized school districts to develop facility prioritization plans that identify which charter schools may lease, lease-purchase or purchase available school district facilities; in Subsection F, after "A school district", deleted "in which a charter school is geographically located shall provide a charter school with" and added "that has", after "available", added "land or one or more available", after "facilities", added "not currently used", after the next occurrence of "for", added "other educational purposes shall make facilities and may make land available for lease, lease-purchase or purchase to", after the next occurrence of "the", deleted "school's" and added "charter schools located in the school district for the charter schools", and after "operations", deleted "unless the facilities are currently used for other educational purposes" and added "and shall notify the charter schools of that availability no later than May 1 of each year. The public school facilities authority shall annually ensure that each school district with available land or one or more available facilities has provided that notification. A school district may develop a facility prioritization plan that identifies which charter schools may lease, lease-purchase or purchase available school district facilities. School-district-owned land shall not be considered available to a charter school if the school district has justified future use of that land through its five-year facilities master plan.", and after "reimbursement rate provided in", deleted "Subparagraph (b) of".

**The 2021 amendment**, effective July 1, 2021, prohibited the imposition of discipline, discrimination or disparate treatment against a student based on the student's race, religion or culture or because of the student's use of protective hairstyles or cultural or religious headdresses, and defined "cultural or religious headdresses", "protective hairstyles", and "race" as used in this section; in Subsection A, after "special education services", added "and shall not allow for the imposition of discipline, discrimination or disparate treatment against a student based on the student's race, religion or culture or because of the student's use of protective hairstyles or cultural or religious headdresses"; and added new Subsection U.

Laws 2021, ch. 19, § 2 and Laws 2021, ch. 37, § 2, both effective July 1, 2021, enacted identical amendments to this section. The section was set out as amended by Laws 2021, ch. 37, § 2. See 12-1-8 NMSA 1978.

**The 2011 amendment**, effective July 1, 2012, prohibited discrimination based on physical or mental handicap, serious medical condition, sex, gender identity, sexual orientation and spousal affiliation; and prohibited a member of a local school board from being a member of the governing body of a charter school or being employed by a charter school in the school board's school district.

**The 2007 amendment**, effective July 1, 2007, amended Subsection F to authorize reasonable lease payments for the use of school district facilities by charter schools provided that the payments do not exceed the lease reimbursement rate specified in 22-24-4 NMSA 1978 and that the payments are not considered to be cash balance in calculations under 22-8-41 NMSA 1978 and amended Subsection N to provide that upon the termination of the charter of a chartered school, the assets financed by general obligation bonds issued by the school district shall revert to the local school board.

**The 2006 amendment**, effective July 1, 2007, added the condition in Subsection B that a governing body must have at least five members; provided in Paragraph (1) of Subsection C that operations are subject to audit pursuant to the Audit Act; in Subsection E, added the qualification that the conversion school must be chartered before July 1, 2007 and added the condition that the use of equipment and facilities is subject to Subsection F; provided in Subsection F that the facilities provided to a charter school must meet all occupancy standards specified by the public school capital outlay council; changed "charter school" to "locally chartered charter school" in Subsections G through I; changed "school district" to "chartering authority" in Subsection L; in Subsection N, added the qualification that the acquisition and disposition of property must be within constitutional and statutory limits and that all assets of state-chartered schools will revert to the state, added Subsection R to provide for contracting authority of charter schools; added Subsection S to require an accountability data system; and added Subsection T to provide for special education services.

**The 2005 amendment**, effective July 1, 2005, provided in Subsection B that no member of a governing body of a school that is initially approved or whose charter is renewed on or after July 1, 2005 shall serve on the governing body of another charter school; provided in Subsection D that a charter school may contract with the state and its political subdivisions, the federal government or its agencies and a tribal government; provided in Subsection D that the facilities of a charter school must meet the standards of 22-8B-4.2 NMSA 1978; deleted the former provision in Subsection E which provided for the use by charter schools of school district facilities; provided in Subsection E that a conversion school may choose to continue using school district facilities and equipment; added Subsection F to



provide for the use by charter schools of school district facilities; authorized a charter school in Subsection G to pay the costs of operation and maintenance of its facilities and to contract with a school district for facility operation and maintenance services; added Subsection H to provide that charter school facilities are eligible for state and local capital outlay funds and shall be included in the school district's five-year facilities plan; deleted the former provision of Subsection G, which provided that a charter school may negotiate with a school district for capital expenditures; added Subsection L to provide that a single charter school may maintain separate facilities at two or more locations, but that all locations shall be deemed to be a single location for purposes of calculating program units pursuant to the Public School Finance Act; and provided in Subsection Q that applicable health and safety requirements include health and safety codes relating to educational building occupancy.

**The 2003 amendment**, effective April 4, 2003, deleted "local" preceding "school district" throughout the section; and in Subsection J substituted "Section" for "Sections 22-1-6 and" preceding "22-2-8" near the middle and inserted "and the Assessment and Accountability Act" at the end.

**The 2001 amendment**, effective June 15, 2001, in Subsection F, substituted "shall" for "may" in the first sentence and added the second sentence.

**The 2000 amendment**, effective March 7, 2000, deleted former Subsection B, relating to enrollment procedures at start-up charter schools, and redesignated the remaining subsections accordingly.

## ANNOTATIONS

### Procurement Code applies to charter schools.

— A charter school is a public entity, that is subject to the Procurement Code, 13-1-1 NMSA 1979 et seq., which requires competitive bids or proposals unless the school demonstrates that a sole-source contract by a single vendor is warranted. 2014 Op. Att'y Gen. 14-03.

### Management agreement with a for-profit entity. —

Where a virtual charter school entered into a contract with a for-profit company for products and services that involved educational program consulting; personnel assistance; facility management; business administration of program aspects; budgeting; financial reporting and preparing a proposed annual budget; financial planning; maintenance of student records and retention of the records on behalf of the school; recommendation of school policies and procedures for student discipline; creation of the annual report to the chartering authority; development of teacher training and a faculty handbook; assistance in the development of charter policies and the charter renewal process; providing policies and procedures for instructional property; solicitation and receipt of grants and donations from public funds; and any other services agreed to by the parties, the services provided by the for-profit company and the relationship created under the contract constituted "management of the charter school" in violation of 22-8B-4(R) NMSA 1978, which prohibits the management of a charter school by a for-profit entity. 2014 Op. Att'y Gen. 14-03.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity, construction, and application of statute or regulation governing charter schools, 78 A.L.R.5th 533.

## 22-8B-4.1. Charter schools' enrollment procedures.

A. Start-up schools and conversion schools are subject to the following enrollment procedures:

(1) a start-up school may either enroll students on a first-come, first-served basis or through a lottery selection process if the total number of applicants exceeds the number of spaces available at the start-up school; and

(2) a conversion school shall give enrollment preference to students who are enrolled in the public school at the time it is converted into a charter school and to siblings of students admitted to or attending the charter school. The conversion school may either enroll all other students on a first-come, first-served basis or through a lottery selection process if the total number of applicants exceeds the number of spaces available at the conversion school.

B. In subsequent years of its operation, a charter school shall give enrollment preference to:

(1) students who have been admitted to the charter school through an appropriate admission process and remain in attendance through subsequent grades;

(2) children of employees employed by the charter school; and

(3) siblings of students already admitted to or attending the same charter school.

**History:** 1978 Comp., § 22-8B-4.1, enacted by Laws 2000, ch. 82, § 3; 2021, ch. 28, § 1.

**The 2021 amendment**, effective July 1, 2021, provided an enrollment preference for students whose parents are employees of the charter school; and in Subsection B,

added new Paragraph B(2) and redesignated former Paragraph B(2) as Paragraph B(3).

**Applicability.** — Laws 2021, ch. 28, § 2 provided that the provisions of Laws 2021, ch. 28, § 1 apply to the 2021-2022 school year and subsequent school years.

## 22-8B-4.2. Charter school facilities; standards.

A. The facilities of a charter school that is approved on or after July 1, 2005 and before July 1, 2015 shall meet educational occupancy standards required by applicable New Mexico construction codes.

B. The facilities of a charter school whose charter has been renewed at least once shall be evaluated, prioritized and eligible for grants pursuant to the Public School Capital Outlay Act

[Chapter 22, Article 24 NMSA 1978] in the same manner as all other public schools in the state; provided that for charter school facilities in leased facilities, grants may be used to provide additional lease payments for leasehold improvements made by the lessor.

C. On or after July 1, 2011, a new charter school shall not open and an existing charter school shall not relocate unless the facilities of the new or relocated charter school, as measured by the New Mexico condition index, receive a condition rating equal to or better than the average condition for all New Mexico public schools for that year or the charter school demonstrates, within eighteen months of occupancy or relocation of the charter, the way in which the facilities will achieve a rating equal to or better than the average New Mexico condition index.

D. On or after July 1, 2015, a new charter school shall not open and an existing charter shall not be renewed unless the charter school:

(1) is housed in a building that is:

(a) owned by the charter school, the school district, the state, an institution of the state, another political subdivision of the state, the federal government or one of its agencies or a tribal government; or

(b) subject to a lease-purchase arrangement that has been entered into and approved pursuant to the Public School Lease Purchase Act [Chapter 22, Article 26A NMSA 1978]; or

(2) if it is not housed in a building described in Paragraph (1) of this subsection, demonstrates that:

(a) the facility in which the charter school is housed meets the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act and the owner of the facility is contractually obligated to maintain those standards at no additional cost to the charter school or the state; and

(b) either: 1) public buildings are not available or adequate for the educational program of the charter school; or 2) the owner of the facility is a nonprofit entity specifically organized for the purpose of providing the facility for the charter school.

E. Without the approval of the public school facilities authority pursuant to Section 22-20-1 NMSA 1978, a charter school shall not enter into a lease-purchase agreement.

F. The public school capital outlay council:

(1) shall determine whether facilities of a charter school meet the educational occupancy standards pursuant to the requirements of Subsection A of this section or the requirements of Subsections B, C and D of this section, as applicable; and

(2) upon a determination that specific requirements are not appropriate or reasonable for a charter school, may grant a variance from those requirements for that charter school.

**History:** Laws 2005, ch. 221, § 3; 2005, ch. 274, § 2; 2007, ch. 366, § 17; 2009, ch. 258, § 1; 2011, ch. 69, § 2.

**Cross references.** — For the Public School Capital Outlay Council, see 22-24-6 NMSA 1978.

**The 2011 amendment,** effective July 1, 2011, added Subsection C to require new and relocated charter schools to use facilities that meet the average condition of public school facilities or to demonstrate the way in which the facilities will achieve the average condition of public school facilities; and added Subsection E to require the public school facilities authority to approve lease-purchase agreements.

**The 2009 amendment,** effective April 8, 2009, in Subsection A, after "and before", changed "July 1, 2010" to "July 1, 2015"; in Subsection B, after "charter school", deleted "that is in existence, or has been approved, prior to July 1, 2005" and added "whose charter has been renewed at least once"; after "grants may be used", deleted "as" and added "to provide"; and after "leasehold improvements",

added "made by the lessor"; in Subsection C, after "July 1", deleted "2010, an application for a charter shall not be approved" and added "2015, a new charter school shall not open", in Paragraph (1) of Subsection C, after "housed in a", deleted "public"; deleted former Subparagraph (b) of Paragraph (1) of Subsection C, which provided that the building must be eligible for grants pursuant to the Public School Capital Outlay Act; deleted former Paragraph (2) of Subsection C, which provided that the building must meet statewide adequacy standards and be leased with an option to purchase; added Subparagraph (b) of Paragraph (1) of Subsection C; and in Paragraph (1) of Subsection D, after "Subsection A of this section", deleted "shall determine whether facilities of a charter school meet".

**The 2007 amendment,** effective July 1, 2007, added Paragraph (2) of Subsection C to require charter schools to meet the statewide adequacy standards for buildings on or after July 1, 2010.

## 22-8B-5. Charter schools; status; local school board authority.

A. The local school board may waive only locally imposed school district requirements for locally chartered charter schools.



B. A state-chartered charter school is exempt from school district requirements. A state-chartered charter school is responsible for developing its own written policies and procedures in accordance with this section.

C. The department shall waive requirements or rules and provisions of the Public School Code [Chapter 22 [except Article 5A] NMSA 1978] pertaining to individual class load, teaching load, length of the school day, staffing patterns, subject areas, purchase of instructional material, evaluation standards for school personnel, school principal duties and driver education. The department may waive requirements or rules and provisions of the Public School Code pertaining to graduation requirements. Any waivers granted pursuant to this section shall be for the term of the charter granted but may be suspended or revoked earlier by the department.

D. A charter school shall be a public school accredited by the department and shall be accountable to the chartering authority for purposes of ensuring compliance with applicable laws, rules and charter provisions.

E. A local school board shall not require any employee of the school district to be employed in a charter school.

F. A local school board shall not require any student residing within the geographic boundary of its district to enroll in a charter school.

G. A student who is suspended or expelled from a charter school shall be deemed to be suspended or expelled from the school district in which the student resides.

**History:** Laws 1999, ch. 281, § 5; 2006, ch. 94, § 32.

**Cross references.** — For the Public School Capital Outlay Council, see 22-24-6 NMSA 1978.

**The 2006 amendment,** effective July 1, 2007, provided in Subsection A for waiver of requirements for locally chartered charter schools; deleted former Subsection B; added a new Subsection B to provide that a

state-chartered charter schools is exempt from school district requirements and is responsible for developing policies and procedures; and in Subsection C (formerly Subsection B), provided that the department shall waive requirements for class load, teaching load, length of school day, staffing, subject areas and instructional material.

### 22-8B-5.1. Governing body training.

The department shall develop a mandatory training course for all governing body members that explains department rules, policies and procedures, statutory powers and duties of governing boards, legal concepts pertaining to public schools, finance and budget and other matters deemed relevant by the department. The department shall notify the governing body members of the dates of the training courses.

**History:** Laws 2009, ch. 18, § 1.

**Effective dates.** — Laws 2009, ch. 18 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

### 22-8B-5.2. Governing body conflicts of interest.

A. A person shall not serve as a member of a governing body of a charter school if the person or an immediate family member of the person is an owner, agent of, contractor with or otherwise has a financial interest in a for-profit or nonprofit entity with which the charter school contracts directly, for professional services, goods or facilities. A violation of this subsection renders the contract between the person or the person's immediate family member and the charter school voidable at the option of the chartering authority, the department or the governing body. A person who knowingly violates this subsection may be individually liable to the charter school for any financial damage caused by the violation.

B. No member of a governing body or employee, officer or agent of a charter school shall participate in selecting, awarding or administering a contract with the charter school if a conflict of interest exists. A conflict of interest exists when the member, employee, officer or agent or an immediate family member of the member, employee, officer or agent has a financial interest in the entity with which the charter school is contracting. A violation of this subsection renders the contract voidable.

C. Any employee, agent or board member of the chartering authority who participates in the initial review, approval, ongoing oversight, evaluation or charter renewal process of a charter school is ineligible to serve on the governing body of the charter school chartered by the chartering authority.

D. As used in this section, "immediate family member" means spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister, sister-in-law or any other relative who is financially supported.

**History:** Laws 2011, ch. 14, § 7.

**Effective dates.** — Laws 2011, ch. 14, § 10 made Laws 2011, ch. 14, § 7 effective July 1, 2012.

### **22-8B-5.3. Chartering authority; powers; duties; liability.**

A chartering authority shall:

- A. evaluate charter applications;
- B. actively pursue the utilization of charter schools to satisfy identified education needs and promote a diversity of educational choices;
- C. approve charter applications that meet the requirements of the Charter Schools Act;
- D. decline to approve charter applications that fail to meet the requirements of the Charter Schools Act or are otherwise inadequate;
- E. negotiate and execute, in good faith, charter contracts that meet the requirements of the Charter Schools Act with each approved charter school;
- F. monitor, in accordance with the requirements of the Charter Schools Act and the terms of the charter contract, the performance and legal compliance of charter schools under their authority;
- G. determine whether a charter school merits suspension, revocation or nonrenewal; and
- H. develop and maintain chartering policies and practices consistent with nationally recognized principles and standards for quality charter authorizing in all major areas of authorizing, including:
  - (1) organizational capacity and infrastructure;
  - (2) evaluating charter applications;
  - (3) performance contracting;
  - (4) charter school oversight and evaluation; and
  - (5) charter school suspension, revocation and renewal processes.

**History:** Laws 2011, ch. 14, § 8.

**Effective dates.** — Laws 2011, ch. 14, § 10 made Laws 2011, ch. 14, § 8 effective July 1, 2012.

### **22-8B-5.4. Governing body authority over who may carry a firearm on charter school property.**

Only the governing body has the authority to authorize school security personnel to carry a firearm on any charter school premises or other charter school property. The decision shall be made in an open meeting and shall be formalized as a policy of the governing body.

**History:** Laws 2019, ch. 189, § 2.

**Effective dates.** — Laws 2019, ch. 189, § 5 made Laws 2019, ch. 189, § 2 effective July 1, 2020.

### **22-8B-6. Charter school requirements; application process; authorization; state board of finance designation required; public hearings; subcommittees.**

A. A local school board has the authority to approve the establishment of a locally chartered charter school within that local school board's district.

B. No later than the second Tuesday of January of the year in which an application will be filed, the organizers of a proposed charter school shall provide written notification to the commission



and the school district in which the charter school is proposed to be located of their intent to establish a charter school. Failure to notify may result in an application not being accepted.

C. A charter school applicant shall apply to either a local school board or the commission for a charter. If an application is submitted to a chartering authority, the chartering authority shall process the application. Applications for initial charters shall be submitted by June 1 to be eligible for consideration for the following fiscal year; provided that the June 1 deadline may be waived upon agreement of the applicant and the chartering authority.

D. An application shall include the total number of grades the charter school proposes to provide, either immediately or phased. A charter school may decrease the number of grades it eventually offers, but it shall not increase the number of grades or the total number of students proposed to be served in each grade.

E. An application shall include the total number of students the charter school proposes to serve in each of the charter school's first three years of operation. No later than June 15, each local school board and the commission shall notify the department as to the number of students each charter school applicant proposes to serve in each year.

F. An application shall include a detailed description of the charter school's projected facility needs, including projected requests for capital outlay assistance that have been approved by the director of the public school facilities authority or the director's designee. The director shall respond to a written request for review from a charter applicant within forty-five days of the request.

G. An application may be made by one or more teachers, parents or community members or by a public post-secondary educational institution or nonprofit organization. Municipalities, counties, private post-secondary educational institutions and for-profit business entities are not eligible to apply for or receive a charter.

H. An initial application for a charter school shall not be made after June 30, 2007 if the proposed charter school's proposed enrollment for all grades or the proposed charter school's proposed enrollment for all grades in combination with any other charter school's enrollment for all grades would equal or exceed ten percent of the total MEM of the school district in which the charter school will be geographically located and that school district has a total enrollment of not more than one thousand three hundred students.

I. A state-chartered charter school shall not be approved for operation unless its governing body has qualified to be a board of finance.

J. The chartering authority shall receive and review all applications for charter schools submitted to it. The chartering authority shall not charge application fees.

K. The chartering authority shall hold at least one public hearing in the school district in which the charter school is proposed to be located to obtain information and community input to assist it in its decision whether to grant a charter school application. The chartering authority may designate a subcommittee of no fewer than three members to hold the public hearing, and, if so, the hearing shall be transcribed for later review by other members of the chartering authority. Community input may include written or oral comments in favor of or in opposition to the application from the applicant, the local community and, for state-chartered charter schools, the local school board and school district in whose geographical boundaries the charter school is proposed to be located.

L. The chartering authority shall rule on the application for a charter school in a public meeting by September 1 of the year the application was received; provided, however, that prior to ruling on the application for which a designated subcommittee was used, any member of the chartering authority who was not present at the public hearing shall receive the transcript of the public hearing together with documents submitted for the public hearing. If not ruled upon by that date, the charter application shall be automatically reviewed by the secretary in accordance with the provisions of Section 22-8B-7 NMSA 1978. The charter school applicant and the chartering authority may, however, jointly waive the deadlines set forth in this section.

M. A chartering authority may approve, approve with conditions or deny an application. A chartering authority may deny an application if:

- (1) the application is incomplete or inadequate;
- (2) the application does not propose to offer an educational program consistent with the requirements and purposes of the Charter Schools Act;



(3) the proposed head administrator or other administrative or fiscal staff was involved with another charter school whose charter was denied or revoked for fiscal mismanagement or the proposed head administrator or other administrative or fiscal staff was discharged from a public school for fiscal mismanagement;

(4) for a proposed state-chartered charter school, it does not request to have the governing body of the charter school designated as a board of finance or the governing body does not qualify as a board of finance;

(5) for a proposed charter school on tribal land, it fails to receive approval from the tribal government; or

(6) the application is otherwise contrary to the best interests of the charter school's projected students, the local community or the school district in whose geographic boundaries the charter school applies to operate.

N. If the chartering authority denies a charter school application or approves the application with conditions, it shall state its reasons for the denial or conditions in writing within fourteen days of the meeting. If the chartering authority grants a charter, the approved charter shall be provided to the applicant together with any imposed conditions.

O. A charter school that has received a notice from the chartering authority denying approval of the charter shall have a right to a hearing by the secretary as provided in Section 22-8B-7 NMSA 1978.

**History:** Laws 1999, ch. 281, § 6; 2005, ch. 221, § 4; 2006, ch. 94, § 33; 2007, ch. 198, § 1; 2009, ch. 6, § 1; 2009, ch. 12, § 1; 2011, ch. 69, § 3; 2015, ch. 108, § 9; 2019, ch. 174, § 4; 2019, ch. 206, § 20; 2019, ch. 207, § 20.

**2019 Multiple Amendments.** — Laws 2019, ch. 174, § 4 and Laws 2019, ch. 207, § 20, both effective June 14, 2019, enacted different amendments to this section that can be reconciled. Laws 2019, ch. 206, § 20 and Laws 2019, ch. 207, § 20, enacted identical amendments to this section. Pursuant to 12-1-8 NMSA 1978, Laws 2019, ch. 207, § 20 as the last act signed by the governor, is set out above and incorporates all amendments. The amendments enacted by Laws 2019, ch. 174, § 4, Laws 2019, ch. 206, § 20 and Laws 2019, ch. 207, § 20 are described below. To view the session laws in their entirety, see the 2019 session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Laws 2019, ch. 174, § 4, authorized a chartering authority to deny an application for a proposed charter school on tribal land if it fails to receive approval from the tribal government, and Laws 2019, ch. 206, § 20 and Laws 2019, ch. 207, § 20, provided additional content requirements for an application to establish a charter school.

**Laws 2019, ch. 207, § 20 and Laws 2019, ch. 206, § 20**, both effective June 14, 2019, provided additional content requirements for an application to establish a charter school; added new Subsection E and redesignated former Subsections E through N as Subsections F through O, respectively.

**Laws 2019, ch. 174, § 4**, effective June 14, 2019, authorized a chartering authority to deny an application for a proposed charter school on tribal land if it fails to receive approval from the tribal government; and in Subsection L, added new Paragraph L(5) and redesignated former Paragraph L(5) as Paragraph L(6).

**The 2015 amendment**, effective July 1, 2015, specified that each local school board has the authority to approve the establishment of a "locally chartered" charter school, and changed the date by when applications for initial charters must be submitted; in Subsection A, after "establishment of a", added "locally chartered", after "charter school within", deleted "the" and added "that local", after "school", added "board's", and after "district", deleted "in which it is located"; and in Subsection C, after "shall be submitted", deleted "between" and added "by",

after "June 1", deleted "and July 1", and after "provided that the", deleted "July" and added "June".

**The 2011 amendment**, effective July 1, 2011, in Subsection E, required the director of the public school facilities authority or the director's designee to review and approve requests by charter schools for capital outlay assistance within forty-five days.

**The 2009 amendment**, effective June 19, 2009, in Subsection J, permitted a chartering authority to designate a subcommittee to hold public hearings; and in Subsection K, provided that prior to ruling on an application for which a subcommittee was used, any member of a chartering authority who was not present at the public hearing shall receive the transcript of the public hearing and documents submitted for the public hearing.

**The 2007 amendment**, effective April 2, 2007, prohibited the filing of an application for a charter school after June 2007 if the school's proposed enrollment for all grades in combination with any other charter school's enrollment for all grades will equal or exceed ten percent of the total MEM of the school district.

**The 2006 amendment**, effective July 1, 2007, added Subsection B to provide advance notice to the commission and the school district of intent to establish a charter school; in Subsection C provided that the chartering authority must process applications submitted to it and changed "local school board" to "chartering authority"; added Subsection D to provide for the number of grades of charter schools and changed the number of grades; provided in Subsection E (formerly Subsection C) that the application shall include a detailed description of the projected capital outlay needs; provided in Subsection F (formerly Subsection D) that an application may be made by a public post-secondary educational institution or nonprofit organization and that certain institutions and entities are not eligible to apply for or to receive a charter; added Subsection G to prohibit applications after June 30, 2007 under certain circumstances; added Subsection H to require the charter school to qualify as a board of finance; deleted former Subsection E, which provided for applications for conversion schools; in Subsection I (formerly Subsection F) changed "local school board" to "chartering authority" and deleted the provision that if an application is incomplete, the board shall request the necessary information from the applicant; in Subsection J (formerly Subsection G), changed "local



school board" to "chartering authority", requires a public meeting in the school district in which the charter school is proposed to be located, and provides for community input; deleted former Subsection H, which provided for an appeal by an applicant to the secretary; added Subsection K to provide for the approval and denial of an application; in Subsection L (formerly Subsection I), changed "local school board" to "chartering authority", required written reasons within fourteen days after a meeting, deleted the requirement that a copy of the approved charter be sent within fifteen days after granting the charter and added the provision that the approved charter be provided to

the applicant together with any imposed conditions; and added Subsection M to provide for a hearing by the secretary if an application is denied.

**The 2005 amendment**, effective July 1, 2005, changed the application deadline from October 1 to July 1 and changed "school year" to "fiscal year" in Subsection B; added Subsection C to provide that an application shall include a request for capital outlay funding; and provided in Subsection I that if the local school board approves the application with conditions, it shall state the reasons for the conditions.

## **22-8B-7. Appeal of denial, nonrenewal, suspension or revocation; procedures.**

A. The secretary, upon receipt of a notice of appeal or upon the secretary's own motion, shall review decisions of a chartering authority concerning charter schools in accordance with the provisions of this section.

B. A charter applicant or governing body that wishes to appeal a decision of the chartering authority concerning the denial, nonrenewal, suspension or revocation of a charter school or the imposition of conditions that are unacceptable to the charter school or charter school applicant shall provide the secretary with a notice of appeal within thirty days after the chartering authority's decision. The charter school applicant or governing body bringing the appeal shall limit the grounds of the appeal to the grounds for denial, nonrenewal, suspension or revocation or the imposition of conditions that were specified by the chartering authority. The notice shall include a brief statement of the reasons the charter school applicant or governing body contends the chartering authority's decision was in error. Except as provided in Subsection E of this section, the appeal and review process shall be as follows within sixty days after receipt of the notice of appeal, the secretary, at a public hearing that may be held in the school district in which the charter school is located or in which the proposed charter school has applied for a charter, shall review the decision of the chartering authority and make findings. If the secretary finds that the chartering authority acted arbitrarily or capriciously, rendered a decision not supported by substantial evidence or did not act in accordance with law, the secretary may reverse the decision of the chartering authority and order the approval of the charter with or without conditions. The decision of the secretary shall be final.

C. The secretary, on the secretary's own motion, may review a chartering authority's decision to grant a charter. Within sixty days after the making of a motion to review by the secretary, the secretary, at a public hearing that may be held in the school district in which the proposed charter school that has applied for a charter will be located, shall review the decision of the chartering authority and determine whether the decision was arbitrary or capricious or whether the establishment or operation of the proposed charter school would:

- (1) violate any federal or state laws concerning civil rights;
- (2) violate any court order; or
- (3) threaten the health and safety of students within the school district.

D. If the secretary determines that the charter would violate the provisions set forth in Subsection C of this section, the secretary shall deny the charter application. The secretary may extend the time lines established in this section for good cause. The decision of the secretary shall be final.

E. If a chartering authority denies an application or refuses to renew a charter because the public school capital outlay council has determined that the facilities do not meet the standards required by Section 22-8B-4.2 NMSA 1978, the charter school applicant or charter school may appeal the decision to the secretary as otherwise provided in this section; provided that the secretary shall reverse the decision of the chartering authority only if the secretary determines that the decision was arbitrary, capricious, not supported by substantial evidence or otherwise not in accordance with the law.

F. A person aggrieved by a final decision of the secretary may appeal the decision to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**History:** Laws 1999, ch. 281, § 7; 2005, ch. 221, § 5; 2006, ch. 94, § 34.

**Cross references.** — For the Public School Capital Outlay Council, *see* 22-24-6 NMSA 1978.

For the secretary of public education, *see* 9-24-5 NMSA 1978.

For the secretary of public education, *see* 9-24-5 NMSA 1978.

For appeals to the district court, *see* 1-074 NMRA.

**The 2006 amendment**, effective July 1, 2007, changed "local school board" to "chartering authority" in Subsections A through C and E; in Subsection B, deleted the provision which provided for remand of the decision of the local school board if the secretary finds the decision contrary to the best interests of the students, school district or community with directions to approve the application and added a new provision which provides for the reversal of a decision of the chartering authority if the decision is arbitrary, capricious, not supported by substantial evidence or not in accordance with the law; deleted the provision of former Paragraph (2) of Subsection B which provided that within thirty days after remand the application shall

be approved; deleted Paragraph (4) of Subsection C which provided for review to determine if the charter school would violate Section 22-8B-11 NMSA 1978; and added Subsection F to provide for an appeal to the district court.

**The 2005 amendment**, effective July 1, 2005, changed "state board" to "secretary"; provided in Subsection B that the appellant shall limit the grounds of the appeal to grounds that include the imposition of conditions that were specified by the local school board, that the notice shall include a statement of the reasons the governing board contends the local school board's decision was in error, and that except as provided in Subsection E, the appeal and review process shall consist of the procedure specified in Subsections B(1) and (2); provided in Subsection B(1) that the hearing shall be held in the school district in which the charter school is located; and added Subsection E to provide for the appeal by a charter school of a decision to deny an application or to refuse to renew a charter because the public school capital outlay council has determine the facilities does not meet statutory standards and to prescribe a standard of review by the secretary.

## 22-8B-8. Charter application; contents.

The charter school application shall include:

- A. the mission statement of the charter school;
- B. the goals, objectives and student performance outcomes to be achieved by the charter school;
- C. a description of the charter school's educational program, student performance standards and curriculum that must meet or exceed the department's educational standards and must be designed to enable each student to achieve those standards;
- D. a description of the way a charter school's educational program will meet the individual needs of the students, including those students determined to be at risk;
- E. a description of the charter school's plan for evaluating student performance, the types of assessments that will be used to measure student progress toward achievement of the state's standards and the school's student performance outcomes, the time line for achievement of the outcomes and the procedures for taking corrective action in the event that student performance falls below the standards;
- F. evidence that the plan for the charter school is economically sound, including a proposed budget for the term of the charter and a description of the manner in which the annual audit of the financial and administrative operations of the charter school is to be conducted;
- G. evidence that the fiscal management of the charter school complies with all applicable federal and state laws and rules relative to fiscal procedures;
- H. evidence of a plan for the displacement of students, teachers and other employees who will not attend or be employed in the conversion school;
- I. a description of the governing body and operation of the charter school, including:
  - (1) how the governing body will be selected;
  - (2) qualification and terms of members, how vacancies on the governing body will be filled and procedures for changing governing body membership; and
  - (3) the nature and extent of parental, professional educator and community involvement in the governance and operation of the school;
- J. an explanation of the relationship that will exist between the proposed charter school and its employees, including evidence that the terms and conditions of employment will be addressed with affected employees and their recognized representatives, if any;
- K. the employment and student discipline policies of the proposed charter school;
- L. an agreement between the charter school and the chartering authority regarding their respective legal liability and applicable insurance coverage;
- M. a description of how the charter school plans to meet the transportation and food service needs of its students;



N. a description of both the discretionary waivers and the waivers provided for in Section 22-8B-5 NMSA 1978 that the charter school is requesting or that will be provided from the local school board or the department and the charter school's plan for addressing and using these waiver requests; and

O. a description of the facilities the charter school plans to use.

**History:** Laws 1999, ch. 281, § 8; 2006, ch. 94, § 35; 2011, ch. 14, § 2.

**Cross references.** — For transfer of powers and duties of former state board of education, see 9-24-15 NMSA 1978.

For the Assessment and Accountability Act, see 22-2C-1 NMSA 1978.

For the Public School Finance Act, see 22-8-1 NMSA 1978.

For School Personnel Act, see 22-10A-1 NMSA 1978.

For educational standards, see 22-13-1 to 22-13-27 NMSA 1978.

**The 2011 amendment**, effective July 1, 2012, required that the applications of all charter schools contain the information specified in this section; required that applications contain a statement of student performance outcomes to be achieved by the school, an agreement

between the charter school and the chartering authority regarding legal liability and insurance coverage, and a description of discretionary waivers and waivers under Section 22-8B-5 NMSA 1978 that will be provided and the school's planned use of the waivers.

**The 2006 amendment**, effective July 1, 2007, changed "local school board" to "chartering authority"; deleted conversion schools in Subsection A; in Subsection C, changed "state board of education" to "department"; added Paragraph (2) of Subsection I to require inclusion of qualifications and terms of members, the method of filling vacancies and procedures for changing membership; in Paragraph (3) of Subsection I, deleted a statement of the relationship between the governing body and the local school board; in Subsection L, added the qualification referring to a locally chartered charter school; and in Subsection P, changed "local school board" to "chartering authority".

## 22-8B-9. Charter school contract; contents; rules.

A. The chartering authority shall enter into a contract with the governing body of the applicant charter school within thirty days of approval of the charter application. The charter contract shall be the final authorization for the charter school and shall be part of the charter. If the chartering authority and the applicant charter school fail to agree upon the terms of or enter into a contract within thirty days of the approval of the charter application, either party may appeal to the secretary to finalize the terms of the contract; provided that such appeal must be provided in writing to the secretary within forty-five days of the approval of the charter application. Failure to enter into a charter contract or appeal to the secretary pursuant to this section precludes the chartering authority from chartering the school.

B. The charter contract shall include:

(1) all agreements regarding the release of the charter school from department and local school board rules and policies, including discretionary waivers provided for in Section 22-8B-5 NMSA 1978;

(2) any material term of the charter application as determined by the parties to the contract;

(3) the mission statement of the charter school and how the charter school will report on implementation of its mission;

(4) the chartering authority's duties to the charter school and liabilities of the chartering authority as provided in Section 22-8B-5.3 NMSA 1978;

(5) a statement of admission policies and procedures;

(6) signed assurances from the charter school's governing body members regarding compliance with all federal and state laws governing organizational, programmatic and financial requirements applicable to charter schools;

(7) the criteria, processes and procedures that the chartering authority will use for ongoing oversight of operational, financial and academic performance of the charter school;

(8) a detailed description of how the chartering authority will use the withheld two percent of the school-generated program cost as provided in Section 22-8B-13 NMSA 1978;

(9) the types and amounts of insurance liability coverage to be obtained by the charter school;

(10) the term of the contract;

(11) the process and criteria that the chartering authority intends to use to annually monitor and evaluate the fiscal, overall governance and student performance of the charter school, including the method that the chartering authority intends to use to conduct the evaluation as required by Section 22-8B-12 NMSA 1978;

(12) the dispute resolution processes agreed upon by the chartering authority and the charter school, provided that the processes shall, at a minimum, include:

- (a) written notice of the intent to invoke the dispute resolution process, which notice shall include a description of the matter in dispute;
- (b) a time limit for response to the notice and cure of the matter in dispute;
- (c) a procedure for selection of a neutral third party to assist in resolving the dispute;
- (d) a process for apportionment of all costs related to the dispute resolution process; and
- (e) a process for final resolution of the issue reviewed under the dispute resolution process;

(13) the criteria, procedures and time lines, agreed upon by the charter school and the chartering authority, addressing charter revocation and deficiencies found in the annual status report pursuant to the provisions of Section 22-8B-12 NMSA 1978;

(14) if the charter school contracts with a third-party provider, the criteria and procedures for the chartering authority to review the provider's contract and the charter school's financial independence from the provider;

(15) all requests for release of the charter school from department rules or the Public School Code. Within ten days after the contract is approved by the local school board, any request for release from department rules or the Public School Code shall be delivered by the local school board to the department. If the department grants the request, it shall notify the local school board and the charter school of its decision. If the department denies the request, it shall notify the local school board and the charter school that the request is denied and specify the reasons for denial;

(16) an agreement that the charter school will participate in the public school insurance authority;

(17) if the charter school is a state-chartered charter school, a process for qualification of and review of the school as a qualified board of finance and provisions for assurance that the school has satisfied any conditions imposed by the commission;

(18) a listing of the charter school's nondiscretionary waivers; and

(19) any other information reasonably required by either party to the contract.

C. The process for revision or amendment to the terms of the charter contract shall be made only with the approval of the chartering authority and the governing body of the charter school. If they cannot agree, either party may appeal to the secretary as provided in Subsection A of this section.

**History:** Laws 1999, ch. 281, § 9; 2006, ch. 94, § 36; 2011, ch. 14, § 3; 2015, ch. 108, § 10.

**Cross references.** — For transfer of powers and duties of former state board of education, see 9-24-15 NMSA 1978.

**The 2015 amendment,** effective July 1, 2015, required that each charter school contract contain a listing of the charter school's nondiscretionary waivers; in Paragraph (1) of Subsection B, after "discretionary waivers", deleted "and waivers"; in Paragraph (4) of Subsection B, after "Section", deleted "8 of this 2011 act" and added "22-8B-5.3 NMSA 1978"; and added new Paragraph (18) of Subsection B and redesignated the succeeding subsection accordingly.

**The 2011 amendment,** effective July 1, 2012, required that a chartering authority and a charter school enter into a contract as a condition to chartering the school; provided a procedure for finalizing a contract if the parties fail to timely enter into a contract and for amending a contract if the parties cannot agree upon amendments; and specified the minimum required contents of a contract.

**The 2006 amendment,** effective July 1, 2007, changed "local school board" to "chartering authority" in Subsection A; in Subsection B, deleted the reference to a contract between the charter school and the local school board and changed "school district" to "department", in Subsection C; added the qualification for locally chartered charter schools at the beginning of the first sentence and changed "state board" to "department"; deleted former Subsection D, which provided for waiver of certain Public School Code requirements for charter schools; in Subsection E (formerly Subsection F), changed "local school board" to "chartering authority"; and in Subsection F (formerly Subsection G), added the qualification for locally chartered charter schools at the beginning of the first sentence.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity, construction, and application of statute or regulation governing charter schools, 78 A.L.R.5th 533.

## 22-8B-9.1. Performance framework.

A. The performance provisions in the charter contract shall be based on a framework that clearly sets forth the academic and operations performance indicators and performance targets that will guide the chartering authority's evaluation of each charter school. The performance



framework shall be a material term of the charter school contract and shall include performance indicators and performance targets for, at a minimum:

- (1) student academic performance;
- (2) student academic growth;
- (3) achievement gaps in both proficiency and growth between student subgroups;
- (4) attendance;
- (5) recurrent enrollment from year to year;
- (6) if the charter school is a high school, post-secondary readiness;
- (7) if the charter school is a high school, graduation rate;
- (8) financial performance and sustainability; and
- (9) governing body performance, including compliance with all applicable laws, rules and terms of the charter contract.

B. Annual performance targets shall be set by each chartering authority in consultation with its charter schools and shall be designed to help each charter school meet applicable federal, state and chartering authority expectations as set forth in the charter contracts to which the authority is a party.

C. The performance framework shall allow for the inclusion of additional rigorous, valid and reliable indicators proposed by a charter school to augment external evaluations of its performance, provided that the chartering authority shall approve the quality and rigor of such proposed indicators and the indicators are consistent with the purposes of the Charter Schools Act.

D. The performance framework shall require the disaggregation of all student performance data collected in compliance with this section by student subgroup, including gender, race, poverty status, special education or gifted status and English language learner.

E. The chartering authority shall collect, analyze and report all data from state assessment tests in accordance with the performance framework set forth in the charter contract for each charter school overseen by that chartering authority.

**History:** Laws 2011, ch. 14, § 4; 2015, ch. 108, § 11.

**The 2015 amendment**, effective July 1, 2015, amended the performance framework that must be included in each charter school contract; in the introductory paragraph of Subsection A, after "performance indicators", deleted "measures", after the second occurrence of "and", deleted

"metrics" and added "performance targets", after "performance framework shall", added "be a material term of the charter school contract and shall", after "include", added "performance", after "indicators", deleted "measures", and after the fourth occurrence of "and", deleted "metrics" and added "performance targets".

## 22-8B-10. Charter schools; employees.

A. A charter school shall hire its own employees. The provisions of the School Personnel Act [Chapter 22, Article 10A NMSA 1978] shall apply to such employees. The head administrator of the charter school shall employ, fix the salaries of, assign, terminate and discharge all employees of the charter school.

B. The head administrator of a charter school shall not initially employ or approve the initial employment in any capacity of a person who is the spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister or sister-in-law of a member of the governing body or the head administrator. The governing body may waive the nepotism rule for family members of a head administrator.

C. Nothing in this section shall prohibit the continued employment of a person employed on or before July 1, 2008.

**History:** Laws 1999, ch. 281, § 10; 2006, ch. 94, § 37; 2007, ch. 259, § 1; 2008, ch. 5, § 2; 2009, ch. 195, § 2.

**Cross references.** — For the Educational Retirement Act, see 22-11-1 NMSA 1978.

**The 2009 amendment**, effective June 19, 2009, in Subsection B, after "daughter-in-law", added "brother, brother-in-law, sister or sister-in-law".

**The 2008 amendment**, effective February 13, 2008, deleted the authorization of charter schools to authorize the governing board to make employment decisions.

**The 2007 amendment**, effective June 15, 2007, provided for employment decisions to be made by the head administrator and prohibits the head administrator from initially employing a person who is related to a member of the governing body or the head administrator.

**The 2006 amendment**, effective July 1, 2007, in Subsection A, deleted the qualification "notwithstanding the provisions of Section 22-5-4 NMSA 1978" at the beginning of the first sentence and added the provision regarding employment decisions; deleted former Subsection B.

which provided for leave of absence for employees of a school district who are employed by a conversion school; deleted former Subsection C, which provided for longevity credit for employees on leave of absence; deleted former Subsection D, which provided retirement benefits for employees on leave of absence; deleted former Subsection E, which provided that a leave of absence is not a break of

service with a school district; deleted former Subsection F, which provided for the return of employees to a school district; deleted former Subsection G, which provided for the effect of discharge or termination by a charter school; added a new Subsection B to prohibit nepotism; and added a new Subsection C to provide for continued employment of persons employed on or before July 1, 2007.

## **22-8B-11. Charter schools; maximum number established.**

A. The commission shall authorize the approval of start-up charter schools.

B. No more than fifteen start-up schools may be established per year statewide. The number of charter school slots remaining in that year shall be transferred to succeeding years up to a maximum of seventy-five start-up schools in any five-year period.

**History:** Laws 1999, ch. 281, § 11; 2006, ch. 94, § 38.

**Cross references.** — For transfer of powers and duties of former state board of education, see 9-24-15 NMSA 1978.

**The 2006 amendment**, effective July 1, 2007, in Subsection A, changed "local school boards" to "commission"

and in Subsection B, deleted the references to conversion schools and the provision that the state board notify the local school board when the limits set in this section are reached.

## **22-8B-12. Charter schools; term; oversight and corrective actions; site visits; renewal of charter; grounds for nonrenewal or revocation.**

A. A charter school may be approved for an initial term of six years; provided that the first year shall be used exclusively for planning and not for completing the application. A charter may be renewed for successive periods of five years each. Approvals of less than five years may be agreed to between the charter school and the chartering authority.

B. During the planning year, the charter school shall file a minimum of three status reports with the chartering authority and the department for the purpose of demonstrating that the charter school's implementation progress is consistent with the conditions, standards and procedures of its approved charter. The report content, format and schedule for submission shall be agreed to by the chartering authority and the charter school and become part of the charter contract.

C. Prior to the end of the planning year, the charter school shall demonstrate that its facilities meet the requirements of Section 22-8B-4.2 NMSA 1978.

D. A chartering authority shall monitor the fiscal, overall governance and student performance and legal compliance of the charter schools that it oversees, including reviewing the data provided by the charter school to support ongoing evaluation according to the charter contract. Every chartering authority may conduct or require oversight activities that allow the chartering authority to fulfill its responsibilities under the Charter Schools Act, including conducting appropriate inquiries and investigations; provided that the chartering authority complies with the provisions of the Charter Schools Act and the terms of the charter contract and does not unduly inhibit the autonomy granted to the charter schools that it governs.

E. As part of its performance review of a charter school, a chartering authority shall visit a charter school under its authority at least once annually to provide technical assistance to the charter school and to determine the status of the charter school and the progress of the charter school toward the performance framework goals in its charter contract.

F. If, based on the performance review conducted by the chartering authority pursuant to Subsection D of this section, a charter school's fiscal, overall governance or student performance or legal compliance appears unsatisfactory, the chartering authority shall promptly notify the governing body of the charter school of the unsatisfactory review and provide reasonable opportunity for the governing body to remedy the problem; provided that if the unsatisfactory review warrants revocation, the revocation procedures set forth in this section shall apply. A chartering authority may take appropriate corrective actions or exercise sanctions, as long as such sanctions do not constitute revocation, in response to the unsatisfactory review. Such actions or sanctions by the



chartering authority may include requiring a governing body to develop and execute a corrective action plan with the chartering authority that sets forth time frames for compliance.

G. Every chartering authority shall submit an annual report to the division, including a performance report for each charter school that it oversees, in accordance with the performance framework set forth in the charter contract.

H. The department shall review the annual report received from the chartering authority to determine if the department or local school board rules and policies from which the charter school was released pursuant to the provisions of Section 22-8B-5 NMSA 1978 assisted or impeded the charter school in meeting its stated goals and objectives. The department shall use the annual reports received from the chartering authorities as part of its report to the governor, the legislative finance committee and the legislative education study committee as required by the Charter Schools Act.

I. No later than two hundred seventy days prior to the date in which the charter expires, the governing body may submit a renewal application to the chartering authority. A charter school may apply to a different chartering authority for renewal. The chartering authority shall rule in a public hearing on the renewal application no later than one hundred eighty days prior to the expiration of the charter.

J. A charter school renewal application submitted to the chartering authority shall contain:

(1) a report on the progress of meeting the academic performance, financial compliance and governance responsibilities of the charter school, including achieving the goals, objectives, student performance outcomes, state standards of excellence and other terms of the charter contract, including the accountability requirements set forth in the Assessment and Accountability Act [Chapter 22, Article 2C NMSA 1978];

(2) a financial statement that discloses the costs of administration, instruction and other spending categories for the charter school that is understandable to the general public, that allows comparison of costs to other schools or comparable organizations and that is in a format required by the department;

(3) a copy of the charter contract executed in compliance with the provisions of Section 22-8B-9 NMSA 1978;

(4) a petition in support of the charter school renewing its charter status signed by not less than sixty-five percent of the employees in the charter school;

(5) a petition in support of the charter school renewing its charter status signed by at least seventy-five percent of the households whose children are enrolled in the charter school;

(6) a description of the charter school facilities and assurances that the facilities are in compliance with the requirements of Section 22-8B-4.2 NMSA 1978; and

(7) for charter schools located on tribal land, documentation of ongoing consultation pursuant to the Indian Education Act [Chapter 22, Article 23A NMSA 1978].

K. A charter may be suspended, revoked or not renewed by the chartering authority if the chartering authority determines that the charter school did any of the following:

(1) committed a material violation of any of the conditions, standards or procedures set forth in the charter contract;

(2) failed to meet or make substantial progress toward achievement of the department's standards of excellence or student performance standards identified in the charter contract;

(3) failed to meet generally accepted standards of fiscal management;

(4) for a charter school located on tribal land, failed to comply with ongoing consultations pursuant to the Indian Education Act; or

(5) violated any provision of law from which the charter school was not specifically exempted.

L. The chartering authority shall develop processes for suspension, revocation or nonrenewal of a charter that:

(1) provide the charter school with timely notification of the prospect of suspension, revocation or nonrenewal of the charter and the reasons for such action;

(2) allow the charter school a reasonable amount of time to prepare and submit a response to the chartering authority's action; and

(3) require the final determination made by the chartering authority to be submitted to the department.



M. If a chartering authority suspends, revokes or does not renew a charter, the chartering authority shall state in writing its reasons for the suspension, revocation or nonrenewal.

N. If a chartering authority suspends, revokes or does not renew the charter of a charter school located on tribal land, the chartering authority and charter school shall consult with the tribe pursuant to Subsections C and D of Section 3 of this 2019 act.

O. A decision to suspend, revoke or not to renew a charter may be appealed by the governing body pursuant to Section 22-8B-7 NMSA 1978.

**History:** Laws 1999, ch. 281, § 12; 2005, ch. 221, § 6; 2006, ch. 94, § 39; 2010, ch. 48, § 1; 2011, ch. 14, § 5; 2015, ch. 108, § 12; 2019, ch. 174, § 5.

**Cross references.** — For transfer of powers and duties of former state board of education, see 9-24-15 NMSA 1978.

**The 2019 amendment,** effective June 14, 2019, required charter school renewal applications, for charter schools on tribal land, to contain documentation of ongoing consultation pursuant to the Indian Education Act; in Paragraph J, added Paragraph J(7); in Subsection K, added a new Paragraph K(4) and redesignated former Paragraph K(4) as Paragraph K(5); and added a new Subsection N and redesignated former Subsection N as Subsection O.

**The 2015 amendment,** effective July 1, 2015, amended the required contents of a charter school renewal application; in Paragraph (1) of Subsection J, after "state", deleted "minimum educational", after "standards", added of "excellence"; and in Paragraph (2) of Subsection K, after "department's", deleted "minimum educational", and after "standards", added "of excellence".

**The 2011 amendment,** effective July 1, 2012, required a chartering authority to monitor the performance of the charter schools it oversees, including visits to the school; permitted a chartering authority to take corrective actions and impose sanctions if a school's performance is unsatisfactory; required chartering authorities to submit an annual report to the charter school division that includes a performance report; required the department to review the annual report to determine how waivers of requirements affected the school's performance; and required chartering authorities to develop processes for suspension, revocation or nonrenewal of charters.

**The 2010 amendment,** effective May 19, 2010, added Subsection B and relettered succeeding subsections accordingly.

**The 2006 amendment,** effective July 1, 2007, in Subsection A, provided that the first year shall be used exclusively for planning and not for completing the application

and changed "local school board" to "chartering authority"; added a new Subsection C to require demonstration of qualification as a board of finance and satisfaction of conditions imposed by the commission and to provide for the issuance of an authorization to commence operations; in Subsection D (formerly Subsection C), changed "January 1 of the year prior to the year the charter expires" to "two hundred seventy days prior to the date the charter expires"; changed "local school board" to "chartering authority"; added the provision that a charter school may apply to a different chartering authority for renewal, and changed the date for ruling on a renewal application from March 1 of the fiscal year in which the charter expires to one hundred eighty days prior to the expiration of the charter; in Subsection E (formerly Subsection D), changed "local school board" to "chartering authority"; in Paragraph (5) of Subsection E (formerly Subsection D), changed "majority" to "at least seventy-five percent"; in Subsection F (formerly Subsection E), provided that a charter may be suspended and changes "local school board" to "chartering authority"; in Paragraph (2) of Subsection F (formerly Subsection E), changed "state board" to "department"; in Subsection G (formerly Subsection F), changed "local school board" to "chartering authority" and required written reasons for suspension of a charter; and in Subsection H (formerly Subsection G), provided for the appeal of the suspension of a charter.

**The 2005 amendment,** effective July 1, 2005, changed the initial term from five to six years and provided that the first year shall be used for planning; added Subsection B to provide that prior to the end of the planning year, the charter school shall demonstrate that its facilities meet statutory standards; provided in Subsection D(1) that an application for renewal shall contain a report on the progress in meeting the accountability requirements of the Assessment and Accountability Act; and added Subsection D(6) to provide that an application for renewal shall contain a description of the charter school facilities and assurances that the facilities comply with statutory standards.

## 22-8B-12.1. Charter school closure; chartering authority protocols; chartering authority duties; distribution of assets.

A. Prior to any charter school closure decision, the chartering authority shall develop a charter school closure protocol to ensure timely notification to parents, orderly transition of students and student records to new schools and proper disposition of school funds, property and assets in accordance with the provisions of Subsection C of this section. The protocol shall specify tasks, time lines and responsible parties, including delineating the respective duties of the charter school, the governing body and the chartering authority.

B. If a charter school is ordered closed for any reason, prior to closure, the chartering authority shall oversee and work with the closing school to ensure a smooth and orderly closure and transition for students and parents according to the closure protocol.

C. When a charter school is closed, the assets of the school shall be distributed first to satisfy outstanding payroll obligations for employees of the school, then to creditors of the school and then to the state treasury to the credit of the current school fund. If the assets of the school are



insufficient to pay all parties to whom the schools owes compensation, the prioritization of the distribution of assets may be determined by decree of a court of law.

**History:** Laws 2011, ch. 14, § 6. **Effective dates.** — Laws 2011, ch. 14, § 10 made Laws 2011, ch. 14, § 6 effective July 1, 2012.

## **22-8B-12.2. Charter schools; proposals to open or close a public school on tribal land; consultation with tribal leaders and members and families of students.**

A. If a charter school applicant wants to open a charter school on tribal land, it shall negotiate with and receive the tribal government's approval for the public school before the charter school authorizer acts on the application. The applicant shall also consult with tribal leaders and members and families of students who will be eligible to attend the public school.

B. Consultation shall include, among other actions, meetings in which the charter school applicant shall explain:

- (1) how and why the applicant reached the decision to approach the tribe about opening a public school on tribal land; and
- (2) the level of the charter school applicant's commitment to improving educational outcomes for Indian students by opening a public school and how that commitment will be manifested through:
  - (a) culturally and linguistically responsive school policies;
  - (b) rigorous and culturally meaningful curricula and instructional materials;
  - (c) sensitivity to the tribe's calendar of religious and tribal obligations when making the school calendar; and
  - (d) professional development for school personnel at the public school to ensure that the best practices used in teaching, mentoring, counseling and administration are culturally and linguistically responsive to students.

C. Whenever a charter school authorizer is contemplating closing a charter school on tribal land, for any reason, it shall consult with tribal leaders and members and families of students attending the charter school.

D. Consultation shall include, among other actions, open meetings in which the charter school authorizer and the head administrator of the charter school explain:

- (1) the reasons for closing the charter school;
- (2) the reasons why the charter school has not or cannot provide additional resources to keep the charter school open;
- (3) locations of other public schools in the vicinity to which students will be sent and the plan to transport students to those schools;
- (4) how the public school receiving new students will consult with tribal leaders and members and families of students attending the public school related to:
  - (a) culturally and linguistically responsive school policies;
  - (b) rigorous and culturally meaningful curricula and instructional materials;
  - (c) sensitivity to the tribe's calendar of religious and other tribal obligations when making the school calendar; and
  - (d) professional development for school personnel at the public school to ensure that the best practices used in teaching, mentoring, counseling and administration are culturally and linguistically responsive to students;
- (5) how the educational outcomes for the Indian students will be improved by attending another public school;
- (6) plans for the public school buildings that will be left empty by the closure; and
- (7) any other matters the charter school governing body and head administrator believe provide an adequate explanation of the reasons for closing the charter school.

**History:** Laws 2019, ch. 174, § 3. **Effective dates.** — Laws 2019, ch. 174 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019; 90 days after the adjournment of the legislature.

## 22-8B-13. Charter school financing.

A. The amount of funding allocated to a charter school shall be not less than ninety-eight percent of the school-generated program cost. The school district or division may withhold and use two percent of the school-generated program cost for its administrative support of a charter school.

B. That portion of money from state or federal programs generated by students enrolled in a locally chartered charter school shall be allocated to that charter school serving students eligible for that aid. Any other public school program not offered by the locally chartered charter school shall not be entitled to the share of money generated by a charter school program.

C. When a state-chartered charter school is designated as a board of finance pursuant to Section 22-8-38 NMSA 1978, it shall receive state and federal funds for which it is eligible.

D. Charter schools may apply for all federal funds for which they are eligible.

E. All services centrally or otherwise provided by a local school district, including custodial, maintenance and media services, libraries and warehousing shall be subject to negotiation between the charter school and the school district. Any services for which a charter school contracts with a school district shall be provided by the district at a reasonable cost.

**History:** Laws 1999, ch. 281, § 13; 2006, ch. 94, § 40.

The 2006 amendment, effective July 1, 2007, provided in Subsection A for the withholding and use of two percent of school-generated program cost for administrative support of a charter school; in Subsection B, changed "charter

school" to "locally chartered charter school"; added Subsection C to provide for the receipt of state and federal funds by state-chartered charter schools that are designated as a board of finance; and added Subsection D to provide that charter schools may apply for federal funds.

## 22-8B-14. Charter schools stimulus fund created.

A. The "charter schools stimulus fund" is created in the state treasury. Money in the fund is appropriated to the department of education [public education department] to provide financial support to charter schools, whether start-up or conversion, for initial start-up costs and initial costs associated with renovating or remodeling existing buildings and structures for expenditure in fiscal year 2000 and subsequent fiscal years. The fund shall consist of money appropriated by the legislature and grants, gifts, devises and donations from any public or private source. The department of education [public education department] shall administer the fund in accordance with rules adopted by the state board [department]. The department of education [public education department] may use up to three percent of the fund for administrative costs. Money in the fund shall not revert to the general fund at the end of a fiscal year.

B. If the charter school receives an initial grant and fails to begin operating a charter school within the next eighteen months, the charter school shall immediately reimburse the fund.

**History:** Laws 1999, ch. 281, § 14.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed

references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

### 22-8B-14.1. Repealed.

**Repeals.** — Laws 2007, ch. 214, § 4 repealed 22-8B-14.1, as enacted by Laws 2007, ch. 214, § 3, relating to charter school capital outlay fund, effective July 1, 2012. For provisions of former section, see the 2011 NMSA 1978 on *NMOneSource.com*.

Laws 2007, ch. 214, § 4 also provided that upon repeal, the proportion of the unencumbered balance of the charter school capital outlay fund attributable to proceeds of severance tax bonds shall revert to the severance tax bonding fund, and the remaining unencumbered balance shall revert to the general fund.

### 22-8B-15. Repealed.

**Repeals.** — Laws 2006, ch. 94, § 60 repealed 22-8B-15 NMSA 1978, as enacted by Laws 1999, ch. 281, § 15, relating to charter extensions, effective July 1, 2007. For

provisions of former section, see the 2005 NMSA 1978 on *NMOneSource.com*.



## 22-8B-16. Public education commission; powers and duties.

The commission shall receive applications for initial chartering and renewals of charters for charter schools that want to be chartered by the state and approve or disapprove those charter applications. The commission may approve, deny, suspend or revoke the charter of a state-chartered charter school in accordance with the provisions of the Charter Schools Act. The chartering authority for a charter school existing on July 1, 2007 may be transferred to the commission; provided, however, that if a school chartered under a previous chartering authority chooses to transfer its chartering authority, it shall continue to operate under the provisions of that charter until its renewal date unless it is suspended or revoked by the commission. An application for a charter school filed with a local school board prior to July 1, 2007, but not approved, may be transferred to the commission on July 1, 2007.

**History:** Laws 2006, ch. 94, § 29.

**Cross references.** — For the public education commission, see 9-24-9 NMSA 1978 and N.M. Const., art. XII, § 6.

**Effective dates.** — Laws 2006, ch. 94, § 61 made Laws 2006, ch. 94, § 29 effective July 1, 2007.

## 22-8B-17. Charter schools division; duties.

The "charter schools division" is created in the department. The division shall:

- A. provide staff support to the commission;
- B. provide technical support to all charter schools;
- C. review and approve state-chartered charter school budget matters; and
- D. make recommendations to the commission regarding the approval, denial, suspension or revocation of the charter of a state-chartered charter school.

**History:** Laws 2006, ch. 94, § 30.

**Cross references.** — For divisions of the public education department, see 9-24-4 NMSA 1978.

**Effective dates.** — Laws 2006, ch. 94, § 61 made Laws 2006, ch. 94, § 30 effective July 1, 2007.

### 22-8B-17.1. Division; annual report.

By December 1 annually, the division shall issue to the governor, the legislative finance committee and the legislative education study committee a report on the state's charter schools for the school year ending in the preceding calendar year, drawing from the annual reports submitted by every chartering authority as well as any relevant data compiled by the division. The annual report shall include a comparison of the performance of charter school students with the performance of academically, ethnically and economically comparable groups of students in noncharter public schools. The report shall also include an assessment of the successes, challenges and areas for improvement in meeting the purposes of the Charter Schools Act, including the division's assessment of the sufficiency of funding for charter schools, the efficacy of the state formula for chartering authority funding and any suggested changes to state law or policy necessary to strengthen the state's charter schools. The annual report shall be published on the department's web site.

**History:** Laws 2011, ch. 14, § 9.

**Effective dates.** — Laws 2011, ch. 14, § 10 made Laws 2011, ch. 14, § 9 effective July 1, 2012.

## ARTICLE 8C

### Charter School Districts

Sec.

- 22-8C-1. Repealed.
- 22-8C-2. Repealed.
- 22-8C-3. Repealed.
- 22-8C-4. Repealed.
- 22-8C-5. Repealed.

Sec.

- 22-8C-6. Repealed.
- 22-8C-7. Repealed.
- 22-8C-8. Charter school student participation in public school extracurricular activities.

### 22-8C-1. Repealed.

**Repeals.** — Laws 2005, ch. 292, § 9 repealed 22-8C-1 NMSA 1978, as enacted by Laws 1999, ch. 293, § 1, the short title for the Charter School District Act, effective

July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on New Mexico Source of Law. For comparable provisions, *see* 22-8E-1 NMSA 1978.

### 22-8C-2. Repealed.

**Repeals.** — Laws 2005, ch. 292, § 9 repealed 22-8C-2 NMSA 1978, as enacted by Laws 1999, ch. 293, § 2, relating to definitions, effective July 1, 2005. For provisions

of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

### 22-8C-3. Repealed.

**Repeals.** — Laws 2005, ch. 292, § 9 repealed 22-8C-3 NMSA 1978, as enacted by Laws 1999, ch. 293, § 3, relating to creation of charter school districts, effective July 1,

2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

### 22-8C-4. Repealed.

**Repeals.** — Laws 2005, ch. 292, § 9 repealed 22-8C-4 NMSA 1978, as enacted by Laws 1999, ch. 293, § 4, relating to charter school district application requirements,

effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

### 22-8C-5. Repealed.

**Repeals.** — Laws 2005, ch. 292, § 9 repealed 22-8C-5 NMSA 1978, as enacted by Laws 1999, ch. 293, § 5, relating to charter school district contracts, effective July 1,

2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

### 22-8C-6. Repealed.

**Repeals.** — Laws 2005, ch. 292, § 9 repealed 22-8C-6 NMSA 1978, as enacted by Laws 1999, ch. 293, § 6, relating to charter renewals, effective July 1, 2005. For

provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

### 22-8C-7. Repealed.

**Repeals.** — Laws 2005, ch. 292, § 9 repealed 22-8C-7 NMSA 1978, as enacted by Laws 1999, ch. 293, § 7, relating to report to legislature, effective July 1, 2005. For

provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

### 22-8C-8. Charter school student participation in public school extracurricular activities.

A. The New Mexico activities association and the local school board in the school district in which a charter school is located shall allow charter school students in grades seven through twelve to participate in school district extracurricular activities sanctioned by the New Mexico activities association if they meet eligibility requirements other than enrollment in a particular public school and if the charter school does not offer such activities sanctioned by the New Mexico activities association or any other association.

B. A charter school student otherwise eligible to participate in an extracurricular activity shall participate in the public school in the attendance zone in which the student lives, provided, however, that the student may choose only one public school in which to participate.



**History:** Laws 2005, ch. 97, § 1.

**Effective dates.** — Laws 2005, ch. 97 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## ARTICLE 8D

### Special Urban School District

Sec.

22-8D-1. Repealed.

22-8D-2. Repealed.

22-8D-3. Repealed.

22-8D-4. Repealed.

Sec.

22-8D-5. Repealed.

22-8D-6. Repealed.

22-8D-7. Repealed.

#### 22-8D-1. Repealed.

**Repeals.** — Laws 2005, ch. 292, § 9 repealed 22-8D-1 NMSA 1978, as enacted by Laws 2003, ch. 434, § 1, the short title for Special Urban School District Act, effective

July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

#### 22-8D-2. Repealed.

**Repeals.** — Laws 2005, ch. 292, § 9 repealed 22-8D-2 NMSA 1978, as enacted by Laws 2003, ch. 434, § 2, relating to definitions, effective July 1, 2005. For provisions

of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

#### 22-8D-3. Repealed.

**Repeals.** — Laws 2005, ch. 292, § 9 repealed 22-8D-3 NMSA 1978, as enacted by Laws 2003, ch. 434, § 3, relating to special urban school district application requirements,

effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

#### 22-8D-4. Repealed.

**Repeals.** — Laws 2005, ch. 292, § 9 repealed 22-8D-4 NMSA 1978, as enacted by Laws 2003, ch. 434, § 4, relating to special urban school district requirements, effective

July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

#### 22-8D-5. Repealed.

**Repeals.** — Laws 2005, ch. 292, § 9 repealed 22-8D-5 NMSA 1978, as enacted by Laws 2003, ch. 434, § 5, relating to district responsibilities, effective July 1, 2005. For

provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

#### 22-8D-6. Repealed.

**Repeals.** — Laws 2005, ch. 292, § 9 repealed 22-8D-6 NMSA 1978, as enacted by Laws 2003, ch. 434, § 6, relating to grounds for nonrenewal, probation or revocation

of charter, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

#### 22-8D-7. Repealed.

**Repeals.** — Laws 2005, ch. 292, § 9 repealed 22-8D-7 NMSA 1978, as enacted by Laws 2003, ch. 434, § 7, relating to report to legislature and governor, effective July 1,

2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

## ARTICLE 8E

### Charter School District Act of 2005

Sec.

22-8E-1. Short title.

22-8E-2. Definition.

22-8E-3. Charter school district application requirements; process.

22-8E-4. Charter contract.

22-8E-5. Charter school district responsibilities; exemptions from Public School Code.

Sec.

22-8E-6. Renewal of charter.

22-8E-7. Evaluation; grounds for nonrenewal, probation or revocation of charter.

22-8E-8. Report to the legislative education study committee and the governor.

#### 22-8E-1. Short title.

Sections 1 through 8 [22-8E-1 through 22-8E-8 NMSA 1978] of this act may be cited as the "Charter School District Act of 2005".

**History:** Laws 2005, ch. 292, § 1.

**Cross references.** — For the 1999 Charter Schools Act and the Charter Schools Act as amended in 2007, *see* 22-8B-1 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 292, § 10 made the act effective July 1, 2005.

#### 22-8E-2. Definition.

As used in the Charter School District Act of 2005, "charter school district" means an existing school district that operates under a charter approved by the department, that is nonreligious, that does not charge tuition and that does not have admission requirements in addition to those found in the Public School Code [Chapter 22 [except Article 5A] NMSA 1978].

**History:** Laws 2005, ch. 292, § 2.

**Cross references.** — For the Public Education Department Act, *see* 9-24-1 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 292, § 10 made the act effective July 1, 2005.

#### 22-8E-3. Charter school district application requirements; process.

A. Before a school district applies for a charter from the department, the local school board shall adopt a resolution approving the application plan and hold at least two public hearings on the matter. The school district shall advertise the charter school district application plan in the same manner as other legal notices of the school district. In addition, the school district shall send a notice to the principal of each school in the district, with instructions that each school distribute the notice to the families whose children are enrolled in the school. The local school board may amend the charter school district application after the public hearings. The local school board shall vote to approve the final application before the school district submits it to the department.

B. Not less than sixty-five percent of the employees of the school district must sign a petition in support of the school district becoming a charter school district.

C. The department shall establish by rule the process and requirements for applying for charter school district status and the process and requirements for renewing charter school district status. In each case, the department shall hold a public hearing.

D. The department shall approve no more than nine charter school districts altogether, three small, three medium and three large districts as determined by the department.

E. The department shall disapprove an initial application or application for renewal of charter school district status when it determines, after a hearing, that the application is not in the best interests of the students, the school district or the community.

**History:** Laws 2005, ch. 292, § 3.

**Cross references.** — For the Public Education Department Act, *see* 9-24-1 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 292, § 10 made the act effective July 1, 2005.



## 22-8E-4. Charter contract.

A. The local school board of a school district that meets the requirements for a charter school district shall enter into a contract with the department establishing its charter to operate as a charter school district for five years.

B. The contract shall reflect all agreements regarding the operation of the charter school district. The terms of the contract may be revised at any time with the approval of both the department and the charter school district.

C. The charter shall include:

(1) assurances that the charter school district shall comply with state laws pertaining to accreditation, state educational standards, assessment and accountability and financial requirements;

(2) a statement of mission and purpose for the operation of the charter school district, including the charter school district's goals and objectives;

(3) evidence that the charter school district's educational and operational plans are economically sound and comply with all state and federal laws and rules;

(4) a description of the charter school district's educational programs and student performance standards and curriculum that must meet or exceed department standards and must be designed to enable each student to achieve those standards;

(5) a description of the way the charter school district's educational program will meet the individual needs of the students, including students with disabilities and students determined to be at risk;

(6) an explanation of the relationship that will exist between the charter school district and its employees and a description of the way the terms and conditions of employment will be addressed with affected employees; and

(7) a description of all waivers from department rules requested and granted.

D. The charter school district shall:

(1) continue to operate as a public, nonsectarian public school district and operate in the same geographic boundaries that existed for the school district prior to becoming a charter school district;

(2) receive state money as provided in the Public School Code [Chapter 22 NMSA 1978];

(3) provide special education services as required by state and federal law;

(4) be liable for timely payment on its bonded indebtedness and subject to the same bonded indebtedness limitations as it was before becoming a charter school district; and

(5) be subject to all state and federal laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry or need for special education services.

E. The charter school district shall be accountable to the department for ensuring compliance with its charter and applicable state and federal laws and rules.

F. Employees of a charter school district shall be considered continuous employees without interruption of employment pursuant to the School Personnel Act [Chapter 22, Article 10A NMSA 1978] and shall be afforded procedural due process rights and protection.

G. The governing body of the charter school district shall continue to be the local school board.

**History:** Laws 2005, ch. 292, § 4.

**Cross references.** — For the Public Education Department Act, see 9-24-1 NMSA 1978.

For the public education department, see 9-24-4 NMSA 1978.

For the Assessment and Accountability Act, see 22-2C-1 NMSA 1978.

For the Human Rights Act, see 28-1-1 NMSA 1978.

For courses of instruction and school programs, see 22-13-1 to 22-13-27 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 292, § 10 made the act effective July 1, 2006.

## 22-8E-5. Charter school district responsibilities; exemptions from Public School Code.

A. The charter school district shall promulgate policies to ensure that the individual needs of students and schools in the district are met.

B. The charter school district is exempt from provisions of the Public School Code [Chapter 22 NMSA 1978] and rules adopted pursuant to that act pertaining to the length of the school day, staffing patterns, subject areas and instructional materials.

C. The department may waive other requirements the secretary deems appropriate.

**History:** Laws 2005, ch. 292, § 5. **Effective dates.** — Laws 2005, ch. 292, § 10 made the act effective July 1, 2005.

## 22-8E-6. Renewal of charter.

A. A charter for a charter school district may be renewed for successive periods of five years each.

B. Before it submits an application for renewal to the department, the local school board shall hold a public hearing to adopt a resolution approving the application for renewal.

C. A charter school district renewal application submitted to the department shall contain:

(1) a report on the progress that the charter school district has made toward achieving the goals of its charter;

(2) a petition in support of the charter school district renewing its charter school district status signed by not less than sixty-five percent of the employees in the charter school district;

(3) a resolution by the local school board requesting renewal of the charter; and

(4) any other information that the department deems appropriate.

**History:** Laws 2005, ch. 292, § 6; 2015, ch. 58, § 12.

**Cross references.** — For the Public Education Department Act, see 9-24-1 NMSA 1978.

**The 2015 amendment,** effective June 19, 2015, removed provisions relating to adequate yearly progress;

and in Subsection C, deleted former Paragraphs (2) and (3), relating to lists of schools that have made adequate yearly progress and lists of schools that have not made adequate yearly progress, and redesignated the succeeding paragraphs accordingly.

## 22-8E-7. Evaluation; grounds for nonrenewal, probation or revocation of charter.

A. The department shall provide ongoing evaluation of the charter school district's compliance with accreditation and state laws pertaining to state educational standards, assessment and accountability and financial requirements. Department staff shall visit the charter school district at least once each year to provide technical assistance and to determine the status of the charter school district and the progress of the charter school district toward the goals of its charter.

B. If the department finds that the charter school district is not in compliance with its charter or with any applicable state or federal law or rules, or is not in the best interests of the students, the school district or the community, the department may deny renewal, revoke the charter or place the charter school district on probationary status.

**History:** Laws 2005, ch. 292, § 7.

**Cross references.** — For the public education department, see 9-24-4 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 292, § 10 made the act effective July 1, 2005.

## 22-8E-8. Report to the legislative education study committee and the governor.

Each December, the department and each charter school district shall report to the legislative education study committee and the governor regarding the progress that each charter school district has made toward achieving the goals of its charter.



**History:** Laws 2005, ch. 292, § 8.

**Cross references.** — For the public education department, see 9-24-4 NMSA 1978.

For legislative education study committee, see 2-10-1 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 292, § 10 made the act effective July 1, 2005.

## ARTICLE 8F

### Family Income Index

Sec.

22-8F-1. Short title.

22-8F-2. Definitions.

22-8F-3. Family income index; income categories; calculation; information-sharing agreements.

Sec.

22-8F-4. Threshold for funding distribution; distribution of family income index funds; allocations to eligible public schools.

22-8F-5. Uses of family income index distributions.

22-8F-6. Educational plan to include allowable uses for each public school; distributions; reporting.

#### 22-8F-1. Short title.

This act [22-8F-1 to 22-8F-6 NMSA 1978] may be cited as the "Family Income Index Act".

**History:** Laws 2021, ch. 18, § 1.

**Effective dates.** — Laws 2021, ch. 18, § 7 made Laws 2021, ch. 18, § 1 effective July 1, 2021.

#### 22-8F-2. Definitions.

As used in the Family Income Index Act:

A. "above average income" means a household income of two hundred twenty-five percent or a higher percentage of the federal poverty level;

B. "extremely low income" means a household income of up to seventy-five percent of the federal poverty level;

C. "low income" means a household income of at least one hundred thirty percent but less than one hundred eighty-five percent of the federal poverty level;

D. "moderate income" means a household income of at least one hundred eighty-five percent but less than two hundred twenty-five percent of the federal poverty level;

E. "school district" includes a state-chartered charter school; and

F. "very low income" means a household income greater than seventy-five percent but less than one hundred thirty percent of the federal poverty level.

**History:** Laws 2021, ch. 18, § 2.

**Effective dates.** — Laws 2021, ch. 18, § 7 made Laws 2021, ch. 18, § 2 effective July 1, 2021.

#### 22-8F-3. Family income index; income categories; calculation; information-sharing agreements.

A. The department shall calculate a family income index for each public school, using the following information:

(1) the department shall obtain family income information sufficient to identify the total number of households in each public school in each of the income categories in Subsection C of this section, based on tax return data of families of students enrolled in that public school and for whose households the taxation and revenue department is able to locate tax return information;

(2) for students whose families the taxation and revenue department is unable to identify tax return data for pursuant to Paragraph (1) of this subsection, family income information sufficient to identify the total number of households in each public school in each of the income categories in Subsection C of this section, based on income information provided to the human services department by families applying for benefits; and

(3) for a student whose family income is not available to the taxation and revenue department or the human services department, the department shall use income statistics from the most current census information for the reported address of the student to determine to which income category in Subsection C of this section the student is assigned.

B. The taxation and revenue department and the human services department shall enter into information-sharing agreements with the department to provide the information requested by the department pursuant to Subsection A of this section.

C. Pursuant to Subsection D of this section, the department shall calculate the percentage of student households for each public school in each of the following income categories using information obtained as provided in Subsection A of this section:

- (1) extremely low income;
- (2) very low income;
- (3) low income;
- (4) moderate income; and
- (5) above average income.

D. The number of students from each public school in each category shall be divided by the public school's total enrollment to determine the percentage of students in each category. The family income index for each public school is as follows:

(1) for fiscal year 2022, the sum of the percentages of the public school's students in the extremely low and very low income categories during the preceding fiscal year;

(2) for fiscal year 2023, the average of the sum of the percentages of the public school's students in the extremely low and very low income categories during the immediately preceding two fiscal years; and

(3) for fiscal year 2024 and each subsequent fiscal year, the average of the sum of the percentages of the public school's students in the extremely low and very low income categories during the immediately preceding three fiscal years.

E. The department shall rank all public schools in the state from lowest family income index to highest family income index by October 31 of each year.

F. The department shall provide the percentage of students at each public school in each income category to the legislative education study committee and the legislative finance committee by November 15 of each year.

**History:** Laws 2021, ch. 18, § 3.

**Effective dates.** — Laws 2021, ch. 18, § 7 made Laws 2021, ch. 18, § 3 effective July 1, 2021.

#### **22-8F-4. Threshold for funding distribution; distribution of family income index funds; allocations to eligible public schools.**

A. Except as provided in Subsection E of this section, each year, to determine the number of public schools that are eligible for family income index allocations through their respective school districts, the department shall:

(1) identify the school districts that have public schools within the fifty percent of public schools on the department's ranked list pursuant to Subsection E of Section 3 [22-8F-3 NMSA 1978] of the Family Income Index Act with the highest family income indices; and

(2) multiply the total number of public schools within each of the school districts that are identified in Paragraph (1) of this subsection by one-tenth, and if the product is:

- (a) less than one, the product shall be rounded to one; and
- (b) more than one, the product shall be rounded to the nearest whole number.

B. The number of eligible public schools within a school district identified in Paragraph (1) of Subsection A of this section for which funding may be allocated pursuant to this section is equal to the rounded product determined pursuant to Paragraph (2) of Subsection A of this section. Each year, the public schools that are eligible for an allocation are those public schools within each school district that have the highest family income indices.



C. An allocation for an eligible public school is limited to the greater of that public school's proportional share as determined pursuant to Subsection D of this section or twenty thousand dollars (\$20,000).

D. To determine the proportional share of funding that the department distributes to a school district for each eligible public school, the number of eligible students in each eligible public school shall be divided by the total number of eligible students at all eligible public schools. Each eligible public school's proportional share shall be multiplied by the total amount appropriated for distribution pursuant to the Family Income Index Act.

E. The legislature may establish a different percentage of public schools to be considered pursuant to Paragraphs (1) and (2) of Subsection A of this section.

F. A family income index distribution to a school district for allocation to an eligible public school shall be used exclusively at that public school for the interventions specified in Section 5 [22-8F-5 NMSA 1978] of the Family Income Index Act.

G. For the purposes of this section, "eligible students" means students with household incomes in the extremely low income or very low income categories.

**History:** Laws 2021, ch. 18, § 4. **Effective dates.** — Laws 2021, ch. 18, § 7 made Laws 2021, ch. 18, § 4 effective July 1, 2021.

## **22-8F-5. Uses of family income index distributions.**

A. Except as provided in Subsection B of this section, a public school shall use its family income index allocation as follows:

- (1) at least one-third for evidence-based, structured literacy interventions that have been shown to improve reading and writing achievement of students;
  - (2) at least one-third for evidence-based mathematics instruction and interventions, including educational programming intended to improve career and college readiness of at-risk students, dual or concurrent enrollment, and career and technical education; and
  - (3) no more than one-third on the following interventions:
    - (a) case management, tutoring and after-school and summer enrichment programs that are delivered by social workers, counselors, teachers or other professional staff;
    - (b) culturally relevant professional and curriculum development, including those necessary to support language acquisition and bilingual and multicultural education;
    - (c) whole school interventions, including social and emotional learning programs, multi-layered systems of support, student nutrition programs, school-based health centers and community schools;
    - (d) instructional resources and materials;
    - (e) services to engage and support parents and families in the education of students;
- and
- (f) services to engage and support tribal communities in the education of Native American students.

B. A public school that receives an allocation that is less than forty thousand dollars (\$40,000) may use any portion of that allocation on any of the uses specified in Subsection A of this section.

C. A school district shall use distributions received for allowable uses specified in Subsection A of this section to expand or improve services provided as part of a public school's existing academic program, but not to replace existing services.

**History:** Laws 2021, ch. 18, § 5. **Effective dates.** — Laws 2021, ch. 18, § 7 made Laws 2021, ch. 18, § 5 effective July 1, 2021.

## **22-8F-6. Educational plan to include allowable uses for each public school; distributions; reporting.**

A. A school district shall establish, within its department-approved educational plan, the interventions identified in Section 5 [22-8F-5 NMSA 1978] of the Family Income Index Act that will

be used in each of its eligible public schools. Each school district that receives a distribution shall provide a report to the department by August 1 after the fiscal year in which it receives a distribution that includes a description of the services the school district has provided for each public school that received an allocation to improve the academic success of students. The report shall include a detailed description of how each public school has used its allocation and the way in which the additional funding has impacted student academic outcomes.

B. The department shall evaluate how each public school used its allocation and the way in which each allocation impacted student academic outcomes and report its findings and recommendations to the legislative finance committee and the legislative education study committee by October 15 of each year beginning in fiscal year 2022.

**History:** Laws 2021, ch. 18, § 6.

**Effective dates.** — Laws 2021, ch. 18, § 7 made Laws 2021, ch. 18, § 6 effective July 1, 2021.

## ARTICLE 9

### Federal Aid to Education

Sec.

22-9-1. Repealed.

22-9-2. Federal aid to education; state educational agency.

22-9-3. State educational agency; powers; duties.

22-9-4. Limitation on accepting grants and gifts.

22-9-5. Custody of funds; budgets; disbursements.

22-9-6. Authorization to receive federal grants and to submit a state plan.

22-9-7. Federal grant-in-aid funds; custody; deposit; disbursement.

22-9-8. State educational authorities for federal grant administration.

22-9-9. Agencies for grants-in-aid; powers; duties.

22-9-10. Reports; federal funds; federal agencies; legislature.

Sec.

22-9-11. School facility construction grants-in-aid; enforcement of labor standards.

22-9-12. Official notice of acceptance of federal acts for education and library service.

22-9-13. Superintendent of public instruction declared sole agency for administration of federal aid to education.

22-9-14. Promulgation of standards and procedures; sale of obligations; purposes for which payments may be used.

22-9-15. Accounting, budgeting and other fiscal methods to be prescribed by superintendent.

22-9-16. Reports.

#### 22-9-1. Repealed.

**Repeals.** — Laws 2011, ch. 35, § 6 repealed 22-9-1 NMSA 1978, as enacted by Laws 1967, ch. 16, § 101, relating to gifts and grants for education, effective June 17,

2011. For provisions of former section, see the 2010 NMSA 1978 on *NMOneSource.com*.

#### 22-9-2. Federal aid to education; state educational agency.

The department shall be the sole educational agency of the state for the administration or for the supervision of the administration of any state plan established or funds received by the state by virtue of any federal statute relating to aid for education, school construction or school breakfast or lunch programs, except as is provided in Section 21-1-26 NMSA 1978 and as may otherwise be provided by law.

**History:** 1953 Comp., § 77-7-2, enacted by Laws 1967, ch. 16, § 102; 2004, ch. 27, § 22; 2011, ch. 35, § 2.

**Cross references.** — For designation of the state educational authorities for administration of federal grants, see 22-9-8 NMSA 1978.

For designation of higher education department to administer funds furnished under acts of congress to state educational institutions, see 21-1-26 NMSA 1978.

For designation of the public education commission for vocational education programs, see 22-14-2 NMSA 1978.

For the public education department, see 9-24-4 NMSA 1978.

For the higher education department, see 9-25-4 NMSA 1978.

**The 2011 amendment**, effective June 17, 2011, added breakfast programs to the list of programs that are administered and supervised by the department.

**The 2004 amendment**, effective May 19, 2004, changed "state department" to "department" and changed a 1953 statutory reference to the NMSA 1978 section number.



### 22-9-3. State educational agency; powers; duties.

Whenever the department is the sole educational agency of the state pursuant to the provisions of Section 22-9-2 NMSA 1978, it may:

- A. enter into an agreement with the proper federal agency to procure for the state the benefits of the federal statute;
- B. establish a state plan, if required by the federal statute, which meets the requirements of the federal statute to qualify the state for the benefits of the federal statute;
- C. provide for reports to be made to the federal agency as may be required;
- D. provide for reports to be made to the department or its representative from agencies receiving federal funds;
- E. make surveys and studies in cooperation with other agencies to determine the needs of the state in the areas where the federal funds are to be applied;
- F. establish standards to which agencies must conform in receiving federal funds; and
- G. give technical advice and assistance to any local educational agency in connection with that agency obtaining federal funds.

**History:** 1953 Comp., § 77-7-3, enacted by Laws 1967, ch. 16, § 103; 2004, ch. 27, § 23.

**Cross references.** — For designation of the department for submission of state plan for federal grants under Public Law 93-380, see 22-9-6 NMSA 1978.

For the public education department, see 9-24-4 NMSA 1978.

**The 2004 amendment**, effective May 19, 2004, changed "state department" to "department" and changed a 1953 statutory reference to the NMSA 1978 section number.

### 22-9-4. Limitation on accepting grants and gifts.

Federal funds, gifts or grants relating to aid for education, school construction or school breakfast or lunch programs may be accepted by the state only if supervision and control of courses of instruction and the personnel of public schools is reserved to the state or its local subdivisions.

**History:** 1953 Comp., § 77-7-4, enacted by Laws 1967, ch. 16, § 104; 2011, ch. 35, § 3.

**The 2011 amendment**, effective June 17, 2011, added breakfast programs to the list of programs for which federal funds, gifts or grants may be accepted.

### 22-9-5. Custody of funds; budgets; disbursements.

A. The state treasurer shall be the custodian of all funds received by the state by virtue of a federal statute, gift or grant relating to aid for education, school construction or school breakfast or lunch programs. The state treasurer shall hold these funds in separate accounts according to the purpose of the grant or gift.

B. All federal funds, gifts or grants administered by the department shall be budgeted, accounted for and disbursed as provided by law and by the rules of the department of finance and administration.

**History:** 1953 Comp., § 77-7-5, enacted by Laws 1967, ch. 16, § 105; 2011, ch. 35, § 4.

**The 2011 amendment**, effective June 17, 2011, added federal funds for breakfast programs to the list of funds within the custody of the state treasurer.

### 22-9-6. Authorization to receive federal grants and to submit a state plan.

For purposes of receiving federal grants pursuant to Section 842 of Public Law 93-380, Assistance to States for State Equalization Plans, the state department of public education [department] is designated the state agency and is authorized to submit a state plan to the United States secretary of education.

**History:** 1953 Comp., § 77-7-6, enacted by Laws 1976, ch. 21, § 1; 1977, ch. 246, § 64; 1980, ch. 151, § 50; 1988, ch. 64, § 39.

**Cross references.** — For references to the former state department of public education, see 9-24-15 NMSA 1978.

For state equalization guarantee distributions generally, see 22-8-25 NMSA 1978.

For Section 842 of Public Law 93-380, see 20 U.S.C. § 246.

**The 1988 amendment**, effective May 18, 1988, substituted "state department of public education" for "public school finance division of the department of finance and administration".

## 22-9-7. Federal grant-in-aid funds; custody; deposit; disbursement.

The state treasurer is the trustee for all funds apportioned to the state under any act of congress and he is directed to enter into agreements with, and to comply with the rules and regulations of, such agencies of the federal government as are necessary to procure for the state grants of federal aid to education. Any funds received under any act of congress shall be held by the state treasurer in special funds designated in accordance with the purposes of the grant made and shall be paid out by him only on warrant of the secretary of finance and administration. Warrants shall be issued only upon voucher of the superintendent of public instruction for disbursements other than for rural library service. Disbursements made for rural library service shall be made only upon voucher issued by the state librarian.

**History:** Laws 1939, ch. 162, § 2; 1941 Comp., § 55-519; 1953 Comp., § 73-6-32; Laws 1961, ch. 126, § 8; 1977, ch. 247, § 192.

## 22-9-8. State educational authorities for federal grant administration.

The superintendent of public instruction [secretary] shall be the state educational authority to represent the state in administration of any funds received under any act of congress to authorize grants to states in aid of education other than grants for aid to rural library service and, as to such grants and funds received thereunder, the state librarian shall be the authority to represent the state in the administration of the funds.

**History:** Laws 1939, ch. 162, § 3; 1941 Comp., § 55-520; 1953 Comp., § 73-6-33; Laws 1961, ch. 126, § 9.

**Cross references.** — For designation and powers of public education department as educational agency of state for administration of state plans established for funds received pursuant to federal statutes, see 22-9-2 and 22-9-3 NMSA 1978.

For references to the former superintendent of public instruction, see 9-24-15 NMSA 1978.

For designation of higher education department to administer funds furnished under acts of congress to state educational institutions, see 21-1-26 NMSA 1978.

### ANNOTATIONS

**Grants under Title I, Public Law 815**, 81st Cong. (2d sess.), may properly be applied for and administered by the superintendent of public instruction. 1951-52 Op. Att'y Gen. No. 51-5344. See also 1951-52 Op. Att'y Gen. No. 51-5365.

## 22-9-9. Agencies for grants-in-aid; powers; duties.

Whenever, under any act of the congress of the United States, federal aid to education is made available to the states:

A. the superintendent of public instruction [secretary] shall:

- (1) enter into any agreements with the proper federal agency or agencies necessary to procure for this state all benefits which may be available under any such act of congress;
- (2) provide for and install an adequate system of auditing for the expenditure of funds to be received through the provisions of any such act of congress and to be apportioned to local school jurisdictions and teacher-training institutions, to educational agencies and institutions, conducting adult education, and to the state educational authority for any other purpose or purposes;
- (3) provide an adequate system of reports to be made to such superintendent from local school jurisdictions and teacher-preparation institutions, from educational agencies and institutions conducting adult education, and from such other jurisdictions, institutions and agencies as may be required;



(4) develop and provide a plan of apportioning among local school jurisdictions any funds received for expenditure within such jurisdictions in such manner as to assist effectively in equalizing educational opportunities in public elementary and secondary schools within the state, such plan to conform as near as may be to any requirements of the act of congress and rules and regulations issued thereunder;

(5) develop and provide a plan of apportioning any funds received for expenditures in eligible institutions based on recommendations of the board of educational finance;

(6) develop and provide a plan for apportioning funds received for expenditure for adult education among public educational agencies and institutions in this state in such manner as will effectively contribute to the development of an economical, effective and comprehensive program of adult education; and

(7) make surveys and prepare and maintain state standards for the development of improved administrative units and attendance areas for the public elementary and secondary schools in anticipation of the availability of funds for the construction or alteration of buildings in connection with the public elementary and secondary schools, and for such purpose the superintendent may cooperate with any other public agency which he may designate; and

B. the state librarian of this state is hereby authorized and directed to:

(1) enter into any and all agreements with the proper federal agency or agencies necessary to procure for this state all benefits for rural or other library service which may be available under any such act of congress;

(2) make and administer all plans which may be necessary to carry out any provisions of any such act of congress which offers aid to library service;

(3) provide for and install an adequate system of auditing of the expenditure of funds to be received through the provisions of any such act of congress and to be apportioned to libraries and library services;

(4) provide for an adequate system of reports to be made to him from libraries and library services; and

(5) develop and provide a plan for apportioning any funds received for expenditure for library service which will provide for maintenance of a cooperative and integrated system of library service throughout the state, for suitable cooperative arrangements with school systems, cooperative agricultural extension services, and other appropriate agencies, and in such manner of apportioning as will effectively lessen inequalities of opportunity for library service.

**History:** Laws 1939, ch. 162, § 4; 1941 Comp., § 55-521; 1953 Comp., § 73-6-34; Laws 1961, ch. 126, § 10; 1961, ch. 217, § 1; 1977, ch. 246, § 48.

**Cross references.** — For references to the former state superintendent, see 9-24-15 NMSA 1978.

For the state librarian, see 18-2-3 NMSA 1978.

For powers of public education department when designated as sole educational agency of state for administration of state plans established for funds received pursuant to federal statutes, see 22-9-3 NMSA 1978.

For disbursement by state librarian of federal funds for rural library services, see 22-9-7 NMSA 1978.

## 22-9-10. Reports; federal funds; federal agencies; legislature.

A. Whenever required by any act of congress authorizing federal aid to education or any rules issued pursuant thereto:

(1) the state superintendent [secretary] shall make reports with respect to expenditure of funds received and progress of education generally, progress of adult education generally or any other matters in the form and containing information required by the appropriate federal agencies; and

(2) the state librarian shall make reports with respect to expenditure of funds received and progress of library service in the form and containing information required by the appropriate federal agencies.

B. Annually, by November 1, the state superintendent [secretary] shall submit to the legislative education study committee, the legislative finance committee and the library of the legislative council service a detailed report of all federal funds distributed to the state department of public

education in the federal fiscal year ending September 30, one year prior to the date of the report, with a description of the purpose for which the state received the money and a detailed accounting of how the funds were expended.

**History:** Laws 1939, ch. 162, § 5; 1941 Comp., § 55-522; 1953 Comp., § 73-6-35; Laws 1961, ch. 126, § 11; 2001, ch. 313, § 2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state

department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Cross references.** — For the state librarian, *see* 18-2-3 NMSA 1978.

For powers of public education department when designated as sole educational agency of state for administration of state plans established for funds received pursuant to federal statutes, *see* 22-9-3 NMSA 1978.

**The 2001 amendment**, effective June 15, 2001, added Subsection B and made stylistic changes.

## 22-9-11. [School facility construction grants-in-aid; enforcement of labor standards.]

In the event that the state shall accept any provision of any such act of congress which authorizes and grants aid in the construction of school facilities, the superintendent of public instruction [secretary] shall, by contract or otherwise, enforce labor standards not less beneficial to employees on such projects than those required under Sections 1 and 2 of the act of August 30, 1935 (49 Stat. 1011, ch. 825), as amended; provided, that the act of congress authorizing such aid shall so require.

**History:** Laws 1939, ch. 162, § 6; 1941 Comp., § 55-523; 1953 Comp., § 73-6-36.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all

references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Cross references.** — For Sections 1 and 2 of the Congressional Act of August 30, 1935, as amended, *see* 40 U.S.C. §§ 276a and 276a-1. *See* 40 U.S.C.S. § 3141 et seq.

## 22-9-12. Official notice of acceptance of federal acts for education and library service.

The superintendent of public instruction [secretary] shall transmit to the proper federal agency designated in any act of congress authorizing federal aid to education, official notice of acceptance of any parts and titles of the act and transmit therewith certified copies of this act [22-9-7 to 22-9-12 NMSA 1978] and apportionment plans required in connection with the granting of any funds by any act of congress. In the case of aid to rural or other library service authorized in any act of congress, the official notice with the necessary certified copies as relate to library service shall be transmitted by the state librarian.

**History:** Laws 1939, ch. 162, § 9; 1941 Comp., § 55-524; 1953 Comp., § 73-6-37; Laws 1961, ch. 126, § 12.

**Cross references.** — For transfer of powers and duties of the former superintendent of public instruction, *see* 9-24-15 NMSA 1978.

## 22-9-13. [Superintendent of public instruction declared sole agency for administration of federal aid to education.]

The superintendent of public instruction [secretary] is hereby designated as the sole agency of the state of New Mexico for the administration of any and all plans which may be established or funds which may be available to the state, or for which the state may be eligible by virtue of any legislation enacted by the federal government, to authorize federal assistance to states and communities to enable them to increase public elementary and secondary school construction.

**History:** 1953 Comp., § 73-6-37.1, enacted by Laws 1955, ch. 135, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.



Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Cross references.** — For designation of the educational agency for administration of state plans established for funds received pursuant to federal statutes, *see* 22-9-2 NMSA 1978.

For enforcement of labor standards relating to school facility construction grants-in-aid, *see* 22-9-11 NMSA 1978.

## **22-9-14. [Promulgation of standards and procedures; sale of obligations; purposes for which payments may be used.]**

Said superintendent [secretary] shall, as required or necessary for such eligibility, set forth and promulgate standards and procedures, conforming to federal requirements, for determining eligibility of local educational agencies for payment under such federal legislation, and the amounts thereof, and the need for the facilities to be constructed, which standards and procedures shall provide reasonable assurance that:

A. such payments will be made only if, and to the extent, necessary to enable any local educational agency:

(1) to sell to the federal government or such agency as may be designated for such purpose obligation [obligations] in the amounts needed by such agency to construct the school facilities with respect to which the payments are made; or

(2) if such agency is legally unable to sell such obligations, to rent such facilities from a state school-building agency at rentals which the federal government or its designated agent determines to be comparable to those charged by state school-building agencies pursuant to agreements with the federal government or its designated agent; and,

B. such payments will be made only with respect to the construction of school facilities needed to relieve or prevent extreme overcrowding, double shifts or unhealthful or hazardous conditions.

**History:** 1953 Comp., § 73-6-37.2, enacted by Laws 1955, ch. 135, § 2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed

references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## **22-9-15. [Accounting, budgeting and other fiscal methods to be prescribed by superintendent.]**

Said superintendent [secretary] shall provide and require such accounting, budgeting and other fiscal methods and procedures as are necessary for the proper and efficient administration of such federal plan or plans.

**History:** 1953 Comp., § 73-6-37.3, enacted by Laws 1955, ch. 135, § 3.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed

references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## **22-9-16. [Reports.]**

Said superintendent [secretary] shall provide for the making of such reports, in such form and containing such information as the federal government or its designated agent may from time to time reasonably require to carry out the provisions of applicable legislation, and for compliance with such provisions as may from time to time be necessary to assure the correctness and verification of such reports.

**History:** 1953 Comp., § 73-6-37.4, enacted by Laws 1955, ch. 135, § 4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed

references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

## ARTICLE 10

### Certified School Personnel

Sec.

22-10-1. Recompiled.

22-10-2. Recompiled.

22-10-3. Repealed.

22-10-3.1. Repealed.

22-10-3.2. Recompiled.

22-10-3.3. Recompiled.

22-10-3.4. Repealed.

22-10-3.5. Repealed.

22-10-3.6. Repealed.

22-10-4. Repealed.

22-10-4.1. Recompiled.

22-10-5. Repealed.

22-10-6. Repealed.

22-10-7. Repealed.

22-10-8. Repealed.

22-10-9. Repealed.

22-10-10. Recompiled.

22-10-11. Recompiled.

Sec.

22-10-12. Recompiled.

22-10-13. Recompiled.

22-10-14. Recompiled.

22-10-14.1. Recompiled.

22-10-15. Repealed.

22-10-16. Recompiled.

22-10-17. Recompiled.

22-10-17.1. Recompiled.

22-10-18. Recompiled.

22-10-19. Repealed.

22-10-20. Repealed.

22-10-21. Recompiled.

22-10-22. Recompiled.

22-10-23. Recompiled.

22-10-24. Recompiled.

22-10-25. Recompiled.

22-10-26. Recompiled.

22-10-27. Recompiled.

#### 22-10-1. Recompiled.

**Recompilations.** — Laws 2003, ch. 153, § 33 recompiled and amended former 22-10-1 NMSA 1978, relating

to the School Personnel Act, as 22-10A-1 NMSA 1978, effective April 4, 2003.

#### 22-10-2. Recompiled.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-2 NMSA 1978, relating to definitions, as 22-10A-2 NMSA 1978, effective April 4, 2003.

#### 22-10-3. Repealed.

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-10-3 NMSA 1978, as enacted by Laws 1975, ch. 306, § 3, relating to certificate requirements, types of certificates, forfeiture

of claims, exceptions, and administrator apprenticeships, effective April 4, 2003. For provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

#### 22-10-3.1. Repealed.

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-10-3.1 NMSA 1978, as enacted by Laws 1986, ch. 33, § 18, relating to certified school administrators, evaluation

and improvement training, effective April 4, 2003. For provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

#### 22-10-3.2. Recompiled.

**Recompilations.** — Laws 2003, ch. 153, § 53 recompiled and amended former 22-10-3.2 NMSA 1978, relating

to certified school personnel and school nurses, as 22-10A-32 NMSA 1978, effective April 4, 2003.

#### 22-10-3.3. Recompiled.

**Recompilations.** — Laws 2003, ch. 153, § 36 recompiled and amended former 22-10-3.3 NMSA 1978, relating

to background checks, as 22-10A-5 NMSA 1978, effective April 4, 2003.



### 22-10-3.4. Repealed.

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-10-3.4 NMSA 1978, as enacted by Laws 1997, ch. 238, § 2, relating to known convictions, reporting requirements, limited

immunity from liability and penalty for failure to report, effective April 4, 2003. For provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

### 22-10-3.5. Repealed.

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-10-3.5 NMSA 1978, as enacted by Laws 1999, ch. 249, § 1, relating to issuance of alternative certificates, effective April 4,

2003. For provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

### 22-10-3.6. Repealed.

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-10-3.6 NMSA 1978, as enacted by Laws 1999, ch. 249, § 2, relating to alternative certificates, employment, and

discrimination, effective April 4, 2003. For provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

### 22-10-4. Repealed.

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-10-4 NMSA 1978, as enacted by Laws 1967, ch. 16, § 107, relating to certificate fees, effective April 4, 2003. For

provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

### 22-10-4.1. Recompiled.

**Recompilations.** — Laws 2003, ch. 153, § 31 recompiled and amended 22-10-4.1 NMSA 1978, relating to the

distribution and appropriation of educator certification funds, as 22-8-44 NMSA 1978, effective April 4, 2003.

### 22-10-5. Repealed.

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-10-5 NMSA 1978, as enacted by Laws 1967, ch. 16, § 108, relating to the duties of certified school personnel, effective

April 4, 2003. For provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

### 22-10-6. Repealed.

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-10-6 NMSA 1978, as enacted by Laws 1973, ch. 135, § 1, relating to additional duties of school principals, effective

April 4, 2003. For provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

### 22-10-7. Repealed.

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-10-7 NMSA 1978, as enacted by Laws 1967, ch. 16, § 109, relating to certified school personnel salaries, effective April 4,

2003. For provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

### 22-10-8. Repealed.

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-10-8 NMSA 1978, as enacted by Laws 1967, ch. 16, § 110, relating to compensation for educational meetings, effective

April 4, 2003. For provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

### 22-10-9. Repealed.

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-10-9 NMSA 1978, as enacted by Laws 1967, ch. 16, § 111, relating to professional status, effective April 4, 2003. For

provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

## 22-10-10. Recompiled.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-10 NMSA 1978 as 22-10A-34 NMSA 1978, effective April 4, 2003.

: Laws 2017, ch. 87, § 31 repealed 22-10A-34 NMSA 1978, effective June 16, 2017. For provisions of former section, see the 2016 NMSA 1978 on *NMOneSource.com*.

## 22-10-11. Recompiled.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-11 NMSA 1978 as 22-10A-21 NMSA 1978, effective April 4, 2003.

## 22-10-12. Recompiled.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-12 NMSA 1978 as 22-10A-22 NMSA 1978, effective April 4, 2003.

## 22-10-13. Recompiled.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-13 NMSA 1978 as 22-10A-23 NMSA 1978, effective April 4, 2003.

## 22-10-14. Recompiled.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-14 NMSA 1978 as 22-10A-24 NMSA 1978, effective April 4, 2003.

## 22-10-14.1. Recompiled.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-14.1 NMSA 1978 as 22-10A-25 NMSA 1978, effective April 4, 2003.

## 22-10-15. Repealed.

**Repeals.** — Laws 1986, ch. 33, § 33 repealed 22-10-15 NMSA 1978, as amended by Laws 1975, ch. 306, § 11, relating to the procedure to be followed by a local school board or the governing body of a state agency in

refusing to reemploy a certified school instructor with tenure rights. For present comparable provisions, see 22-10A-24 and 22-10A-25 NMSA 1978.

## 22-10-16. Recompiled.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-16 NMSA 1978 as 22-10A-26 NMSA 1978, effective April 4, 2003.

## 22-10-17. Recompiled.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-17 NMSA 1978 as 22-10A-27 NMSA 1978, effective April 4, 2003.

## 22-10-17.1. Recompiled.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-17.1 NMSA 1978 as 22-10A-28 NMSA 1978, effective April 4, 2003.



**22-10-18. Recompiled.**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-18 NMSA 1978 as 22-10A-29 NMSA 1978, effective April 4, 2003.

**22-10-19. Repealed.**

**Repeals.** — Laws 1986, ch. 33, § 33 repealed 22-10-19 NMSA 1978, as amended by Laws 1975, ch. 306, § 14,

effective May 21, 1986. For present comparable provisions, *see* 22-10A-24 NMSA 1978.

**22-10-20. Repealed.**

**Repeals.** — Laws 1986, ch. 33, § 33 repealed 22-10-20 NMSA 1978, as amended by Laws 1975, ch. 306, § 15,

effective May 21, 1986. For present comparable provisions, *see* 22-10A-25 NMSA 1978.

**22-10-21. Recompiled.**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-21 NMSA 1978 as 22-10A-30 NMSA 1978, effective April 4, 2003.

**22-10-22. Recompiled.**

**Recompilations.** — Laws 2003, ch. 153, § 52 recompiled and amended former 22-10-22 NMSA 1978, relating

to suspension and revocation of teaching certificates, as 22-10A-31 NMSA 1978, effective April 4, 2003.

**22-10-23. Recompiled.**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-23 NMSA 1978 as 22-10A-35 NMSA 1978, effective April 4, 2003.

**22-10-24. Recompiled.**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-24 NMSA 1978 as 22-10A-36 NMSA 1978, effective April 4, 2003.

**22-10-25. Recompiled.**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-25 NMSA 1978 as 22-10A-37 NMSA 1978, effective April 4, 2003.

**22-10-26. Recompiled.**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-26 NMSA 1978 as 22-10A-38 NMSA 1978, effective April 4, 2003.

**22-10-27. Recompiled.**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-27 NMSA 1978 as 22-10A-39 NMSA 1978, effective April 4, 2003.

# ARTICLE 10A

## School Personnel Act

### Sec.

- 22-10A-1. Short title.
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### Sec.

- 22-10A-19.1. Professional development; systemic framework; requirements; department duties.
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- 22-10A-21. Licensed school employees; employment contracts; duration.
- 22-10A-22. Licensed school employees; notice of reemployment; termination.
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- 22-10A-24. Termination decisions; local school board; governing authority of a state agency; procedures.
- 22-10A-25. Appeals; independent arbitrator; qualifications; procedure; binding decision.
- 22-10A-26. Excepted from provisions.
- 22-10A-27. Discharge hearing; licensed school employees; procedures.
- 22-10A-28. Discharge appeals; licensed school employees; independent arbitrator; qualifications; procedure; binding decision.
- 22-10A-29. Compensation payments to discharged personnel.
- 22-10A-30. Supervision and correction procedures.
- 22-10A-31. Denial, suspension and revocation of licenses.
- 22-10A-32. School district personnel, school employees, school volunteers, contractors and contractors' employees; required training program.
- 22-10A-33. Repealed.
- 22-10A-34. Repealed.
- 22-10A-35. Local sabbatical leave program authorized.
- 22-10A-36. Approved program required for sabbatical leave.
- 22-10A-37. Minimum conditions for sabbatical leave.
- 22-10A-38. Pay for sabbatical leave.
- 22-10A-39. Noncertified school personnel; salaries.
- 22-10A-40. School security personnel; definitions; required training.
- 22-10A-40.1. Construction.

### 22-10A-1. Short title.

Chapter 22, Article 10A NMSA 1978 may be cited as the "School Personnel Act".

**History:** 1953 Comp., § 77-8-1, enacted by Laws 1975, ch. 306, § 1; 1991, ch. 187, § 2; 1978 Comp., § 22-10-1, recompiled and amended as § 22-10A-1 by Laws 2003, ch. 153, § 33.

**Recompilations.** — Laws 2003, ch. 153, § 33 recompiled and amended former 22-10-1 NMSA 1978 as 22-10A-1 NMSA 1978, effective April 4, 2003.

**Repeals and reenactments.** — Laws 1975, ch. 306, § 1, repealed 77-8-1, 1953 Comp., as enacted by Laws 1967, ch. 16, § 106, relating to requirements for certificates, and enacted a new section.

**The 2003 amendment,** effective April 4, 2003, substituted "10A" for "10" following "Article" near the beginning of the section.

**The 1991 amendment,** effective June 14, 1991, rewrote this section which read "Sections 77-8-1 through

77-8-24 NMSA 1953 may be cited as the 'Certified School Personnel Act'."

### ANNOTATIONS

**Purpose of provisions.** — The purpose of the Certified School Personnel Act (now School Personnel Act) is to protect the public against incompetent teachers and to insure proper educational qualifications; personal fitness and a high standard of teaching performance. *N.M. State Bd. of Educ. v. Stoudt*, 1977-NMSC-099, 91 N.M. 183, 571 P.2d 1186.

By statute, teachers are assured an indefinite tenure of position during satisfactory performance of their duties. *Atencio v. Board of Educ.*, 1982-NMSC-140, 99 N.M. 168, 655 P.2d 1012, superseded by statute, *Naranjo*



*v. Board of Educ.*, 1995-NMSC-015, 119 N.M. 401, 891 P.2d 542.

**Public school instructors and administrators are state employees** within the constraints of the prohibition against serving in the legislature while receiving compensation as an employee of the state. 1988 Op. Att'y Gen. No. 88-20, *overruled by State ex rel. Stratton v. Roswell Indep. Sch.*, 1991-NMCA-013, 111 N.M. 495, 806 P.2d 1085.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Tests of moral character or fitness as requisite to issuance of teacher's license or certificate, 96 A.L.R.2d 536.

Drugs and narcotics: use of illegal drugs as ground for dismissal of teacher, or denial or cancellation of teacher's certificate, 47 A.L.R.3d 754.

Sexual conduct as ground for dismissal of teacher or denial or revocation of teaching certificate, 78 A.L.R.3d 19.

Student's right to compel school officials to issue degree, diploma, or the like, 11 A.L.R.4th 1182.

Validity, construction, and effect of municipal residency requirements for teachers, principals, and other school employees, 75 A.L.R.4th 272.

78 C.J.S. Schools and School Districts § 197.

## 22-10A-2. Definitions.

As used in the School Personnel Act:

A. "child abuse" means a child:

(1) who has suffered or who is at risk of suffering serious harm because of the action or inaction of the child's parent, guardian, custodian or other adult;

(2) who has suffered physical abuse, emotional abuse or psychological abuse inflicted or caused by the child's parent, guardian, custodian or other adult;

(3) who has suffered sexual abuse or sexual exploitation inflicted by the child's parent, guardian, custodian or other adult;

(4) whose parent, guardian, custodian or other adult has knowingly, intentionally or negligently placed the child in a situation that may endanger the child's life or health; or

(5) whose parent, guardian, custodian or other adult has knowingly or intentionally tortured, cruelly confined or cruelly punished the child;

B. "constitutional special school" means the New Mexico military institute, New Mexico school for the deaf and New Mexico school for the blind and visually impaired;

C. "contractor" means an individual who is under contract with a public school and is hired to provide services to the public school, but does not include a general contractor or a building or maintenance contractor who is supervised and has no access to students at the public school;

D. "discharge" means the act of severing the employment relationship with a licensed school employee prior to the expiration of the current employment contract;

E. "employed for three consecutive school years" means a licensed school employee has been offered and accepted in writing a notice of reemployment for the third consecutive school year;

F. "ethical misconduct" means the following behavior or conduct by school district personnel, school employees, school volunteers, contractors or contractors' employees:

(1) discriminatory practice based on race, age, color, national origin, ethnicity, sex, pregnancy, sexual orientation, gender identity, mental or physical disability, marital status, religion, citizenship, domestic abuse reporting status or serious medical condition;

(2) sexual misconduct or any sexual offense prohibited by Chapter 30, Article 6A or 9 NMSA 1978 involving an adult or child, regardless of a child's enrollment status;

(3) fondling a child or student, including touching private body parts, such as breasts, buttocks, genitals, inner thighs, groin or anus; or

(4) any other behavior, including licentious, enticing or solicitous behavior, that is reasonably apparent to result in inappropriate sexual contact with a child or student or to induce a child or student into engaging in illegal, immoral or other prohibited behavior;

G. "governing authority" means the policy-setting body of a school district, charter school, constitutional special school or regional education cooperative, or the final decision maker of another state agency;

H. "instructional support provider" means a person who is employed to support the instructional program of a public school, including educational assistant, school counselor, social worker, school nurse, speech-language pathologist, psychologist, physical therapist, occupational therapist, recreational therapist, marriage and family therapist, interpreter for the deaf and diagnostician;

I. "just cause" means a reason that is rationally related to a school employee's competence or turpitude or the proper performance of the school employee's duties and that is not in violation of the school employee's civil or constitutional rights;

J. "military service member" means a person who is:

(1) serving in the armed forces of the United States as an active duty member or in an active reserve component of the armed forces of the United States, including the national guard;

(2) the spouse of a person who is serving in the armed forces of the United States as an active duty member or in an active reserve component of the armed forces of the United States, including the national guard; or a surviving spouse of a member who at the time of death was serving on active duty; or

(3) the child of a person who is serving in the armed forces of the United States as an active duty member or in an active reserve component of the armed forces of the United States, including the national guard; provided that child is also a dependent of that person for federal income tax purposes;

K. "moral turpitude" means an act or behavior that gravely violates the accepted standards of moral conduct, justice or honesty and may include ethical misconduct;

L. "public school" means a school district, charter school, constitutional special school, regional education cooperative or the educational program of another state agency;

M. "responsibility factor" means a value of 1.20 for an elementary school principal, 1.40 for a middle school or junior high school principal, 1.60 for a high school principal, 1.10 for an assistant elementary school principal, 1.15 for an assistant middle school or assistant junior high school principal and 1.25 for an assistant high school principal;

N. "sabbatical leave" means leave of absence with pay as approved by the governing authority during all or part of a regular school term for purposes of study or travel related to a licensed school employee's duties and of direct benefit to the instructional program;

O. "school administrator" means a person licensed to administer in a school district, charter school, constitutional special school or regional education cooperative or a person employed with another state agency who administers an educational program and includes local superintendents, school principals, central district administrators, business managers, charter school head administrators and state agency education supervisors;

P. "school employee" includes licensed and unlicensed employees of a public school;

Q. "school premises" means:

(1) the buildings and grounds, including playgrounds, playing fields and parking areas and a school bus of a public school, in or on which school or school-related activities are being operated under the supervision of a local school board, charter school or state agency; or

(2) any other public buildings or grounds, including playing fields and parking areas that are not public school property, in or on which public school-related and -sanctioned activities are being performed;

R. "school volunteer" means a person, including a relative of a student, who commits to serve on a regular basis at a school district, charter school or other educational entity without compensation;

S. "state agency" means a regional education cooperative or state institution;

T. "state institution" means the New Mexico boys' school, girls' welfare home, New Mexico youth diagnostic and development center, Sequoyah adolescent treatment center, Carrie Tingley crippled children's hospital, New Mexico behavioral health institute at Las Vegas and any other state agency responsible for educating resident children;

U. "substitute teacher" means a person who holds a certificate to substitute for a teacher in the classroom;

V. "superintendent" means a local superintendent, head administrator of a charter school or regional education cooperative, superintendent or commandant of a special school or head administrator of the educational program of a state agency;

W. "teacher" means a person who holds a level one, level two or level three-A license and whose primary job is classroom instruction or the supervision, below the school principal level, of an



instructional program or whose duties include curriculum development, peer intervention, peer coaching or mentoring or serving as a resource teacher for other teachers;

X. "terminate" means the act of severing the employment relationship with a school employee;

Y. "unsupervised contact with children or students" means access to or contact with, or the opportunity to have access to or contact with, a child or student for any length of time in the absence of:

(1) a licensed staff person from the same school or institution;

(2) a school volunteer who has undergone a background check pursuant to Section 22-10A-5 NMSA 1978; or

(3) any adult relative or guardian of the child or student;

Z. "veteran" means a person who has received an honorable discharge or separation from military service in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard; and

AA. "working day" means every school calendar day, excluding Saturdays, Sundays and legal holidays.

**History:** 1953 Comp., § 77-8-1.1, enacted by Laws 1975, ch. 306, § 2; 1990, ch. 90, § 1; 1991, ch. 187, § 3; 1994, ch. 110, § 1; 1978 Comp., § 22-10-2, recompiled as § 22-10A-2 by Laws 2003, ch. 153, § 72; 2007, ch. 304, § 1; repealed and reenacted by Laws 2019, ch. 238, § 1; 2021, ch. 92, § 1; 2021, ch. 94, § 4.

**Repeals and reenactments.** — Laws 2019, ch. 238, § 1 repealed and reenacted 22-10A-2 NMSA 1978, effective June 14, 2019.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-2 NMSA 1978, as 22-10A-2 NMSA 1978, effective April 4, 2003.

**Cross references.** — For sabbatical leave programs generally, see 22-10A-35 NMSA 1978.

**2021 Multiple Amendments.** — Laws 2021, ch. 94, § 4 and Laws 2021, ch. 92, § 1, both effective June 18, 2021, enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2021, ch. 94, § 4 as the last act signed by the governor is set out above and incorporates both amendments. The amendments enacted by Laws 2021, ch. 92, § 1 and Laws 2021, ch. 94, § 4 are described below. To view the session laws in their entirety, see the 2021 session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Laws 2021, ch. 92, § 1, defined "military service member" and "veteran", as used in the School Personnel Act, and Laws 2021, ch. 94, § 4, defined "child abuse", "contractor", "ethical misconduct", "moral turpitude", "school volunteer", and "unsupervised contact with children or students", as used in the School Personnel Act.

**Laws 2021, ch. 92, § 1**, effective June 18, 2021, defined "military service member" and "veteran", as used in the School Personnel Act; added a new Subsection G and redesignated former Subsections G through R as Subsections H through S, respectively; and added a new Subsection T and redesignated former Subsection S as Subsection U.

**Laws 2021, ch. 94, § 4**, effective June 18, 2021, defined "child abuse", "contractor", "ethical misconduct", "moral turpitude", "school volunteer", and "unsupervised contact with children or students", as used in the School Personnel Act; added a new Subsection A and redesignated former Subsection A as Subsection B; added a new Subsection C and redesignated former Subsections B and C as

Subsections D and E, respectively; added a new Subsection F and redesignated former Subsections D through F as Subsections G through I, respectively; added a new Subsection J and redesignated former Subsections G through L as Subsections K through P, respectively; added a new Subsection Q and redesignated former Subsections M through R as Subsections R through W, respectively; and added a new Subsection X and redesignated former Subsection S as Subsection Y.

**The 2007 amendment**, effective June 15, 2007, added Subsection B.

**The 1994 amendment**, effective May 18, 1994, substituted "with a certified school employee" for "with an employee" in Subsection A, and rewrote Subsection D, which read "'terminate' the act of not reemploying an employee for the ensuing school year."

**The 1991 amendment**, effective June 14, 1991, deleted "Certified" preceding "School Personnel Act" in the introductory phrase; added Subsection F; and made a related stylistic change.

**The 1990 amendment**, effective May 16, 1990, added present Subsections A, D and E, redesignated former Subsections A and B as present Subsections B and C, and made a minor stylistic change.

## ANNOTATIONS

**Definition of "just cause".** — Legislature intended to codify and incorporate the rule in *Swisher v. Darden* when it defined "just cause" in 1991 amendment. *Aguilera v. Hatch Valley Schs.*, 2006-NMSC-015, 139 N.M. 330, 132 P.3d 587.

**Reduction in force as just cause.** — Statutory "just cause" allows for discharge of a teacher when exigent fiscal circumstances justify a reduction in force, but the teacher's competence, turpitude and performance do not. *Aguilera v. Hatch Valley Schs.*, 2006-NMSC-015, 139 N.M. 330, 132 P.3d 587.

**"Just cause" for termination.** — Evidence of teacher's arrest for driving under the influence and charges of resisting an officer and battery did not show conduct that had any relationship to his competence as an employee or to the proper performance of his duties. *Kibbe v. Elida Sch. Dist.*, 2000-NMSC-006, 128 N.M. 629, 996 P.2d 419.



### 22-10A-3. License or certificate required; application fee; general duties.

A. Except as otherwise provided in this subsection, any person teaching, supervising an instructional program or providing instructional support services in a public school; any person administering in a public school; and any person providing health care and administering medications or performing medical procedures in a public school shall hold a valid license or certificate from the department authorizing the person to perform that function. This subsection does not apply to a person performing the functions of a practice teacher or teaching intern as defined by the department.

B. Except as provided in Subsection C of this section, the department shall charge a reasonable fee for each application for or the renewal of a license or certificate. The application fee may be waived if the applicant meets a standard of indigency established by the department.

C. No licensing or certificate fee shall be charged for the first three years a license or certificate required by this section is valid if the licensee or certificate holder is a military service member or a veteran.

D. A person performing the duties of a licensed school employee who does not hold a valid license or certificate or has not submitted a complete application for licensure or certification within the first three months from beginning employment duties shall not be compensated thereafter for services rendered until the person demonstrates that the person holds a valid license or certificate. This section does not apply to practice teachers or teaching interns as defined by rules of the department.

E. Each licensed school employee shall:

- (1) enforce all laws and rules applicable to the employee's public school;
- (2) if teaching, teach the prescribed courses of instruction;
- (3) exercise supervision over students on public school premises and while the students are under the control of the public school; and
- (4) furnish reports as required.

**History:** 1978 Comp., § 22-10A-3, enacted by Laws 2003, ch. 153, § 34; 2019, ch. 238, § 2; 2020, ch. 6, § 1; 2021, ch. 92, § 2.

**The 2021 amendment**, effective June 18, 2021, amended the existing provision that waives certain license fees for military members and veterans to include the waiver of certain certificate fees, and removed the definitions of terms; in Subsection C, after "No licensing", added "or certificate", after "three years a license", added "or certificate", and after "valid if the license", added "or certificate holder"; and deleted former Subsection F, which defined "military service member" and "veteran".

**The 2020 amendment**, effective July 1, 2020, provided a waiver of licensing fees for the first three years of a valid license for military service members and veterans, and defined "military service member" and "veteran" for purposes of this section; in Subsection B, added "Except as provided in Subsection C of this section"; added a new Subsection C and redesignated former Subsections C and D as Subsections D and E, respectively; and added Subsection F.

**The 2019 amendment**, effective June 14, 2019, exempted teaching interns from certain provisions of this

section; in Subsection A, after "public school", deleted "or state agency", after "practice teacher", added "or teaching intern", and after "defined by the", deleted "state board" and added "department"; in Subsection B, after "The", deleted "state board" and added "department"; in Subsection C, after "practice teachers", added "or teaching interns", and after "rules of the", deleted "state board" and added "department"; and in Subsection D, in Paragraph D(1), after "public school", deleted "and school district or to the educational program of the state agency", and in Paragraph D(3), after "students on", deleted "property belonging to the", and after the first occurrence of "public school", deleted "or state agency" and added "premises", and after the second occurrence of "public school", deleted "or state agency".

#### ANNOTATIONS

**Certified school personnel defined.** — A "certified" school employee is one who holds a certificate from the state board of education (now public education department) and includes both instructors and administrators. *Naranjo v. Board of Educ. of Espanola Pub. Schs.*, 1995-NMSC-015, 119 N.M. 401, 891 P.2d 542.

### 22-10A-4. Teachers and school administrators; professional status; licensure levels; salary alignment.

A. Teaching and school administration are recognized as professions, with all the rights, responsibilities and privileges accorded professions, having their first responsibility to the public they serve. The primary responsibilities of the teaching and school administration professions are



to educate the children of this state and to improve the professional practices and ethical conduct of their members.

B. The New Mexico licensure framework for teachers and school administrators is a progressive career system in which licensees are required to demonstrate increased competencies and undertake increased duties as they progress through the licensure levels. The minimum salary provided as part of the career system shall not take effect until the department has adopted increased competencies for the particular level of licensure and a highly objective uniform statewide standard of evaluation.

C. A level one license is a provisional license that gives a beginning teacher the opportunity, through a formal mentorship program, for additional preparation to be a quality teacher. A level two license is given to a teacher who is a fully qualified professional who is primarily responsible for ensuring that students meet and exceed department-adopted academic content and performance standards; a teacher may choose to remain at level two for the remainder of the teacher's career. A level three-A license is the highest level of teaching licensure for those teachers who choose to advance as instructional leaders in the teaching profession and undertake greater responsibilities such as curriculum development, peer intervention and mentoring. A level three-B license is for teachers who commence a new career path in school administration by becoming school administrators.

D. All teacher and school administrator salary systems shall be aligned with the licensure framework in a professional educator licensing and salary system.

E. All teachers and school administrators who hold teaching or administrator certificates on the effective date of the 2003 act shall meet the requirements for their level of licensure by September 1, 2006 and shall be issued licenses.

**History:** 1978 Comp., § 22-10A-4, enacted by Laws 2003, ch. 153, § 35; 2005, ch. 315, § 4; 2005, ch. 316, § 1.

**Cross references.** — For the public education department, see 9-24-4 NMSA 1978.

**The 2005 amendment,** effective April 7, 2005, deleted the former provision in Subsection C that a level one

license shall be issued for the first three years of teaching. Laws 2005, ch. 315, § 4 and Laws 2005, ch. 316, § 1 enacted identical amendments. The section was set out as amended by Laws 2005, ch. 316, § 1. See 12-1-8 NMSS 1978.

## **22-10A-5. Background checks; known convictions; alleged ethical misconduct; reporting required; penalty for failure to report.**

A. An applicant for initial licensure shall be fingerprinted only upon initial licensure and shall provide two fingerprint cards or the equivalent electronic fingerprints to the department or superintendent to obtain the applicant's federal bureau of investigation record. Convictions of felonies or misdemeanors contained in the federal bureau of investigation record shall be used in accordance with the Criminal Offender Employment Act [Chapter 28, Article 2 NMSA 1978]. Other information contained in the federal bureau of investigation record, if supported by independent evidence, may form the basis for the denial, suspension or revocation of a license for just cause. Records and related information shall be privileged and shall not be disclosed to a person not directly involved in the licensure or employment decisions affecting the specific applicant. The applicant for initial licensure shall pay for the cost of obtaining the federal bureau of investigation record.

B. Governing authorities shall develop policies and procedures to require background checks on an applicant who has been offered employment or who applies to be a school volunteer or works for the public school as a contractor or a contractor's employee and who may have unsupervised contact with children or students on school premises.

C. An applicant who has been offered employment or a school volunteer, contractor or contractor's employee shall provide two fingerprint cards or the equivalent electronic fingerprints to the superintendent to obtain the applicant's, school volunteer's, contractor's or contractor's employee's federal bureau of investigation record. The public school shall pay for an applicant's background



check. A school volunteer, contractor or contractor's employee may be required to pay for the cost of obtaining a background check.

D. Convictions of felonies or misdemeanors contained in the federal bureau of investigation record shall be used in accordance with the Criminal Offender Employment Act; provided that other information contained in the federal bureau of investigation record, if supported by independent evidence, may form the basis for the employment decisions for just cause.

E. Records and related information shall be privileged and shall not be disclosed to a person not directly involved in the employment, volunteering or contracting decision affecting the specific applicant, school volunteer, contractor or contractor's employee who has been offered employment, a school volunteer position or a contract and will have unsupervised contact with children or students on school premises.

F. A superintendent shall report immediately to the department any known conviction of any felony or misdemeanor involving moral turpitude of school district personnel, a school employee, a school volunteer, a contractor or a contractor's employee.

G. A superintendent may appoint a designated representative to act on the superintendent's behalf. The superintendent or the designated representative shall investigate all allegations of ethical misconduct about any school district personnel, school employee, school volunteer, contractor or contractor's employee who resigns, is being discharged or terminated or otherwise leaves employment after an allegation has been made. If the investigation results in a finding of ethical misconduct by a licensed school employee, the superintendent or the superintendent's designated representative shall report the identity of the licensed school employee and attendant circumstances of the ethical misconduct on a standardized form to the department and the licensed school employee within thirty days following the separation from employment or immediately if the finding of ethical misconduct is sexual misconduct with an adult or child. The superintendent or the superintendent's designated representative shall also report allegations of sexual assault or sexual abuse involving any school district personnel, school employee, school volunteer, contractor or a contractor's employee to the appropriate law enforcement agency. No agreement between a departing school employee and the governing authority or superintendent shall diminish or eliminate the responsibility of investigating and reporting the alleged ethical misconduct to the department or, if legally mandated, to law enforcement, and any such agreement to the contrary is void.

H. Unless the department has commenced its own investigation of a licensed school employee prior to receipt of the form, the department shall serve the licensed school employee with a notice of investigation and a notice of contemplated action pursuant to the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] within sixty days of receipt of the form.

I. The department shall maintain a list of the names of persons reported to the department, as required by Subsection F of this section, who have been convicted of a felony or misdemeanor involving moral turpitude and, as required by Subsection G of this section and Section 1 [22-10A-5.1 NMSA 1978] of this 2021 act, who have been found to have committed ethical misconduct. The department shall update that list each month. The department shall provide that list to a governing authority upon request.

J. The secretary may initiate action to suspend, revoke or refuse to renew the license of:

- (1) a superintendent who fails to report as required by Subsections F and G of this section or Section 1 of this 2021 act;
- (2) any licensed school district personnel or licensed school employee who fails to report child abuse or neglect pursuant to Section 32A-4-3 NMSA 1978; or
- (3) any licensed school district personnel or school employee who fails to report ethical misconduct pursuant to Subsection G of this section or Section 1 of this 2021 act.

K. As used in this section, "designated representative" means a representative chosen by a superintendent and may include the staff of a regional education cooperative.

**History:** Laws 1997, ch. 238, § 1; 1998, ch. 60, § 1; 1999, ch. 281, § 24; 2001, ch. 293, § 6; 1978 Comp., § 22-10-3.3, recompiled and amended as § 22-10A-5 by Laws 2003, ch. 153, § 36; 2007, ch. 263, § 1; 2019, ch. 209, § 2; 2019, ch. 238, § 3; 2021, ch. 94, § 5.

**Recompilations.** — Laws 2003, ch. 153, § 36 recompiled and amended former 22-10-3.3 NMSA 1978 as 22-10A-5 NMSA 1978, effective April 4, 2003.



**Cross references.** — For transfer of powers and duties of former state board of education, *see* 9-24-15 NMSA 1978.

**The 2021 amendment**, effective June 18, 2021, revised duties of school personnel related to reports of ethical misconduct, required the public education department to maintain a list of reports involving child abuse or ethical misconduct, and made conforming changes due to newly enacted definitions of terms used in the School Personnel Act; deleted former Subsection A and redesignated former Subsections B through I as Subsections A through H, respectively; in Subsection B, after "unsupervised", deleted "access to students" and added "contact with children or students"; in Subsection E, after "unsupervised", deleted "access to students" and added "contact with children or students"; in Subsection F, after "report", added "immediately", after "moral turpitude of", deleted "school district personnel", after "school employee", deleted "that results in any type of action against the licensed school employee" and added "a school volunteer, a contractor or a contractor's employee"; in Subsection G, after "misconduct about any", added "school district personnel", after "school employee", added "school volunteer, contractor or contractor's employee", after "misconduct with an adult or child", deleted "Copies of that form shall not be maintained in the school employee's personnel file", after "involving any", added "school district personnel"; in Subsection H, deleted "If a notice of contemplated action is not served on the licensed school employee within ninety days of receipt of the form, the form, together with any documents related to the alleged ethical misconduct, shall be expunged from the licensed school employee's records"; added a new Subsection I; in Subsection J, Paragraph J(1), after "Subsections", added "F and", after "G", deleted "and H", and after "section", added "or Section 1 of this 2021 act", and added Paragraphs J(2) and J(3); and added Subsection K

**2019 Amendments.** — Laws 2019, ch. 209, § 2, effective July 1, 2020, provided that applicants for licensure shall be fingerprinted only upon initial licensure, and removed a provision that provided limited immunity for any person who in good faith makes reports pursuant to this section; in the section heading, deleted "limited immunity"; in Subsection B, after "fingerprinted", added "only upon initial licensure"; and deleted former Subsection H, which provided "A person who in good faith reports as provided in Subsections E and F of this section shall not be held liable for civil damages as a result of the report. The person being accused shall have the right to sue for any damages sustained as a result of negligent or intentional reporting of inaccurate information or the disclosure of any information to an unauthorized person."

Laws 2019, ch. 238, § 3, effective June 14, 2019, revised the definition of "ethical misconduct" as used in this section, required governing authorities to require background checks on an applicant who applies to be a volunteer or works for the public school as a contractor or contractor employee and who may have unsupervised access to students on school premises; required school volunteers to provide two fingerprint cards to the superintendent, required a superintendent to report immediately to the department conduct constituting sexual harassment or sexual abuse, and required a superintendent to report allegations of sexual assault or sexual abuse involving any school employee, volunteer or contractor to the appropriate law enforcement agency; in Subsection A, after "school employee", added "school volunteer, contractor or contractor's employee", and after "includes", deleted "inappropriate touching, sexual harassment, discrimination" and added "unlawful discriminatory practice; sexual harassment, sexual assault or sexual abuse involving an adult or child, regardless of a child's enrollment

status"; in Subsection C, deleted "Local school boards and regional education cooperatives" and added "Governing authorities", after "offered employment", added "or who applies to be a volunteer or works for the public school as", and after "access to students", deleted "at a public school" and added "on school premises"; in Subsection D, deleted "An applicant for employment who has been initially licensed within twenty-four months of applying for employment with a local school board, regional education cooperative or a charter school shall not be required to submit to another background check if the department has copies of the applicant's federal bureau of investigation record on file.", after "offered employment", deleted "a" and added "or a school volunteer", after "contractor's employee", deleted "with unsupervised access to students at a public school", after "obtain the applicant's", added "school volunteer's, contractor's or contractor's employees", after "The", deleted "applicant" and added "public school shall pay for an applicant's background check. A school volunteer", after "contractor's employee", deleted "who has been offered employment by a regional education cooperative or at a public school", and deleted the last sentence, which related to releasing copies of FBI records that are on file with the department; added new subsection designations "E," and "F" and redesignated former Subsections E and F as Subsections G and H, respectively; in Subsection F, after "involved in employment", added "volunteering or contracting", after "specific applicant", added "volunteer, contractor or contractor's employee", after "offered employment", deleted "contractor or contractor's employee with" and added "a volunteer position or a contract and will have", after "access to students", deleted "at a public school" and added "on school premises"; in Subsection G, after "superintendent", deleted "charter school administrator or regional education cooperative"; in Subsection H, after "superintendent", deleted "charter school administrator or director of a regional education cooperative or their respective designee" and added "or the superintendent's designated representative", after "finding of", deleted "wrongdoing" and added "ethical misconduct by a licensed school employee", after "superintendent", deleted "charter school administrator or director of a regional education cooperative", after "separation from employment", added "or immediately if knowledge of the ethical misconduct is sexual harassment, or sexual abuse of an adult or child", after "maintained in", deleted "public school, school district or regional education cooperative records" and added "the school employee's personnel file. The superintendent shall also report allegations of sexual assault or sexual abuse involving any school employee, volunteer, contractor or a contractor's employee to the appropriate law enforcement agency", after "school employee and the", deleted "local school board school district, charter school or regional education cooperative" and added "governing authority or superintendent", and after "alleged ethical misconduct", added "to the department or, if legally mandated, to law enforcement"; in Subsection I, after "notice of", deleted "contemplated action involving that employee's license" and added "investigation and a notice of contemplated action pursuant to the Uniform Licensing Act", after "within", deleted "ninety" and added "sixty", and after "employee's records", deleted "with the department and shall not be subject to public inspection"; in Subsection J, after "superintendent", deleted "charter school administrator or regional education cooperative director", and after "Subsections", deleted "E" and added "G", and after "and", deleted "F" and added "H"; and in Subsection K, after "Subsections", deleted "E" and added "G", and after "and", deleted "F" and added "H".

**The 2007 amendment**, effective June 15, 2007, deleted former subsections and added new Subsections A, F and G.



The 2003 amendment, effective April 4, 2003, in Subsection A, substituted "licensure" for "certification" three times, deleted "of education" following "the department" near the beginning, and substituted "license" for "certificate" near the middle; divided former Subsection B into present Subsections B and C and deleted former Subsection C; deleted "including a charter school" at the end of present Subsection B; in present Subsection C substituted "licensed" for "certified" following "been initially" near the beginning of the first sentence, substituted "twenty-four" for "twelve" following "within" near the beginning of the first sentence, deleted "of education" following "the department" near the end of the first sentence, deleted "including a charter school" near the middle of the second sentence, inserted "or charter school" following "education cooperative" near the end of the second sentence, deleted "including a charter school" following "public school" near the middle of the third sentence, deleted "of education" following "the department" twice in the fourth sentence, substituted "twenty-four" for "twelve" following "not more than" near the end of the fourth sentence, and deleted

"including a charter school" at the end; and added present Subsections D, E and F.

The 2001 amendment, effective June 15, 2001, in Subsection B, added "regional education cooperative" to each of the first five sentences and added "contractor or contractor's employee" to the fourth sentence.

The 1999 amendment, effective June 18, 1999, inserted "at a public school, including a charter school" and "or a charter school" throughout Subsection B.

The 1998 amendment, effective May 20, 1998, rewrote this section to the extent that a detailed comparison is impracticable.

#### ANNOTATIONS

**Liability of licensing officials.** — Student who allegedly suffered inappropriate touching by a teacher established no cause of action against a state licensing official for injury inflicted by the teacher based on the theory that the license-related investigation of the teacher was recklessly deficient. *B.T. v. Davis*, 557 F. Supp.2d 1262 (D.N.M. 2007).

### 22-10A-5.1. Duty to report ethical misconduct; responsibility to investigate ethical misconduct; ethical misconduct report coordination.

A. School district personnel, a school employee, a contractor or a contractor's employee who knows or has a reasonable suspicion that a child or student has been subject to ethical misconduct by school district personnel, a school employee, a school volunteer, a contractor or a contractor's employee shall report the matter immediately to:

- (1) the superintendent; or
- (2) the department.

B. If a superintendent receives a report pursuant to Subsection A of this section, the superintendent shall immediately transmit to the department by telephone the facts of the report and the name, address and telephone number of the reporter. The superintendent shall transmit the same information in writing within forty-eight hours.

C. If department staff receives a report pursuant to Subsection A of this section, department staff shall immediately transmit to the superintendent by telephone the facts of the report and the name, address and telephone number of the reporter. Department staff shall transmit the same information in writing within forty-eight hours.

D. A written report shall contain the name, address and age of the child or student; the child's or student's parents, guardians or custodians; the school district personnel, school employee, school volunteer, contractor or contractor's employee who is alleged to have committed ethical misconduct; and any evidence of ethical misconduct, including the nature and extent of any injuries and other information that the maker of the report believes might be helpful to investigate a report of ethical misconduct. The written report shall be submitted upon a standardized form developed by the department.

E. Upon receipt of a report of ethical misconduct pursuant to Subsection A of this section, the department shall immediately notify law enforcement if the allegation of ethical misconduct is criminal in nature; provided that the department shall notify a tribal law enforcement or social services agency for any Indian child residing in Indian country.

F. The recipient of a report pursuant to Subsection A of this section shall take immediate steps to ensure prompt investigation of the report. The investigation shall ensure that immediate steps are taken to protect the health or welfare of a student or child who is the subject of a report under Subsection A of this section. A school shall take immediate steps to ensure the safety of enrolled students.

G. After a report of suspected ethical misconduct against a student or child is made to a law enforcement agency, the department or a superintendent pursuant to this section, the office receiving the report shall notify the person making the report within five days after the report was made



that the office receiving the report is investigating the matter. Mailing a notice within five days shall constitute compliance with this subsection.

H. A law enforcement agency, the department or a superintendent shall have access to any of the records pertaining to an ethical misconduct case maintained by any of the persons enumerated in Subsection A of this section.

I. A local school board shall adopt policies providing for the coordination and internal tracking of reports made pursuant to this section. Such policies shall include measures to protect the identity of any alleged victims. No policy shall relieve any person having a duty to report pursuant to this section from that duty.

**History:** Laws 2021, ch. 94, § 1, and Laws 2021, ch. 100, § IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.  
**Effective dates.** — Laws 2021, ch. 94 contained no effective date provision, but, pursuant to N.M. Const., art.

## **22-10A-5.2. Applicants for school employment, contracts or volunteer positions; requirements for work history and other information.**

A. A public school shall require an applicant for employment to provide:

(1) a list of the applicant's current and former employers that were schools or that employed the applicant in a position involving unsupervised contact with children or students. The list shall include the name, address, telephone number and other relevant contact information for each of the applicant's listed employers;

(2) a written statement describing whether the applicant:

(a) has ever been under investigation for, or has been found to have violated, any state or federal statute relating to child abuse or neglect, sexual misconduct or any sexual offense, including those offenses prohibited in Chapter 30, Article 3, 3A, 4, 6, 6A, 9, 37, 37A or 52 NMSA 1978, unless the allegations were false or unsubstantiated;

(b) has ever been under investigation for, or found to have violated, any ethical rule or policy approved by a former employer that previously employed the applicant, unless the allegations were false or unsubstantiated; or

(c) has ever had a professional license or certificate denied, suspended, surrendered or revoked due to a finding of child abuse or ethical misconduct or while allegations of child abuse or ethical misconduct were pending or under investigation; and

(3) a written authorization that authorizes disclosure of information requested under Subsection B or D of this section and the release of related records by the applicant's previous employers, releasing the applicant's previous employers from any liability related to the disclosure or release of records.

B. A public school shall conduct a review of the applicant's employment history and contact the applicant's current and former employers listed under Subsection A of this section and request:

(1) the applicant's dates of employment; and

(2) a written statement describing whether the applicant:

(a) has ever been under investigation for, or has been found to have violated, any state or federal statute relating to child abuse or neglect, sexual misconduct or any sexual offense, including those offenses prohibited in Chapter 30, Article 3, 3A, 4, 6, 6A, 9, 37, 37A or 52 NMSA 1978, unless the allegations were false or unsubstantiated;

(b) has ever been under investigation for, or found to have violated, any ethical rule or policy approved by a former employer that previously employed the applicant, unless the allegations were false or unsubstantiated; or

(c) has ever had a professional license or certificate denied, suspended, surrendered or revoked due to a finding of child abuse or ethical misconduct or while allegations of child abuse or ethical misconduct were pending or under investigation.

C. An applicant's current or former employer shall disclose the information requested under Subsection B of this section within thirty days of receiving the request.

D. During the course of a public school's review of the applicant's employment history, an applicant's current or former employer may disclose any other information the applicant's current or former employer deems pertinent and substantive to the prospective employee's suitability for employment in a position that includes unsupervised contact with children or students.

E. A public school shall make and document efforts to:

- (1) verify the information provided under Subsections A and B of this section; and
- (2) obtain from an applicant's current or former out-of-state employer the information required under Subsection B of this section.

F. A public school may terminate an individual's employment or contract or rescind an applicant's offer of employment or offer of a contract if the applicant is offered or commences employment with a public school after the effective date of this 2021 act and information regarding the applicant's history of child abuse or ethical misconduct that is determined to disqualify the applicant from employment or a contract is subsequently obtained by the public school.

G. When a reference on a former or current employee, contractor or volunteer is requested, the employer shall respond and provide the requested information pursuant to Subsection B of this section.

H. An applicant who provides false information or willfully neglects to disclose information required under this section shall be subject to discipline including termination or denial of employment or action to deny, suspend or revoke a license.

I. For the purposes of this section, "applicant" means an applicant for employment, an individual who is being considered as a contractor, a contractor's employee or an individual who wants to be a school volunteer.

**History:** Laws 2021, ch. 94, § 2.

**Effective dates.** — Laws 2021, ch. 94 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

## 22-10A-6. Educational requirements for licensure.

A. The department shall require a person seeking licensure or reciprocity in elementary, special, early childhood or secondary education to have completed the following minimum requirements in the college of arts and sciences:

- (1) nine semester hours in communication;
- (2) six semester hours in mathematics;
- (3) eight semester hours in laboratory science;
- (4) nine semester hours in social and behavioral science; and
- (5) nine semester hours in humanities and fine arts.

B. In addition to the requirements specified in Subsections A and C of this section, the department shall require that a person seeking standard or alternative elementary licensure shall have completed six hours of reading courses, and a person seeking standard or alternative secondary licensure shall have completed three hours of reading courses in subject matter content. The department shall establish requirements that provide a reasonable period of time to comply with the provisions of this subsection.

C. Except for licensure by reciprocity, the department shall require, prior to initial licensure, no less than sixteen weeks of student teaching, a portion of which shall occur in the first thirty credit hours taken in the college of education and shall be under the direct supervision of a teacher and a portion of which shall occur in the student's senior year with the student teacher being directly responsible for the classroom.

D. Nothing in this section shall preclude the department from establishing or accepting equivalent requirements for purposes of reciprocal licensure or minimum requirements for alternative licensure.

E. Vocational teacher preparatory programs may be exempt from Subsections A through C of this section upon a determination by the department that other licensure requirements are more appropriate for vocational teacher preparatory programs.



F. Before December 31, 2021, the department shall create a license endorsement in secondary computer science available to all teachers who hold a valid license and demonstrate sufficient content knowledge in computer science as determined by the department. The department shall consult with computer science education experts with experience in creating or supporting computer science endorsement pathways when developing computer science endorsement requirements.

**History:** 1978 Comp., § 22-2-8.7, enacted by Laws 1986, ch. 33, § 8; 1987, ch. 225, § 1; 2001, ch. 255, § 1; 2001, ch. 261, § 1; recompiled and amended as § 22-10A-6 by Laws 2003, ch. 153, § 37; 2009, ch. 272, § 1; 2015, ch. 97, § 1; 2021, ch. 102, § 1.

**Recompilations.** — Laws 2003, ch. 153, § 37 recompiled and amended former 22-2-8.7 NMSA 1978 as 22-10A-6 NMSA 1978, effective April 4, 2003.

**Cross references.** — For student achievement, see 22-2C-1 NMSA 1978 et seq.

For transfer of powers and duties of former state board of education, see 9-24-15 NMSA 1978.

**The 2021 amendment,** effective June 18, 2021, provided for a license endorsement for secondary computer science for all teachers who hold a valid license and demonstrate sufficient content knowledge in computer science as determined by the public education department; and added Subsection F.

**The 2015 amendment,** effective July 1, 2016, increased the minimum requirements for persons seeking licensure or reciprocity in elementary special early childhood or secondary education; in Subsection A, after "elementary", added "special early childhood", deleted Paragraphs (1) through (6), and added new Paragraphs (1) through (5); and in Subsection C, after "no less than", deleted "fourteen" and added "sixteen".

**The 2009 amendment,** effective June 19, 2009, in Paragraph (3) of Subsection A, at the beginning of the

sentence, added "nine hours in mathematics for elementary education and" and after "six hours in mathematics", added "for secondary education".

**The 2003 amendment,** effective April 4, 2003, substituted "Educational requirements for licensure" for "Certification requirements" in the section heading; substituted "licensure or reciprocity" for "certification" following "person seeking" near the beginning of Subsection A; in Subsection B substituted "licensure" for "certification" twice in the first sentence, and inserted "The state board shall establish requirements that provide a reasonable period of time to comply with the provisions of this subsection." at the end; in Subsection C inserted "Except for licensure by reciprocity," at the beginning, substituted "initial licensure" for "certification" following "prior to" near the beginning, and substituted "teacher" for "certified school instructor" following "supervision of a" near the middle; substituted "licensure" for "certification" twice in Subsection D; deleted former Subsection E and redesignated former Subsection F as present Subsection E; and substituted "licensure" for "certification" following "that other" near the middle of present Subsection E.

**The 2001 amendment,** effective June 15, 2001, added Subsection B and redesignated the remaining subsections accordingly; substituted "Subsections A and C" for "Subsections A and B" in Subsection E; and substituted "Subsections A through C" for "Subsections A and B" in Subsection F.

## 22-10A-7. Level one licensure.

A. A level one license is a provisional five-year license for beginning teachers that requires as a condition of licensure that the licensee undergo a formal mentorship program for at least one full school year and an annual intensive performance evaluation by a school administrator for at least three full school years before applying for a level two license.

B. Each school district, in accordance with department rules, shall provide for the mentorship and evaluation of level one teachers. At the end of each year and at the end of the license period, the level one teacher shall be evaluated for competency. If the teacher fails to demonstrate satisfactory progress and competence annually, the teacher may be terminated as provided in Section 22-10A-24 NMSA 1978. If the teacher has not demonstrated satisfactory progress and competence by the end of the five-year period, the teacher shall not be granted a level two license.

C. Except in exigent circumstances defined by department rule, a level one license shall not be extended beyond the initial period.

D. The department shall issue a standard level one license to an applicant who is at least eighteen years of age who:

- (1) holds a baccalaureate degree from an accredited educational institution;
- (2) has successfully completed a department-approved teacher preparation program from a nationally accredited or state-approved educational institution;
- (3) has passed the New Mexico teacher assessments examination, including for elementary licensure beginning January 1, 2013, a rigorous assessment of the candidate's knowledge of the science of teaching reading; and

(4) meets other qualifications for level one licensure, including clearance of the required background check.

E. The department shall issue an alternative level one license to an applicant who meets the requirements of Section 22-10A-8 NMSA 1978.

F. The department shall establish competencies and qualifications for specific grade levels, types and subject areas of level one licensure, including early childhood, elementary, middle school, secondary, special and vocational education.

G. The minimum salary for a level one teacher is fifty thousand dollars (\$50,000) for a standard nine and one-half month contract; provided that teachers in an extended learning time program or K-5 plus program shall receive additional salary at the same rate as their base salary for that teaching time.

**History:** 1978 Comp., § 22-10A-7, enacted by Laws 2003, ch. 153, § 38; 2005, ch. 315, § 5; 2005, ch. 316, § 2; 2010, ch. 113, § 1; 2011, ch. 95, § 1; 2018, ch. 72, § 1; 2019, ch. 206, § 21; 2019, ch. 207, § 21; 2022, ch. 28, § 1.

**Cross references.** — For the public education department, see 9-24-4 NMSA 1978.

**The 2022 amendment,** effective July 1, 2022, increased the minimum salary for a level one teacher; and in Subsection G, after "a level one teacher is", deleted "forty thousand dollars (\$40,000)" and added "fifty thousand dollars (\$50,000)".

**2019 Amendments.** — Laws 2019, ch. 207, § 21, effective June 14, 2019, provided that teachers in an extended learning program or K-5 plus program shall receive additional salary for that teaching time; in Subsection G, after the subsection designation, deleted "With the adoption by the department of a highly objective uniform statewide standard of evaluation for level one teachers", after "level one teacher", deleted "shall be thirty-six thousand dollars (\$36,000)" and added "is provided that teachers in an extended learning program or K-5 plus program shall receive additional salary at the same rate as their base salary for that teaching time".

Laws 2019, ch. 206, § 21, effective June 14, 2019, increased minimum salary levels for level one teachers, and provided that teachers in an extended learning program or K-5 plus program shall receive additional salary for that teaching time; in Subsection G, deleted "With the adoption by the department of a highly objective uniform statewide standard of evaluation for level one teachers", after "level one teacher", deleted "shall be thirty-six thousand dollars (\$36,000)" and added "is forty thousand dollars (\$40,000)", and added "provided that teachers in an

extended learning program or K-5 plus program shall receive additional salary at the same rate as their base salary for that teaching time".

**Applicability.** — Laws 2019, ch. 206, § 29 and Laws 2019, ch. 207, § 29 provided that the provisions of Sections 21 through 24 of this act apply to school personnel contracted to provide services for summer 2019 K-5 plus programs in fiscal year 2019 and to all school personnel in fiscal year 2020 and subsequent fiscal years.

**The 2018 amendment,** effective May 16, 2018, increased the statutory minimum salaries for teachers with a level one license; in Subsection G, deleted "Beginning", after "With the", deleted "2003-2004 school year, with the", after "teacher shall be", deleted "thirty thousand dollars (\$30,000)" and added "thirty-six thousand dollars (\$36,000)", and deleted Subsection H, which related to the requirement that teachers be evaluated by the 2006-2007 school year.

**The 2011 amendment,** effective June 17, 2011, in Subsection D, required that knowledge of the science of teaching reading be included in the assessment examination for elementary licensure beginning on January 1, 2013.

**The 2010 amendment,** effective May 19, 2010, in Subsection A, after "formal mentorship program", added "for at least one full school year".

**The 2005 amendment,** effective April 7, 2005, changed the level one license from a three-year license to a five-year license in Subsection A; required at least three full school years of formal mentorship and intensive performance evaluation before a person may apply for a level two license in Subsection A; and changed the period of time within which to demonstrate progress and competence from three years to five years.

## 22-10A-8. Alternative level one license.

A. Except as provided in Subsection B of this section, the department shall issue an alternative level one license to a person who is at least eighteen years of age and who:

(1) has completed a baccalaureate degree at an accredited institution of higher education and has received a passing score on a state-approved subject-area examination in the subject area of instruction for which the person is applying for a license; or

(2) has completed a master's degree at an accredited institution of higher education, including completion of a minimum of twelve graduate credit hours in the subject area of instruction for which the person is applying for a license; or

(3) has completed a doctoral or law degree at an accredited institution of higher education; and

(4) has passed the New Mexico teacher assessments examination, including for elementary licensure beginning January 1, 2013, a rigorous assessment of the candidate's knowledge of the science of teaching reading; and



(5) within two years of beginning teaching, completes a minimum of twelve semester hours of instruction in teaching principles in a program approved by the department; or

(6) demonstrates to the department, in conjunction with the school district or state agency, that the person has met the department-approved competencies for level one teachers that correspond to the grade level that will be taught.

B. A person seeking an alternative level one special education license to teach students with disabilities shall be at least eighteen years of age and meet the educational and assessment requirements of Paragraphs (1) through (4) of Subsection A of this section, as applicable. In addition, the person shall serve a fifteen-week apprenticeship under a level two or three-A special education teacher while taking related and interwoven coursework at a post-secondary educational institution that is designed to connect pedagogical theory with teaching practice, including:

- (1) lesson planning;
- (2) classroom and behavior management for students with special needs;
- (3) learning theory;
- (4) foundations of special education; and
- (5) culturally and linguistically relevant teaching techniques.

C. A degree or examination referred to in Subsection A of this section shall correspond to the subject area of instruction and the particular grade level that will enable the applicant to teach in a competent manner as determined by the department.

D. An alternative level one or alternative level one special education teacher shall participate in the same mentorship, evaluation and other professional development requirements as other level one teachers.

E. A school district or state agency shall not discriminate against a teacher on the basis that the teacher holds an alternative level one license.

F. The department shall provide by rule for training and other requirements to support the use of unlicensed content area experts as resources in classrooms, team teaching, on-line instruction, curriculum development and other purposes.

**History:** 1978 Comp., § 22-10A-8, enacted by Laws 2003, ch. 153, § 39; 2007, ch. 264, § 1; 2011, ch. 36, § 1; 2011, ch. 95, § 2; 2021, ch. 129, § 1.

**Cross references.** — For the public education department, see 9-24-4 NMSA 1978.

**The 2021 amendment,** effective July 1, 2022, changed the requirements for an alternative level one teaching license for special education teachers; in Subsection A, in the introductory clause, after the subsection designation, added "Except as provided in Subsection B of this section"; added new Subsection B and redesignated former Subsections B through E as Subsections C through F, respectively; and in Subsection D, after "An alternative

level one", added "or alternative level one special education".

**2011 Amendments.** — Laws 2011, ch. 95, § 2, effective June 17, 2011, required that knowledge of the science of teaching reading be included in the assessment examination for elementary licensure beginning on January 1, 2013.

Laws 2011, ch. 36, § 1, effective June 17, 2011, allowed a license to be issued based on a subject-area examination in the subject area for which the license will be issued and required the completion of instruction in teaching principles within two years of beginning teaching.

**The 2007 amendment,** effective June 15, 2007, added Subsection E.

## 22-10A-8.1. Saving clause.

Persons holding alternative level one special education licenses on July 1, 2022 are not required to apply for a new license.

**History:** Laws 2021, ch. 129, § 2.

**Compiler's notes.** — Laws 2021, ch. 129, § 2 was not enacted as part of the School Personnel Act, but was compiled there for the convenience of the user.

**Effective dates.** — Laws 2021, ch. 129, § 3 made Laws 2021, ch. 129, § 2 effective July 1, 2022.

## **22-10A-9. Teacher mentorship program for beginning teachers; purpose; department duties.**

A. The purpose of the teacher mentorship program is to provide beginning teachers with an effective transition into the teaching field, to build on their initial preparation and to ensure their success in teaching; to improve the achievement of students; and to retain capable teachers in the classroom and to remove teachers who show little promise of success.

B. The department shall develop a framework for a teacher mentorship program for all beginning teachers. The program shall provide mentorship services by level two or level three mentors to the beginning teacher for the full school year.

C. The department shall work with licensed school employees, representatives from teacher preparation programs and the higher education department to establish the framework.

D. The framework shall include:

- (1) individual support and assistance for each beginning teacher from a designated mentor;
- (2) structured training for mentors;
- (3) an ongoing, formative evaluation that is used for the improvement of teaching practice;
- (4) procedures for a summative evaluation of beginning teachers' performance during at least the first three years of teaching, including annual assessment of suitability for license renewal, and for final assessment of beginning teachers seeking level two licensure;
- (5) support from local school boards or governing bodies of charter schools, school administrators and other school district or charter school personnel; and
- (6) regular review and evaluation of the teacher mentorship program.

E. The department shall:

- (1) require annual submission and approval of each school district's and charter school's teacher mentorship program;
- (2) provide technical assistance to school districts and charter schools that do not have a well-developed teacher mentorship program in place;
- (3) encourage school districts and charter schools to collaborate with teacher preparation program administrators at institutions of higher education, career educators, educational organizations, regional educational cooperatives and other state and community leaders in the teacher mentorship program; and
- (4) distribute up to two thousand dollars (\$2,000) per year per beginning teacher from the beginning teacher mentorship fund for mentorship programs to school districts and charter schools; provided that no less than fifty percent of available funds shall be distributed on or before September 15 of each fiscal year according to the estimated number of teachers eligible to participate in their mentorship programs and, on or before January 15 of each fiscal year, distribute funding based on the actual number of eligible teachers participating in a mentorship program on the first reporting date of the school year, adjusted for any over- or under-estimation made in the first allocation.

F. Each school district and charter school shall submit as part of its teacher mentorship program submission:

- (1) the number of teachers that have completed each of their mentorship programs the previous spring or summer and have been hired by the school district or charter school for the following school year; and
- (2) a description of the mentorship services that will be provided to each of its teachers, including the name of the teacher, the grade level the teacher has been hired to teach and the name of the public school and, if applicable, school district where the teacher has been hired.

**History:** 1978 Comp., § 22-10A-9, enacted by Laws 2008, ch. 153, § 40; 2005, ch. 315, § 6; 2005, ch. 316, § 3; 2007, ch. 264, § 3; 2009, ch. 119, § 1; 2010, ch. 113, § 2; 2020, ch. 24, § 2.

**Cross references.** — For references to the former commission on higher education, see 9-25-4.1 NMSA 1978.

For the public education department, see 9-24-4 NMSA 1978.

The 2020 amendment, effective May 20, 2020, required school districts and charter schools to have formal teacher mentorship programs that are approved annually by the public education department, required the public education department to provide funding for mentorship



programs from the beginning teacher mentorship fund; in Subsection B, substituted each occurrence of "first-year" with "beginning"; and deleted the remainder of the subsection, which provided for certain funding for mentorship services; in Subsection D, Paragraph D(5), after "school boards", added "or governing bodies of charter schools" and after "school district", added "or charter school"; in Subsection E, after "school district's", added "and charter schools" throughout the subsection, in Paragraph E(1), after "require", added "annual", in Paragraph E(3), after "regional", deleted "service centers" and added "educational cooperatives", and in Paragraph E(4), after "distribute", deleted "no less than fifty percent of available funds" and added "up to two thousand dollars (\$2,000) per year per beginning teacher from the beginning teacher mentorship fund", after "school districts", added "and charter schools; provided that no less than fifty percent of available funds shall be distributed", after "their mentorship", deleted "program on the fortieth day of the school year" and added "programs", after "distribute", deleted "the balance of available funds" and added "funding", and after "program on the", deleted "fortieth day" and added "first reporting date"; in Subsection F, deleted the introductory clause, which provided for developing a model for mentorship services, and added "Each school district and charter school shall submit as part of its teacher mentorship program submission"; deleted former Paragraph F(1) and redesignated the succeeding paragraphs accordingly,

in Paragraph F(1), deleted "an annual report to the department of", and after "hired by", deleted "public high schools, including charter schools" and added "the school district or charter school", and in Paragraph F(2), deleted "an annual report providing".

**The 2010 amendment**, effective May 19, 2010, in the catchline, after "program for", deleted "level one" and added "beginning"; in Subsection B, in the first sentence, after "program for all", deleted "level one" and added "first-year" and added the second and third sentences; and in Subsection E(4), after "estimated number of", changed "beginning teachers on the fortieth day" to "teachers eligible to participate in a mentorship program on the fortieth day" and after "actual number of", changed "beginning teachers on the fortieth day" to "eligible teachers participating in a mentorship program on the fortieth day".

**The 2009 amendment**, effective June 19, 2009, in Paragraph (4) of Subsection E, after "distribute", added "no less than fifty percent of"; after "school district", deleted "annually on a per-teacher basis" and added "on or before September 15 of each fiscal year"; after "according to the", added "estimated"; and after "school year", added the remainder of the sentence.

**The 2007 amendment**, effective June 15, 2007, added Paragraph (4) of Subsection D and Subsection E.

**The 2005 amendment**, effective April 7, 2005, provided in Subsection C(4) that the framework shall include evaluation during at least the first three years of teaching.

## 22-10A-10. Level two licensure.

A. A level two license is a nine-year license granted to a teacher who meets the qualifications for that level and who annually demonstrates essential competency to teach. If a level two teacher does not demonstrate essential competency in a given school year, the school district shall provide the teacher with additional professional development and peer intervention during the following school year. If by the end of that school year the teacher fails to demonstrate essential competency, a school district may choose not to contract with the teacher to teach in the classroom.

B. The department shall issue a level two license to an applicant who has successfully taught at least three, but no more than five, years as a level one teacher or an alternative level one teacher, or a combination of the two, or is granted reciprocity as provided by department rules. An applicant for a level two license shall:

- (1) demonstrate essential competency required by the department as verified by the local superintendent through the highly objective uniform statewide standard of evaluation; and
- (2) meet other qualifications as required by the department.

C. The department shall provide for qualifications for specific grade levels, types and subject areas of level two licensure, including early childhood, elementary, middle, secondary, special and vocational education.

D. The minimum salary for a level two teacher is sixty thousand dollars (\$60,000) for a standard nine and one-half month contract; provided that teachers in an extended learning time program or K-5 plus program shall receive additional salary at the same rate as their base salary for that teaching time.

**History:** 1978 Comp., § 22-10A-10, enacted by Laws 2003, ch. 153, § 41; 2005, ch. 315, § 7; 2005, ch. 316, § 4; 2018, ch. 72, § 2; 2019, ch. 191, § 1; 2019, ch. 206, § 22; 2019, ch. 207, § 22; 2022, ch. 28, § 2.

**The 2022 amendment**, effective July 1, 2022, increased the minimum salary for a level two teacher; and in Subsection D, after "a level two teacher is", deleted "fifty thousand dollars (\$50,000)" and added "sixty thousand dollars (\$60,000)".

**2019 Amendments.** — Laws 2019, ch. 207, § 22, effective June 14, 2019, provided that teachers in an extended learning program or K-5 plus program shall receive

additional salary for that teaching time; in Subsection D, after the subsection designation, deleted "With the adoption by the department of the statewide objective performance evaluation for level two teachers", after "level two teacher", deleted "for a standard nine and one-half month contract shall be forty-four thousand dollars (\$44,000)" and added "is provided that teachers in an extended learning program or K-5 plus program shall receive additional salary at the same rate as their base salary for that teaching time".

Laws 2019, ch. 206, § 22, effective June 14, 2019, increased minimum salary levels for level two teachers; in



Subsection D, after the subsection designation, deleted "With the adoption by the department of the statewide objective performance evaluation for level two teachers", after "level two teacher", deleted "for a standard nine and one-half month contract shall be forty-four thousand dollars (\$44,000)" and added "is fifty thousand dollars (\$50,000) for a standard nine and one-half month contract; provided that teachers in an extended learning program or K-5 plus program shall receive additional salary at the same rate as their base salary for that teaching time".

Laws 2019, ch. 191, § 1, effective June 14, 2019, permitted alternative level one teachers to obtain level two licenses after meeting certain requirements; in Subsection B, after "applicant who", deleted "successfully completes the level one license or is granted reciprocity as provided by department rules; demonstrates" and added "has successfully taught at least three, but no more than five, years as a level one teacher or an alternative level one

teacher, or a combination of the two, or is granted reciprocity as provided by department rules. An applicant for a level two license shall", and added new paragraph designations "(1)" and "(2)".

**Applicability.** — Laws 2019, ch. 206, § 29 and Laws 2019, ch. 207, § 29 provided that the provisions of Sections 21 through 24 apply to school personnel contracted to provide services for summer 2019 K-5 plus programs in fiscal year 2019 and to all school personnel in fiscal year 2020 and subsequent fiscal years.

**The 2018 amendment**, effective May 16, 2018, increased the statutory minimum salaries for teachers with a level two license; and in Subsection D, after "contract shall be", deleted "as follows", deleted former Paragraphs D(1) through D(3) and added "forty-four thousand dollars (\$44,000)".

**The 2005 amendment**, effective April 7, 2005, deleted the former provision that an applicant complete the three year level one license.

## 22-10A-11. Level three licensure; tracks for teachers.

A. A level three-A license is a nine-year license granted to a teacher who meets the qualifications for that level and who annually demonstrates instructional leader competencies. If a level three-A teacher does not demonstrate essential competency in a given school year, the school district shall provide the teacher with additional professional development and peer intervention during the following school year. If by the end of that school year the teacher fails to demonstrate essential competency, a school district may choose not to contract with the teacher to teach in the classroom.

B. The department shall grant a level three-A license to an applicant who has been a level two teacher for at least three years and holds a post-baccalaureate degree or national board for professional teaching standards certification; demonstrates instructional leader competence as required by the department and verified by the local superintendent through the highly objective uniform statewide standard of evaluation; and meets other qualifications for the license.

C. The minimum salary for a level three-A teacher is seventy thousand dollars (\$70,000) for a standard nine and one-half month contract; provided that teachers in an extended learning time program or K-5 plus program shall receive additional salary at the same rate as their base salary for that teaching time.

D. The minimum salary for a counselor who holds a level three or three-A license as provided in the School Personnel Act and rules promulgated by the department shall be the same as provided for level three-A teachers pursuant to Subsection C of this section.

**History:** 1978 Comp., § 22-10A-11, enacted by Laws 2003, ch. 153, § 42; 2005, ch. 315, § 8; Laws 2005, ch. 316, § 5; 2007, ch. 303, § 1; 2007, ch. 304, § 2; 2009, ch. 117, § 1; 2015, ch. 74, § 1; 2015, ch. 103, § 1; 2018, ch. 72, § 3; 2019, ch. 206, § 23; 2019, ch. 207, § 23; 2022, ch. 28, § 3.

**The 2022 amendment**, effective July 1, 2022, increased the minimum salary for a level three-A teacher; and in Subsection C, after "a level three-A teacher is", deleted "sixty thousand dollars (\$60,000)" and added "seventy thousand dollars (\$70,000)".

**2019 Amendments.** — Laws 2019, ch. 206, § 23, effective June 14, 2019, increased minimum salary levels for level three-A teachers; in Subsection C, after the subsection designation, deleted "With the adoption by the department of a highly objective uniform statewide standard of evaluation for level three-A teachers", after "level three-A teacher", deleted "for a standard nine and one-half month contract shall be fifty-four thousand dollars (\$54,000)" and added "is sixty thousand dollars (\$60,000) for a standard nine and one-half month contract; provided that teachers in an extended learning program or K-5

plus program shall receive additional salary at the same rate as their base salary for that teaching time".

Laws 2019, ch. 207, § 23, effective June 14, 2019, provided that teachers in an extended learning program or K-5 plus program shall receive additional salary for that teaching time; in Subsection C, after the subsection designation, deleted "With the adoption by the department of a highly objective uniform statewide standard of evaluation for level three-A teachers", after "level three-A teacher", deleted "for a standard nine and one-half month contract shall be fifty-four thousand dollars (\$54,000)" and added "is provided that teachers in an extended learning program or K-5 plus program shall receive additional salary at the same rate as their base salary for that teaching time".

**Applicability.** — Laws 2019, ch. 206, § 29 and Laws 2019, ch. 207, § 29 provided that the provisions of Sections 21 through 24 apply to school personnel contracted to provide services for summer 2019 K-5 plus programs in fiscal year 2019 and to all school personnel in fiscal year 2020 and subsequent fiscal years.

**The 2018 amendment**, effective May 16, 2018, increased the statutory minimum salaries for teachers with



a level three-A license; and in Subsection C, after "contract shall be", deleted "fifty thousand dollars (\$50,000)" and added "fifty-four thousand dollars (\$54,000)".

**2015 Amendments.** — Laws 2015, ch. 103, § 1, effective June 19, 2015, added a new Subsection D.

Laws 2015, ch. 74, § 1, effective July 1, 2015, in the catchline, after "teachers", deleted "counselors and school administrators"; in Subsection C, after "one-half month contract shall be", deleted "as follows", deleted Paragraphs (1) through (4) and the designation from Paragraph (5), and deleted "for the 2007-2008 school year"; and deleted former Subsections D through G.

**The 2009 amendment,** effective June 19, 2009, in Paragraph (1) of Subsection E, deleted "has been a level three-A teacher for at least one year"; added "holds a level

two license and meets the requirements for a level three-A license"; and added Paragraph (2) of Subsection E.

**The 2007 amendment,** effective June 15, 2007, amended Subsections F and G to implement the 2007 amendment of 22-10A-2 NMSA 1978.

**The 2005 amendment,** effective April 7, 2005, provided in Subsection A that if a level three-A teacher does not demonstrate competency in a school year, the school district shall provide the teacher with professional development and peer intervention during the following school year and that if by the end of that school year the teacher fails to demonstrate competency, the school district may choose not to contract with the teacher to teach in the classroom; and in Subsection F, provided that the minimum salary requirements apply to the 2007-2008 school year.

## 22-10A-11.1. Alternative level two or level three license.

A. At the end of an internship of at least one full school year, the department may issue an alternative level two license to a person who is at least eighteen years of age and who has a post-baccalaureate degree and at least five years' experience teaching at the post-secondary level if the person demonstrates to the department, in conjunction with the school district, charter school, private school or state agency, that the person has met other department-approved competencies for issuance of a level two license that correspond to the grade level and subject area that the person will teach.

B. At the end of an internship of at least one full school year, the department may issue an alternative level three-A or level three-B license to a person who is at least eighteen years of age and who has a post-baccalaureate degree and at least six years' experience teaching or administering at the post-secondary level if the person demonstrates to the department, in conjunction with the school district, charter school, private school or state agency, that the person has met other department-approved competencies for issuance of a level three-A license that correspond to the grade level and subject area that the person will teach or for issuance of a level three-B license for administration.

**History:** Laws 2007, ch. 146, § 1.

**Effective dates.** — Laws 2007, ch. 146, contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

## 22-10A-11.2. Deaf and hard-of-hearing teachers; alternative licensure assessment; saving provision.

A. A person who has a degree from an accredited teacher education program and who is deaf or hard of hearing may elect to demonstrate competency for a level one, two or three license through a portfolio assessment in lieu of all or part of the New Mexico teacher assessment. A person who is deaf or hard of hearing may apply for a lower level of licensure if the person's portfolio assessment does not qualify the person for a higher level. The department shall promulgate rules on the requirements for the portfolio assessment and for who is eligible for licensure pursuant to this section. The department shall provide a process for portfolio review that includes the designation of a review committee consisting of:

- (1) a teacher of deaf and hard-of-hearing students;
- (2) a sign language interpreter;
- (3) a school administrator from the New Mexico school for the deaf;
- (4) the parent of a deaf or hard-of-hearing student;
- (5) a deaf or hard-of-hearing teacher, if one is available; and
- (6) other appropriate persons as determined by the department.

B. Until the rules have been effective for a period deemed sufficient by the department for a deaf or hard-of-hearing person to submit a portfolio, any eligible deaf or hard-of-hearing person

who has a degree from an accredited teacher education program shall be granted a temporary teaching license for the level of licensure for which the person will likely qualify when the person's portfolio is submitted to the department. The temporary teaching license shall be effective for no longer than two school years.

**History:** Laws 2009, ch. 10, § 1.

**Effective dates.** — Laws 2009, ch. 10 contained an emergency clause and was approved March 18, 2009.

### **22-10A-11.3. Level three-B provisional licensure for school principals.**

A. A school district that has a shortage of qualified school principal candidates may request that the department issue a provisional three-B license to a level two teacher whom the school district believes has the potential to be an effective school principal.

B. To qualify for a provisional three-B license, the candidate shall:

- (1) meet the requirements for a level three-A license;
- (2) be enrolled in a department-approved induction and mentoring program in the school district; and
- (3) be accepted into a department-approved school administrator preparation program.

C. The provisional license is a four-year license and is not renewable. To maintain the provisional license, the licensee must receive satisfactory evaluations each year from the school district's mentoring program and from the school administrator preparation program. At the end of the four years, the provisional license may be converted to a regular level three-B license if the candidate:

- (1) satisfactorily completes the school district's mentoring program; and
- (2) satisfactorily completes the department-approved school administrator preparation program.

**History:** Laws 2009, ch. 117, § 2.

**Effective dates.** — Laws 2009, ch. 117 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

### **22-10A-11.4. Level three-B administrator's license; tracks for school administrator licensure.**

A. A level three-B administrator's license is a five-year license granted to an applicant who meets the qualifications for that license. Licenses may be renewed upon satisfactory annual demonstration of instructional leader and administrative competency.

B. The department shall grant a level three-B administrator's license to an applicant who:

- (1) has completed a department-approved administrator preparation program;
- (2) holds a current level two or level three teacher's license; and
- (3) holds a post-baccalaureate degree or national board for professional teaching standards certification.

C. The minimum annual salary for a licensed school principal or assistant school principal is the minimum salary for a level three-A teacher multiplied by the applicable responsibility factor.

D. The department shall adopt a highly objective uniform statewide standard of evaluation, including data sources linked to student achievement and an educational plan for student success progress, for school principals and assistant school principals and rules for the implementation of that evaluation system linked to the level of responsibility at each school level.

E. As used in this section, "level three-B administrator's license" means a five-year license granted to an applicant who meets the qualifications pursuant to this section and department rules.

**History:** Laws 2015, ch. 74, § 2; 2019, ch. 206, § 24; 2019, ch. 207, § 24.

The 2019 amendment, effective June 14, 2019, increased minimum salary levels for a licensed school principal or assistant school principal; in Subsection C, after "school principal", deleted "shall be fifty thousand dollars

(\$50,000)" and added "is the minimum salary for a level three-A teacher".

Laws 2019, ch. 206, § 24 and Laws 2019, ch. 207, § 24, both effective June 14, 2019, enacted identical amendments to this section. The section is set out as amended by Laws 2019, ch. 207, § 24. See 12-1-8 NMSA 1978.



**Applicability.** — Laws 2019, ch. 206, § 29 provided that the provisions of Sections 21 through 24 of this act apply to school personnel contracted to provide services

for summer 2019 K-5 plus programs in fiscal year 2019 and to all school personnel in fiscal year 2020 and subsequent fiscal years.

## **22-10A-12. Limited reciprocity.**

A. A teacher or school principal licensed in another state may be granted a level two or level three license if the teacher or school principal has teaching experience, demonstrates the required competencies and meets other requirements and qualifications for the license for which the teacher or school principal applies, including clearance of the required background check. The local superintendent may require a mentorship period for the licensee if the superintendent deems it necessary. A teacher or school principal who holds an out-of-state license may apply for a lower level license if the teacher or school principal does not meet the requirements for the higher level.

B. The department may grant a level three-B license to a candidate who does not meet the other requirements and qualifications of that license if the candidate has a school administrator license issued in another state and has worked as a school administrator in good standing for at least six years.

**History:** 1978 Comp., § 22-10A-12, enacted by Laws 2003, ch. 153, § 43; 2019, ch. 80, § 1.

The 2019 amendment, effective June 14, 2019, created separate qualifications for the level 3B license,

adding administrator-specific licensing and experience for candidates who do not meet the other requirements and qualifications of that license; and added new subsection designation "A." and Subsection B.

### **22-10A-12.1. Expedited licensure; military service members, spouses and dependents; waiver of fees; veterans.**

A. The department shall, no later than thirty days after a military service member or a veteran with a valid and current or an expired license from another jurisdiction files an application, and provides a background check if required, for a license or a substitute teacher certificate:

(1) process the application; and

(2) issue a license prima facie to a qualified applicant who submits satisfactory evidence that demonstrates the required competencies and meets other requirements and qualifications for the license for which the teacher or school employee applies, including clearance of the required background check. The local superintendent may require a mentorship period for the licensee or certificate holder if the local superintendent deems it necessary. A teacher or school employee who holds an out-of-state license may apply for a lower level license if the teacher or school employee does not meet the requirements for the higher level.

B. A license or a substitute teacher certificate issued pursuant to this section shall not be renewed unless the license or certificate holder satisfies the requirements for the issuance and the renewal of the license or certificate for which the teacher applies. Upon the issuance of a license or certificate pursuant to this section, the department shall notify the license or certificate holder of the requirements for renewing the license or certificate in writing.

C. A military service member or a veteran who is issued a license or certificate pursuant to this section shall not be charged a licensing or certificate fee for the first three years a license or certificate issued pursuant to this section is valid.

D. A license or certificate issued pursuant to this section to an applicant with an expired license or certificate shall not be valid for more than one year.

E. Each entity that issues a license or certificate pursuant to the Public School Code, upon the conclusion of the state fiscal year, shall prepare a report on the number and type of licenses or certificates that were issued during the fiscal year under this section. The report shall be provided to the director of the office of military base planning and support not later than ninety days after the end of the fiscal year.

**History:** Laws 2018, ch. 8, § 1; 2020, ch. 6, § 2; 2021, ch. 92, § 3.

The 2021 amendment, effective June 18, 2021, amended the existing provision that waives license fees for military members and veterans to include the waiver of certain substitute teacher certificate fees, and removed the definitions of terms; in Subsection A, after "provides", deleted "all of the documents required for the application" and added "a background check if required", and after "for a license", added "or a substitute teacher certificate", in Paragraph A(2), after "issue a license", added "prima facie", after "the teacher", added "or school employee", after "period for the licensee", added "or certificate holder", after "A teacher", added "or school employee"; after each occurrence of "license", added "or certificate" throughout; deleted former Subsection E, which defined "military service member" and "veteran", and added a new Subsection E.

The 2020 amendment, effective July 1, 2020, required the public education department to process and issue a license to qualified military service members and veterans within thirty days of application, waived the licensing fees for the first three years of a valid license for military service members and veterans, and amended the definition of "military service member" as used in this section; in the section heading, added "and dependents; waiver of fees; veterans"; in Subsection A, in the introductory paragraph, after "department shall", deleted "as soon as practicable" and added "no later than thirty days", after "military service member", deleted "the spouse of a military service member", and after "files an application," added "and provides all of the documents required for the application"; added a new Subsection C and redesignated former Subsections C and D as Subsections D and E, respectively; and in Subsection E, added Subparagraphs E(1)(b) and E(1)(c).

## 22-10A-13. Native American language and culture certificates.

The department shall issue a Native American language and culture certificate to a person proficient in a Native American language and culture of a New Mexico tribe or pueblo who meets criteria established through a memorandum of agreement between the tribe or pueblo and the public education department. A baccalaureate degree is not required for the person applying for this certificate. The Native American language and culture certificate shall be issued and renewable in accordance with procedures established by the department based on the agreement made with the tribe or pueblo. The minimum annual salary for a person holding a Native American language and culture certificate and working full time in an instructional capacity shall be equal to the minimum annual salary for a level one licensed teacher.

**History:** 1978 Comp., § 22-10A-13, enacted by Laws 2003, ch. 153, § 44; 2022, ch. 40, § 1.

The 2022 amendment, effective May 18, 2022, required the public education department to issue a Native American language and culture certificate to a person meeting Native American language and culture proficiency criteria established through a memorandum of agreement between a tribe or pueblo and the public education department, and provided that the minimum salary for a person holding a Native American language and culture certificate and working full time in an instructional capacity shall be the same as a level one licensed

teacher; and after "The", deleted "state board may" and added "department shall", after "criteria established", deleted "by the state board" and added "through a memorandum of agreement between the tribe or pueblo and the public education department", and after "with procedures established by the", deleted "state board" and added "department based on the agreement made with the tribe or pueblo. The minimum annual salary for a person holding a Native American language and culture certificate and working full time in an instructional capacity shall be equal to the minimum annual salary for a level one licensed teacher".

## 22-10A-14. Certificates of waiver.

A. If a local superintendent or governing authority of a state agency certifies to the department that an emergency exists in the hiring of a qualified person, the department may issue a certificate of teaching waiver or assignment waiver.

B. The department may issue a certificate of teaching waiver to a person who holds a baccalaureate degree but does not meet other requirements for licensure as a level one teacher. Certificates of teaching waivers are one-year waivers and may be renewed only if the holder provides satisfactory evidence of continued progress toward a level one license.

C. At the request of a local superintendent, the department may issue a certificate of assignment waiver to a licensed teacher who is assigned to teach outside the teacher's teaching endorsement area. A certificate of assignment waiver may be renewed each school year if the teacher provides satisfactory evidence of continued progress toward meeting the requirements for endorsement.

**History:** 1978 Comp., § 22-10A-14, enacted by Laws 2003, ch. 153, § 45; 2015, ch. 58, § 13.

The 2015 amendment, effective June 19, 2015, removed a provision relating to adequate yearly progress; in Subsection C, after "teach outside", deleted "his" and

added "the teacher's"; and deleted Subsection D, which prohibited certain teachers from being assigned to schools that have not made adequate yearly progress for two consecutive years.



### 22-10A-15. Substitute teacher certificate.

The department shall provide by rule for the qualifications for a substitute teacher certificate. Substitute teacher certificates shall be issued by the department.

**History:** 1978 Comp., § 22-10A-15, enacted by Laws 2003, ch. 153, § 46; 2004, ch. 92, § 1.

The 2004 amendment, effective July 1, 2004, changed "state board" to "department" in two places and deleted

"A local school board may provide for additional qualifications or requirements as it deems necessary".

### 22-10A-16. Parental notification.

A. Within sixty calendar days from the beginning of each school year, every school district shall issue a notice to parents that they may obtain information regarding the professional qualifications of their children's teachers, instructional support providers and school principals. At a minimum, the information shall include:

- (1) whether the teacher has met state qualifications for licensure for the grade level and subjects being taught by the teacher;
- (2) whether the teacher is teaching under a teaching or assignment waiver;
- (3) the teacher's degree major and any other license or graduate degree held by the teacher; and
- (4) the qualifications of any instructional support providers if the student is served by educational assistants or other instructional support providers.

B. A local superintendent shall give written notice to the parents of those students who are being taught for longer than four consecutive weeks by a substitute teacher or by a person who is not qualified to teach the grade or subject.

C. The local superintendent shall:

- (1) ensure that the notice required by this section is provided by the end of the four-week period following the assignment of that person to the classroom;
- (2) ensure that the notice required by this section is provided in a bilingual form to a parent whose primary language is not English;
- (3) retain a copy of the notice required pursuant to this section; and
- (4) ensure that information relating to teacher licensure is available to the public upon request.

**History:** 1978 Comp., § 22-10A-16, enacted by Laws 2003, ch. 153, § 47.

**Emergency clauses.** — Laws 2003, ch. 153, § 74 contained an emergency clause and was approved April 4, 2003.

### 22-10A-17. Instructional support provider licenses.

A. The department shall license instructional support providers, including educational assistants, school counselors, school social workers, school nurses, speech-language pathologists, psychologists, physical therapists, physical therapy assistants, occupational therapists, occupational therapy assistants, recreational therapists, marriage and family therapists, interpreters for the deaf, diagnosticians and other service providers. The department may provide a professional licensing framework in which licensees can advance in their careers through the demonstration of increased competencies and the undertaking of increased duties.

B. The department shall provide by rule for the requirements for licensure of types of instructional support providers. If an instructional support provider practices a licensed profession, the provider shall provide evidence satisfactory to the department that the provider holds a current, unsuspended license in the profession for which the provider is applying to provide instructional support services. The instructional support provider shall notify the school district and department immediately if the provider's professional license is suspended, revoked or denied. Suspension, revocation or denial of a professional license shall be just cause for discharge or termination and suspension, revocation or denial of the instructional support provider license.

**History:** 1978 Comp., § 22-10A-17, enacted by Laws 2003, ch. 153, § 48; 2004, ch. 27, § 24; 2009, ch. 217, § 2.

**The 2009 amendment**, effective June 19, 2009, in Subsection A, in the first sentence, after "recreational therapist", added "marriage and family therapist".

**The 2004 amendment**, effective May 19, 2004, changed "state department" to "department".

### **22-10A-17.1. Educational assistants; licensing framework; qualifications; minimum salaries.**

A. All persons who perform services as educational assistants in public schools or in those special state-supported schools within state agencies shall hold valid, educational assistant licensure issued by the department. Educational assistants shall be assigned, and serve as assistants, to school staff licensed by the department. While there may be brief periods when educational assistants are alone with and in control of a classroom of students, their primary use shall be to work alongside or under the direct supervision of licensed staff.

B. The department shall, through appropriate rules, institute a licensure system for educational assistants. The highest level of license shall ensure that educational assistants who hold that level of licensure meet the standard for paraprofessionals established in federal statute and regulation for employment in a Title 1 program.

C. A licensed educational assistant who is a resident of New Mexico, who is authorized to work in the United States, who has been employed by a public school in a position that works directly with students for at least two years and is in good standing with the school district and who is enrolled in or accepted by an undergraduate teacher preparation program at a regionally accredited public post-secondary educational institution in New Mexico shall be granted professional leave by that public school to attend a teacher preparation program in New Mexico; provided that the public school may require that the professional leave minimizes disruption to the school day and may require an educational assistant to make up hours in exchange for hours missed from the school day.

D. The minimum annual salary for licensed educational assistants shall be twelve thousand dollars (\$12,000) effective in the 2004-2005 school year.

E. The minimum salaries specified in Subsection D of this section may be adjusted in accordance with appropriations for that purpose in each school year as established by the secretary.

F. School districts shall initiate the implementation of a career salary framework that supports the licensure system in department rules in fiscal year 2005.

G. As used in this section, "teacher preparation program" means a program that has been formally approved as meeting the requirements of the department and that leads to level one teacher licensure, including a program in a two-year post-secondary educational institution that meets the requirements for a teacher education transfer module established pursuant to Subsection C of Section 21-1B-4 NMSA 1978.

**History:** Laws 2004, ch. 30, § 1; 2021, ch. 11, § 8.

**Cross references.** — For Title 1, see 20 U.S.C. 6301.

**The 2021 amendment**, effective July 1, 2021, granted educational assistants professional leave to attend teacher preparation programs in New Mexico if the educational assistants meet certain conditions, defined "teacher preparation program" for purposes of this section, and made technical changes; in Subsection B, deleted "Educational assistants hired on or after January 8, 2002, who provide

instructional support in a Title 1 program, must meet the qualifications for the highest level of licensure on the effective date of this statute. Paraprofessionals hired prior to January 8, 2002 must meet the qualifications for the highest level of licensure by January 8, 2006"; added a new Subsection C and redesignated former Subsections C through E as Subsections D through F, respectively; and added Subsection G.

### **22-10A-17.2. Alternative level three-B licensure; track for instructional support providers.**

A. An alternative level three-B license is a five-year license granted to a school administrator applicant who meets the qualifications for that level. Licenses may be renewed upon satisfactory annual demonstration of instructional leader and administrative competency.

B. The department shall grant an alternative level three-B license to an applicant who is licensed by the department as a school counselor, school social worker, school nurse, speech-language



pathologist, psychologist, physical therapist, physical therapy assistant, occupational therapist, occupational therapy assistant, recreational therapist, marriage and family therapist, interpreter for the deaf or diagnostician and who:

- (1) holds a post-baccalaureate degree;
- (2) has satisfactorily completed department-approved courses in administration and a department-approved administration apprenticeship program; and
- (3) demonstrates instructional leader competence required by the department and verified by the local superintendent through the highly objective uniform statewide standard of evaluation.

C. The minimum annual salary for an alternative level three-B licensed school principal or assistant school principal shall be fifty thousand dollars (\$50,000) multiplied by the applicable responsibility factor.

**History:** Laws 2017, ch. 68, § 1.

**Effective dates.** — Laws 2017, ch. 68 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

## **22-10A-18. School principals; duties.**

In addition to other duties prescribed by law, a school principal shall:

- A. under the general supervision of the local superintendent, assume administrative responsibility and overall instructional leadership for the public school to which he is assigned, including the discipline of students and the planning, operation, supervision and evaluation of the educational program of the school;
- B. recommend to the local superintendent the employment, promotion, transfer, discharge and termination of school employees in his school;
- C. evaluate the performance of school employees and develop professional development plans or job improvement plans to assist school employees to improve;
- D. take disciplinary action against school employees;
- E. develop a proposed budget for the public school, with input from the school council, and submit it to the local superintendent; and
- F. perform other duties assigned to him by the local superintendent to implement the policies of the local school board.

**History:** 1978 Comp., § 22-10A-18, enacted by Laws 2003, ch. 153, § 49.

**Emergency clauses.** — Laws 2003, ch. 153, § 74 contained an emergency clause and was approved April 4, 2003.

## **22-10A-19. Teachers and school principals; accountability; evaluations; sick leave; professional development; peer intervention; mentoring.**

A. The department shall adopt criteria and minimum highly objective uniform statewide standards of evaluation for the annual performance evaluation of licensed school employees. The professional development plan for teachers shall include documentation on how a teacher who receives professional development that has been required or offered by the state or a school district or charter school incorporates the results of that professional development in the classroom.

B. The local superintendent shall adopt policies, guidelines and procedures for the performance evaluation process. Evaluation by other school employees shall be one component of the evaluation tool for school administrators. A teacher's use of personal leave and up to ten days of sick leave shall not affect that teacher's annual performance evaluation; provided that the leave is used consistently with the policy of the local school board or the governing body of the charter school that employs that teacher. An annual performance evaluation may reflect the lowest score with respect to teacher attendance for a teacher who is determined by a school district or charter school to be using sick leave days in a manner inconsistent with a local school board policy, charter

school governing council policy, administrative regulation or an applicable collective bargaining agreement.

C. As part of the highly objective uniform statewide standard of evaluation for teachers, the school principal shall observe each teacher's classroom practice to determine the teacher's ability to demonstrate state-adopted competencies.

D. At the beginning of each school year, teachers and school principals shall devise professional development plans for the coming year, and performance evaluations shall be based in part on how well the professional development plan was carried out.

E. If a level two or three-A teacher's performance evaluation indicates less than satisfactory performance and competency, the school principal may require the teacher to undergo peer intervention, including mentoring, for a period the school principal deems necessary. If the teacher is unable to demonstrate satisfactory performance and competency by the end of the period, the peer interveners may recommend termination of the teacher.

F. At least every two years, school principals shall attend a training program approved by the department to improve their evaluation, administrative and instructional leadership skills.

**History:** 1978 Comp., § 22-10A-19, enacted by Laws 2003, ch. 153, § 50; 2010, ch. 107, § 1; 2019, ch. 12, § 1.

**Cross references.** — For references of the former state board of education, see 9-24-15 NMSA 1978.

**The 2019 amendment,** effective June 14, 2019, provided that a teacher's use of personal leave and up to ten days of sick leave shall not affect the teacher's annual performance evaluation, provided that the leave is used consistently with policies of the local school board or charter school governing body; after "evaluations", added "sick leave"; and in Subsection B, added the last two sentences.

**The 2010 amendment,** effective May 19, 2010, in Subsection A, after "The", changed "state board" to "department", and added the second sentence; designated the former second paragraph of Subsection A as Subsection B; and relettered the succeeding subsections accordingly.

#### ANNOTATIONS

**Structure for teacher evaluation program is within the discretion of the secretary of public education department.** — The legislature has delegated broad authority to the secretary of public education to define how teachers will be evaluated, so long as evaluations are highly objective and uniform statewide. *State ex rel. Stapleton v. Skandera*, 2015-NMCA-044.

Where the secretary of the public education department (secretary) implemented new regulations governing the evaluation of teachers in public schools, and where Subsection A of this section requires the public education department to adopt criteria and minimum highly objective uniform statewide standards of evaluation for the annual performance evaluation of licensed school employees, the

secretary was acting within her statutory authority and exercising her discretion under the statute as long as the teacher evaluation program was objective and uniform; the district court did not err in denying the petition for a writ of mandamus. *State ex rel. Stapleton v. Skandera*, 2015-NMCA-044.

**Department regulation does not violate the public school code.** — Where Subsection A of this section requires the department to adopt uniform statewide standards of evaluation for the annual performance evaluation of licensed school employees, and where the public education department's regulation for evaluation of teachers exempted district-authorized charter schools, the department's regulation did not violate this section because under Section 22-8B-5 NMSA 1978, of the public school code, the legislature expressly exempted charter schools from the public school code's provisions related to teacher evaluations. *State ex rel. Stapleton v. Skandera*, 2015-NMCA-044.

Where Subsection C of this section requires principals to observe each teacher in the classroom as part of the highly objective uniform statewide standard of evaluation for teachers, and where the public education department's regulation for evaluation of teachers required "school leaders" to observe instructional practice of teachers as part of a teacher evaluation program and where "school leaders" includes both principals and assistant principals, the department's regulation did not violate Subsection C of this section because the regulation did not relieve principals of their statutory duty to observe each teacher's performance. *State ex rel. Stapleton v. Skandera*, 2015-NMCA-044.

### 22-10A-19.1. Professional development; systemic framework; requirements; department duties.

A. The department shall develop a systemic framework for professional development that provides training to ensure quality teachers, school principals and instructional support providers and that improves and enhances student achievement. The department shall work with licensed school employees, the higher education department and institutions of higher education to establish the framework.

B. The framework shall include:

(1) the criteria for school districts to apply for professional development funds, including an evaluation component that will be used by the department in approving school district professional development plans;



(2) guidelines for developing extensive professional development activities for school districts that:

(a) improve teachers' knowledge of the subjects they teach and their ability to teach those subjects to all of their students;

(b) are an integral part of the public school and school district plans for improving student achievement;

(c) provide teachers, school administrators and instructional support providers with the strategies, support, knowledge and skills to help all students meet New Mexico academic standards;

(d) are high quality, sustained, intensive and focused on the classroom; and

(e) are developed and evaluated regularly with extensive participation of school employees, parents and organizations with specific subject-area expertise or professional development;

(3) guidelines for integrating career-technical education content into academic instructional practices, including training on best practices to understand state and regional workforce needs and transitions to post-secondary education and the workforce; and

(4) guidelines for funding rigorous professional development for career-technical teachers and educational assistants in the same manner as for teachers and educational assistants of other subjects for which the department has promulgated standards and benchmarks.

C. The department and school districts shall use all available funding sources, including federal Every Student Succeeds Act Title 2 funding, to provide professional development for career-technical teachers and educational assistants.

**History:** Laws 2004, ch. 27, § 2; 2019, ch. 2, § 1.

**Cross references.** — For references to the former commission on higher education, see 9-25-4.1 NMSA 1978.

**The 2019 amendment,** effective June 14, 2019, required professional development for career-technical teachers and educational assistants in the same manner as teachers of other subjects for which the Public

Education Department has promulgated standards and benchmarks, and required the use of federal Every Student Succeeds Act Title II funding for career-technical professional development; in Subparagraph B(2)(e), after "parents", added "and organizations with specific subject-area expertise or professional development;"; added new Paragraphs B(3) and B(4); and added Subsection C.

## 22-10A-19.2. Educator accountability report.

A. The department shall:

(1) design a uniform statewide educator accountability reporting system to measure and track teacher and administrator education candidates from pre-entry to post-graduation in order to benchmark the productivity and accountability of New Mexico's educator work force; provided that the system shall be designed in collaboration with:

(a) all public post-secondary teacher and administrator preparation programs in New Mexico, including those programs that issue alternative or provisional licenses;

(b) the teacher and administrator preparation programs' respective public post-secondary educational institutions; and

(c) the higher education department;

(2) require all public post-secondary teacher and administrator preparation programs to submit the data required for the uniform statewide educator accountability reporting system through the department's student teacher accountability reporting system;

(3) use the uniform statewide educator accountability reporting system, in conjunction with the department's student teacher education accountability reporting system, to assess the status of the state's efforts to establish and maintain a seamless pre-kindergarten through post-graduate system of education;

(4) adopt the format for reporting the outcome measures of each teacher and administrator preparation program in the state; and

(5) issue an annual statewide educator accountability report.

B. The annual educator accountability report format shall be clear, concise and understandable to the legislature and the general public. All annual program and statewide accountability reports shall ensure that the privacy of individual students is protected.

C. Each teacher and administrator preparation program's annual educator accountability report shall include the demographic characteristics of the students and the following indicators of program success:

- (1) the standards for entering and exiting the program;
- (2) the number of hours required for field experience and for student teaching or administrator internship;
- (3) the number and percentage of students needing developmental course work upon entering the program;
- (4) the number and percentage of students completing each program;
- (5) the number and types of degrees received by students who complete each program;
- (6) the number and percentage of students who pass the New Mexico teacher or administrator assessments for initial licensure on the first attempt;
- (7) a description of each program's placement practices; and
- (8) the number and percentage of students hired by New Mexico school districts.

D. The educator accountability report shall include an evaluation plan that includes high performance objectives. The plan shall include objectives and measures for:

- (1) increasing student achievement for all students;
- (2) increasing teacher and administrator retention, particularly in the first three years of a teacher's or administrator's career;
- (3) increasing the percentage of students who pass the New Mexico teacher or administrator assessments for initial licensure on the first attempt;
- (4) increasing the percentage of secondary school classes taught in core academic subject areas by teachers who demonstrate by means of rigorous content area assessments a high level of subject area mastery and a thorough knowledge of the state's academic content and performance standards;
- (5) increasing the percentage of elementary school classes taught by teachers who demonstrate by means of a high level of performance in core academic subject areas their mastery of the state academic content and performance standards; and
- (6) increasing the number of teachers trained in math, science and technology.

E. In addition to the specifications in Subsections C and D of this section, the annual educator accountability report shall also include itemized information on program revenues and expenditures, including staff salaries and benefits and the operational cost per credit hour.

F. The annual educator accountability report shall be adopted by each public post-secondary educational institution, reported in accordance with guidelines established by the department to ensure effective communication with the public and disseminated to the governor, legislators and other policymakers and business and economic development organizations by November 1 of each year.

**History:** Laws 2007, ch. 264, § 2; 2009, ch. 20, § 1.

The 2009 amendment, effective June 19, 2009, changed the name of the uniform statewide teacher education accountability reporting system to the uniform

statewide educator accountability reporting system and included administrators in the uniform statewide educator accountability reporting system.

### **22-10A-19.3. Anti-racism and racial sensitivity training and professional development.**

Each year, all school personnel shall successfully complete an online or in-person anti-racism, racial awareness and sensitivity training or professional development approved by the department that addresses race, racism and racialized aggression and demonstrates how to create and foster an equitable and culturally responsive learning environment for racial minority students.

**History:** Laws 2021, ch. 51, § 9.

**Effective dates.** — Laws 2021, ch. 51 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.



**22-10A-20. Staffing patterns; class load; teaching load.**

A. The individual class load for elementary school teachers shall not exceed twenty students for kindergarten; provided that any teacher in kindergarten with a class load of fifteen to twenty students shall be entitled to the assistance of an educational assistant.

B. The average class load for elementary school teachers at an individual school shall not exceed twenty-two students when averaged among grades one, two and three; provided that any teacher in grade one with a class load of twenty-one or more shall be entitled to the full-time assistance of an educational assistant.

C. The average class load for an elementary school teacher at an individual school shall not exceed twenty-four students when averaged among grades four, five and six.

D. The daily teaching load per teacher for grades seven through twelve shall not exceed one hundred sixty students, except the daily teaching load for teachers of required English courses in grades seven and eight shall not exceed one hundred thirty-five with a maximum of twenty-seven students per class and the daily teaching load for teachers of required English courses in grades nine through twelve shall not exceed one hundred fifty students with a maximum of thirty students per class.

E. Students receiving special education services integrated into a regular classroom for any part of the day shall be counted in the calculation of class load averages. Students receiving special education services not integrated into the regular classroom shall not be counted in the calculation of class load averages. Only classroom teachers charged with responsibility for the regular classroom instructional program shall be counted in determining average class loads. In elementary schools offering only one grade level, average class loads may be calculated by averaging appropriate grade levels between schools in the school district.

F. Class load limits provided for in this section do not apply to band or music classes or athletic electives.

G. The state superintendent [secretary] may waive the individual school class load requirements established in this section. Waivers shall be applied for annually and a waiver shall not be granted for more than two consecutive years. Waivers may only be granted if a school district demonstrates that:

- (1) no portable classrooms are available;
- (2) no other available sources of funding exist to meet its need for additional classrooms;
- (3) the school district is planning alternatives to increase building capacity for implementation within one year; and
- (4) the parents of all children affected by the waiver have been notified in writing:
  - (a) of the statutory class load requirements;
  - (b) that the school district has made a decision to deviate from these class load requirements; and
  - (c) of the school district plan to achieve compliance with the class load requirements.

H. If a waiver is granted pursuant to Subsection G of this section to an individual school, the average class load for elementary school teachers at that school shall not exceed twenty students in grade one and shall not exceed twenty-five students when averaged among grades two, three, four, five and six.

I. Each school district shall report to the department the size and composition of classes subsequent to the fortieth day and the December 1 count. Failure to meet class load requirements within two years shall be justification for the disapproval of the school district's budget by the state superintendent [secretary].

J. The department shall report to the legislative education study committee by November 30 of each year regarding each school district's ability to meet class load requirements imposed by law.

K. Notwithstanding the provisions of Subsection G of this section, the state board [department] may waive the individual class load and teaching load requirements established in this section upon a demonstration of a viable alternative curricular plan and a finding by the state board that the plan is in the best interest of the school district and that, on an annual basis, the plan has been presented to and is supported by the affected teaching staff. The department shall evaluate



the impact of each alternative curricular plan annually. Annual reports shall be made to the legislative education study committee.

L. Teachers shall not be required to perform noninstructional duties except in emergency situations as defined by the state board [department]. For purposes of this subsection, "noninstructional duties" means noon hall duty, noon ground duty and noon cafeteria duty.

**History:** 1978 Comp., § 22-2-8.2, enacted by Laws 1986, ch. 33, § 3; 1987, ch. 320, § 1; 1988, ch. 105, § 1; 1990 (1st S.S.), ch. 3, § 1; 1991, ch. 85, § 1; 1992, ch. 86, § 1; 1993, ch. 226, § 5; 1993, ch. 228, § 1; 1994, ch. 109, § 1; recompiled and amended as § 22-10A-20 by Laws 2003, ch. 153, § 51.

**Recompilations.** — Laws 2003, ch. 153, § 51 recompiled and amended former 22-2-8.2 NMSA 1978 as 22-10A-20 NMSA 1978, effective April, 4, 2003.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**Cross references.** — For student achievement, see 22-2C-1 NMSA 1978 et seq.

**The 2003 amendment,** effective April, 4, 2003, substituted "educational" for "instructional" following "assistance of an" near the end of Subsection A; and near the end of Subsection B; deleted "Effective with the 1994-1995 school year" at the beginning of Subsection C; inserted present Subsection F and redesignated the subsequent paragraphs accordingly; substituted "G" for "F" following "Subsection" near the beginning of present Subsection H; and substituted "Teachers" for "Effective with the 1987-88 school year, certified school instructors" at the beginning of present Subsection L.

**The 1994 amendment,** effective May 18, 1994, substituted the last sentence in Subsection K for the former last two sentences, which read: "For purposes of this subsection, 'noninstructional duties' means noon hall duty, cafeteria duty, ground duty and bus duty. It is the intent of the legislature to maintain the provision of this subsection; provided, however, that for the 1993-94 school year, 'noninstructional duties' shall mean only noon hall duty, noon ground duty and noon cafeteria duty"; and made minor stylistic changes throughout the section.

**The 1993 amendment,** effective June 18, 1993, deleted "and grade one" following "kindergarten" in two places and "twenty-two students for grade two; twenty-four students for grade three; and twenty-five students for grades four through six" in Subsection A; added the provisions of current Subsections B, C, E and G to I; deleted former Subsections C to F, pertaining to the dates for phasing in the provisions of Subsection A, the effective date of the provisions of former Subsection B and the authority of the state superintendent to waive class load requirements in certain cases; redesignated former Subsections B, G, H and I as Subsections E, F, J and K; rewrote Subsection F; added "Notwithstanding the provisions of Subsection F of this section" at the beginning of Subsection J; substituted "1993-94" for "1992-93" in the third sentence of Subsection K; and made minor stylistic changes.

**The 1992 amendment,** effective May 20, 1992, substituted "four hundred" for "400" in Subsection F and "1993-94 school year" for "1992-93 school year" several times throughout the section.

**The 1991 amendment,** effective June 14, 1991, in Subsection C, deleted "and instructional assistant entitlement" following "class load" in Paragraph (2), added present Paragraph (3), redesignated former Paragraphs (3) to (7) as Paragraphs (4) to (8) and substituted "1993-94" for "1992-93" in Paragraph (4), "1994-95" for "1993-94" in Paragraph (5), "1995-96" for "1994-95" in Paragraph (6), "1996-97" for "1995-96" in Paragraph (7), and "1997-98" for "1996-97" in Paragraph (8); substituted "1992-93" for "1991-92" in Paragraph (2) of Subsection D; and substituted "1991-92" for "1990-91" in Subsection I.

**The 1990 (1st S.S.) amendment,** effective July 1, 1990, in Subsection C, updated the school year dates, made changes in the grade level references, and added Paragraphs (5) to (7); rewrote Subsection D; in Subsection F, substituted "with a membership of four hundred or less" for "with an ADM of four hundred or less"; in Subsection G, deleted "for a period not to exceed two years" following "in Subsection A of this section" near the beginning; substituted present Subsection H for the former subsection which read "The state superintendent may waive the individual class load requirements established in Subsection B of this section for a period not to exceed two years upon a demonstration of necessary alternative curricular planning or a temporary shortage of classroom facilities"; and, in Subsection I, substituted "for the 1990-91 school year" for "for the 1987-88 school year and the 1988-89 school year" in the last sentence.

**The 1988 amendment,** effective May 18, 1988, substituted "instructional assistant" for "aide" in Subsections A, C(1), D(1), D(2), and D(4); substituted "twenty-two" for "twenty-three" in Subsection D(2); added present Subsection D(3) and redesignated former Subsection D(3) as present Subsection D(4); substituted "grades three through six" for "grades two through six" in Subsection 4; added present Subsection H and redesignated former Subsection H as present Subsection I; and inserted "and the 1988-89 school year" in present Subsection I.

## ANNOTATIONS

**Amendments to section made in General Appropriations Act were not proper.** — Amendments to this section made in the General Appropriations Act of 1989 were not proper, where the 1989 appropriations measure changed the effective dates for various actions under the statute and enlarged the authority of the state superintendent to waive class load requirements. The amendments constituted general legislation which, though necessary or desirable, could not constitutionally be included in an appropriations bill. 1989 Op. Att'y Gen. No. 89-26.

## 22-10A-20.1. Repealed.

**Repeals.** — Laws 2016, ch. 22, § 2 repealed 22-10A-20.1 NMSA 1978, as enacted by Laws 2014, ch. 77, § 1, relating to individual class load and teaching load, three-year

phase-in, effective May 18, 2016. For provisions of former section, see the 2015 NMSA 1978 on *NMOneSource.com*.



## 22-10A-21. Licensed school employees; employment contracts; duration.

A. All employment contracts between superintendents and licensed school employees shall be in writing on forms approved by the department. These forms shall contain and specify the term of service, the salary to be paid, the method of payment, the causes for discharge during the term of the contract and other provisions required by the rules of the department.

B. All employment contracts between superintendents and licensed school employees shall be for a period of one school year except:

(1) contracts for less than one school year are permitted to fill personnel vacancies that occur during the school year;

(2) contracts for the remainder of a school year are permitted to staff programs when the availability of funds for the programs is not known until after the beginning of the school year;

(3) contracts for less than one school year are permitted to staff summer school programs and to staff federally funded programs in which the federally approved programs are specified to be conducted for less than one school year;

(4) contracts not to exceed three years are allowed at the discretion of the governing authority for superintendents; and

(5) contracts not to exceed three years are allowed at the discretion of the governing authority for licensed school employees in public schools who have been employed for three consecutive school years.

C. Persons employed under contracts for periods of less than one school year as provided in Paragraphs (1) and (2) of Subsection B of this section shall be accorded all the duties, rights and privileges of the School Personnel Act.

D. In determination of eligibility for unemployment compensation rights and benefits for licensed school employees where those rights and benefits are claimed to arise from the employment relationship between governing authorities and licensed school employees, that period of a year not covered by a school year shall not be considered an unemployment period.

E. Except as provided in Section 22-10A-22 NMSA 1978, a licensed school employee employed by contract pursuant to this section has no legitimate objective expectancy of reemployment, and no contract entered into pursuant to this section shall be construed as an implied promise of continued employment pursuant to a subsequent contract.

**History:** 1953 Comp., § 77-8-8, enacted by Laws 1967, ch. 16, § 113; 1975, ch. 306, § 7; 1986, ch. 33, § 19; 1999, ch. 214, § 1; 1978 Comp., § 22-10-11, recompiled as § 22-10A-21 by Laws 2003, ch. 153, § 72; 2019, ch. 298, § 4.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-11 NMSA 1978, as 22-10A-21 NMSA 1978, effective April 4, 2003.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**The 2019 amendment**, effective June 14, 2019, revised the required content of licensed school employee contracts, clarified certain terms and provisions related to licensed school employee contracts, and made technical amendments; added "licensed school employees"; in Subsection A, after "Licensed school", deleted "personnel and between governing authorities of state agencies and certified school instructors" and added "employees", after "causes for", deleted "termination of" and added "discharge during the term of", and after "required by the", deleted "regulations of the board" and added "rules of the department"; in Subsection B, after "licensed school", deleted "personnel and between governing authorities of state agencies and certified school instructors" and added "employees", in Paragraph B(4), after "three years are", deleted "permitted for certified school

administrators in public schools who are engaged in administrative functions for more than one-half of their employment time" and added "allowed at the discretion of the governing authority for superintendents", and in Subsection E, after "Section", changed "22-10-12" to "22-10A-22".

**The 1999 amendment**, effective June 18, 1999, substituted "three years" for "two years" in Paragraph B(4).

### ANNOTATIONS

**Covenant of good faith and fair dealing.** — Where a school teacher alleged that school administrators breached the covenant of good faith and fair dealing by acting in bad faith in evaluating her job performance for the purpose of driving the teacher from her job, and the teacher was not demoted, did not suffer a reduction in pay or loss of employment benefits, and was not disqualified for Level III licensure or denied a Level III license, the teacher's claim failed as a matter of law. *Henning v. Rounds*, 2007-NMCA-139, 142 N.M. 803, 171 P.3d 317.

**Statutory claims beyond contract term.** — Subsection E of Section 22-10A-22 NMSA 1978 did not preclude former assistant superintendent of a school district from pursuing damage claims under Title VII, Americans With Disabilities Act, Age Discrimination in Employment Act and New Mexico Human Rights Act beyond the term of the assistant superintendent's written contract. *Keller v. Board of Educ. of City of Albuquerque*, 182 F. Supp.2d 1148 (D.N.M. 2001).



**Contracts governed by ordinary rules of contract law.** — Contracts for employment made by a school district and its employees are governed by the ordinary rules of contract law, except where expressly restricted by statute. *Board of Educ. v. Jennings*, 1982-NMCA-135, 98 N.M. 602, 651 P.2d 1037.

**Subsection A is directory only.** — Because Subsection A does not prescribe the result that will follow if a contract is not on a form approved by the state board, it is directory only. *Board of Educ. v. Jennings*, 1982-NMCA-135, 98 N.M. 602, 651 P.2d 1037.

**Words "for any other good and just cause" in employment contract** did not allow the state board of education to revoke a teacher's certificate for any reason that was not related to the purposes of the Certified School Personnel Act. *N.M. State Bd. of Educ. v. Stoudt*, 1977-NMSC-099, 91 N.M. 183, 571 P.2d 1186.

**Extension of two-year contract.** — A two-year contract between a local school board and a certified school administrator may not be extended for an additional year, in light of this section, which states that a school administrator's contract may not exceed two years (now three years). 1988 Op. Att'y Gen. No. 88-55.

## 22-10A-22. Licensed school employees; notice of reemployment; termination.

On or before fifteen working days prior to the last day of the school year, the superintendent shall serve written notice of reemployment or termination on each licensed school employee employed by the public school. A notice of reemployment shall be an offer of employment for the ensuing school year. A notice of termination shall be a notice of intention not to reemploy for the ensuing school year. Failure of the superintendent to serve a written notice of reemployment or termination on a licensed school employee shall be construed to mean that notice of reemployment has been served upon the licensed school employee for the ensuing school year according to the terms of the existing employment contract but subject to any additional compensation allowed other licensed school employees of like qualifications and experience. Nothing in this section shall be construed to mean that failure of a superintendent to serve a written notice of reemployment or termination shall automatically extend a licensed school employee's employment contract for a period in excess of one school year.

**History:** 1953 Comp., § 77-8-9, enacted by Laws 1967, ch. 16, § 114; 1975, ch. 306, § 8; 1986, ch. 33, § 20; 1978 Comp., § 22-10-12, recompiled as § 22-10A-22 by Laws 2003, ch. 153, § 72; 2019, ch. 238, § 5.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-12 NMSA 1978, as 22-10A-22 NMSA 1978, effective April 4, 2003.

**Cross references.** — For grounds and procedure for refusal of reemployment of certified school instructors, with tenure rights, see 22-10A-24 NMSA 1978.

For applicability of provisions of section, see 22-10A-26 NMSA 1978.

**The 2019 amendment**, effective June 14, 2019, changed certain requirements for notice of reemployment or termination, and clarified certain terms and provisions related to notice of reemployment or termination; added "Licensed school employees"; and after "On or before", added "fifteen working days prior to".

### ANNOTATIONS

**Failure to serve required notice upon nontenured teacher.** — Because appeal to the state board was available only to tenured teachers for a local board's failure to serve the required notice, the failure of the local board to give a nontenured teacher the written notice required by the regulation 14 days before the end of the school year did not require that the court order her re-employment for an additional year. *Provoda v. Maxwell*, 1991-NMSC-022, 111 N.M. 578, 808 P.2d 28.

**Failure to comply with regulation requiring notice.** — A regulation of the state board of education requiring that notice of reemployment or termination be served no later than 14 days before the end of the school year did not give a nontenured teacher an enforceable right to notice before the end of the school year, and therefore the board's notice of intent not to employ, timely served in accordance

with this section, complied with the law. *Giagreco v. Murlless*, 1997-NMCA-061, 123 N.M. 498, 943 P.2d 532.

**Reemployment offer to come from school board.** — An official offer to reemploy can come only from the school board; thus, a teacher's purported acceptance of employment based on a memorandum from his supervisors of their intent to recommend his reemployment did not form an employment contract. *Giagreco v. Murlless*, 1997-NMCA-061, 123 N.M. 498, 943 P.2d 532.

**Administrators have no tenure rights.** — While certified school instructors have procedural due process and certain other rights under the School Personnel Act, administrators have no tenure rights and therefore have no expectation of continued employment. *Swinney v. Deming Bd. of Educ.*, 1994-NMSC-039, 117 N.M. 492, 873 P.2d 238.

**Mandatory construction.** — Statutes requiring giving of notice of reemployment or dismissal are generally construed as mandatory, and in the absence of the giving of such notice reemployment is usually held to be effected. 1961-62 Op. Att'y Gen. No. 62-129.

**Law reviews.** — For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools §§ 204 et seq.; 231 to 233.

Right to dismiss public schoolteacher on ground that services are no longer needed, 100 A.L.R.2d 1141.

What constitutes "incompetency" or "inefficiency" as a ground for dismissal or demotion of public schoolteacher, 4 A.L.R.3d 1090.

Sufficiency of notice of intention to discharge or not to rehire teacher, under statutes requiring such notice, 52 A.L.R.4th 301.

Liability of school authorities for hiring or retaining incompetent or otherwise unsuitable teacher, 60 A.L.R.4th 260.



Right to unemployment compensation or social security benefits of teacher, or other school employee, 33 A.L.R.5th 643.

78 C.J.S. Schools and School Districts § 214 et seq.

## **22-10A-23. Licensed school employees; reemployment; acceptance; rejection; binding contract.**

A. Each licensed school employee shall deliver to the superintendent a written acceptance or rejection of reemployment for the ensuing school year within fifteen days from the following:

- (1) the date written notice of reemployment is served upon the licensed school employee; or
- (2) the last day of the school year when no written notice of reemployment or termination is served upon the licensed school employee on or before fifteen working days prior to the last day of the school year.

B. Delivery of the written acceptance of reemployment by a licensed school employee creates a binding employment contract between the licensed school employee and the superintendent until the parties enter into a formal written employment contract. Written employment contracts between the superintendent and licensed school employees shall be executed by the parties not later than ten days before the first day of a school year.

**History:** 1953 Comp., § 77-8-10, enacted by Laws 1967, ch. 16, § 115; 1975, ch. 306, § 9; 1986, ch. 33, § 21; 1978 Comp., § 22-10-13, recompiled as § 22-10A-23 by Laws 2003, ch. 153, § 72; 2019, ch. 238, § 6.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-13 NMSA 1978, as 22-10A-23 NMSA 1978, effective April 4, 2003.

**The 2019 amendment,** effective June 14, 2019, clarified certain terms throughout the section; added "Licensed school employees"; and in Subsection A, in Paragraph A(2), after "on or before", added "fifteen working days prior to".

### **ANNOTATIONS**

**Failure to serve required notice upon nontenured teacher.** — A regulation of the state board of education requiring that notice of reemployment or termination be served no later than 14 days before the end of the school year did not give a nontenured teacher an enforceable

right to notice before the end of the school year, and therefore the board's notice of intent not to employ, timely served in accordance with Section 22-10-12 NMSA 1978 (now Section 22-10A-22 NMSA 1978), complied with the law. *Giangreco v. Murlless*, 1997-NMCA-061, 123 N.M. 498, 943 P.2d 532.

**Necessity for acceptance.** — Where teacher did not deliver an acceptance to school board within statutory period, there was no binding contract of employment. This is the case even if the teacher did not receive notice of termination of employment. *Hyde v. Taos Mun. Sch.*, 1972-NMSC-061, 84 N.M. 206, 501 P.2d 194.

**Time requirement for acceptance.** — This section does not authorize written acceptance within 15 days of the end of school, but from the end of school; moreover, the entirety of the section indicates that acceptance is contemplated only after school has ended without the teacher having received any notice. *Provoda v. Maxwell*, 1991-NMSC-022, 111 N.M. 578, 808 P.2d 28.

## **22-10A-24. Termination decisions; local school board; governing authority of a state agency; procedures.**

A. A local school board or governing authority of a state agency may terminate a licensed school employee, excluding licensed educational assistants who have not been offered and accepted the third consecutive contract, for any reason it deems sufficient. A local school board or governing authority of a state agency may terminate a nonlicensed school employee or a licensed educational assistant with less than one year of employment for any reason it deems sufficient. Upon request of the employee, the local superintendent or state agency administrator shall provide written reasons for the decision to terminate. The reasons shall be provided within ten working days of the request. The reasons shall not provide a basis for contesting the decision under the School Personnel Act.

B. Before terminating a nonlicensed school employee or a licensed educational assistant, the local school board or governing authority shall serve the employee or assistant with a written notice of termination.

C. A licensed school employee who has been employed by a school district or state agency for more than two consecutive years or a nonlicensed school employee or licensed educational assistant who has been employed for more than one year and who receives a notice of termination pursuant to either Section 22-10A-22 NMSA 1978 or this section may request an opportunity to make a statement to the local school board or governing authority on the decision to terminate the



employee or assistant by submitting a written request to the local superintendent or state agency administrator within five working days from the date written notice of termination is served upon the employee or assistant. The employee or assistant may also request in writing the reasons for the termination action. The local superintendent or state agency administrator shall provide written reasons for the notice of termination to the employee or assistant within five working days from the date the written request for a meeting and the written request for the reasons were received by the local superintendent or state agency administrator.

D. A local school board or governing authority may not terminate a licensed school employee who has been offered and accepted a third-year contract or a nonlicensed school employee or licensed educational assistant who has been employed by a school district or state agency for more than one year without just cause.

E. The employee's request pursuant to Subsection C of this section shall be granted if the employee responds to the local superintendent's or state agency administrator's written reasons as provided in Subsection C of this section by submitting in writing to the local superintendent or state agency administrator a contention that the decision to terminate was made without just cause. The written contention shall specify the grounds on which it is contended that the decision was without just cause and shall include a statement of the facts that the employee believes support the employee's contention. This written statement shall be submitted within ten working days from the date the employee receives the written reasons from the local superintendent or state agency administrator. The submission of this statement constitutes a representation on the part of the employee that the employee can support the employee's contentions and an acknowledgment that the local school board or governing authority may offer the causes for its decision and any relevant data in its possession in rebuttal of the employee's contentions.

F. A local school board or governing authority shall meet to hear the employee's statement in no less than five or more than fifteen working days after the local school board or governing authority receives the statement. The hearing shall be conducted informally in accordance with the provisions of the Open Meetings Act [Chapter 10, Article 15 NMSA 1978]. The employee and the local superintendent or state agency administrator may each be accompanied by a person of the employee's and the local superintendent's or state agency administrator's choice. First, the local superintendent shall present the factual basis for the determination that just cause exists for the termination of the employee, limited to those reasons provided to the employee pursuant to Subsection C of this section. Then, the employee shall present the employee's contentions, limited to those grounds specified in Subsection E of this section. The local school board or governing authority may offer such rebuttal testimony as it deems relevant. All witnesses may be questioned by the local school board or governing authority, the employee or the employee's representative and the local superintendent or state agency administrator or the local superintendent's or state agency administrator's representative. The local school board or governing authority may consider only such evidence as is presented at the hearing and need consider only such evidence as it considers reliable. The local school board or governing authority shall notify the employee and the local superintendent or state agency administrator of its decision in writing within five working days from the conclusion of the meeting.

**History:** 1953 Comp., § 77-8-11, enacted by Laws 1967, ch. 16, § 116; 1975, ch. 306, § 10; 1979, ch. 86, § 1; 1983, ch. 103, § 1; reenacted by Laws 1986, ch. 33, § 22; 1987, ch. 320, § 5; 1990, ch. 90, § 2; 1991, ch. 187, § 4; 1993, ch. 226, § 27; 1994, ch. 110, § 2; 1978 Comp., § 22-10-14, recompiled as § 22-10A-24 by Laws 2003, ch. 153, § 72; 2019, ch. 232, § 1; 2021, ch. 94, § 6.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-14 NMSA 1978, as 22-10A-24 NMSA 1978, effective April 4, 2003.

**The 2021 amendment**, effective June 18, 2021, allowed termination of school employment or school volunteer position decisions to be made public; in Subsection A, deleted "The reasons shall not be publicly disclosed by the local superintendent, state agency administrator, local

school board or governing authority"; and in Subsection C, deleted "Neither the local superintendent or state agency administrator nor the local school board or governing authority shall publicly disclose its reasons for termination."

**The 2019 amendment**, effective June 14, 2019, clarified that local school boards and governing authorities may terminate any licensed school employee, with certain exceptions, for any reason deemed sufficient, and clarified that licensed school employees who have been offered and are accepting a third-year contract, and nonlicensed school employees or licensed educational assistants employed more than one year, cannot be terminated without just cause; in Subsection A, after "state agency may terminate", deleted "an employee with fewer than three



years of consecutive service" and added "a licensed school employee, excluding licensed educational assistants who have not been offered and accepted the third consecutive contract," after "deems sufficient," added "A local school board or governing authority of a state agency may terminate a nonlicensed school employee or a licensed educational assistant with less than one year of employment for any reason it deems sufficient," after "superintendent or", added "state agency", and after "superintendent," added "state agency"; in Subsection B, after "terminating a", deleted "noncertified" and added "nonlicensed", after "school employee", added "or a licensed educational assistant", and after "serve the employee", added "or assistant"; in Subsection C, after the subsection designation, deleted "An" and added "A licensed school", after "district or state agency for", deleted "three" and added "more than two", after "consecutive years", added, "or a nonlicensed school employee or licensed educational assistant who has been employed for more than one year", after "Section", changed "22-10-12" to "22-10A-22", after "superintendent or", added "state agency", after "served upon", deleted "him" and added "the employee or assistant", after each occurrence of "employee", added "or assistant", after each occurrence of "superintendent or", added "state agency"; in Subsection D, after "may not terminate", deleted "an employee who has been employed by a school district or state agency for three consecutive years" and added "a licensed school employee who has been offered and accepted a third-year contract or a nonlicensed school employee or licensed educational assistant who has been employed by a school district or state agency for more than one year"; in Subsection E, after each occurrence of "superintendent or", added "state agency"; and in Subsection F, after each occurrence of "superintendent or", added "state agency", and after "accompanied by a person of", deleted "his" and added "the employee's and the local superintendent's or state agency administrator's".

**The 1994 amendment**, effective May 18, 1994, substituted "employee" for "certified school instructor" throughout the section, rewrote the first sentence of Subsection A, added Subsection B and redesignated former Subsections B through E as Subsections C through F and made related changes, substituted "or this section" for "or Subsection A of this section" in Subsection C, and substituted "terminate" for "refuse to reemploy" in Subsection D.

**The 1993 amendment**, effective July 1, 1993, substituted "Subsection A" for "Subsection B" in the first sentence and "were received" for "was received" in the third sentence of Subsection B; substituted "Subsection B" for "Subsection C" in two places in the first sentence of Subsection D and in the fourth sentence of Subsection E; and substituted "Subsection D" for "Subsection E" in the fifth sentence of Subsection E.

**The 1991 amendment**, effective June 14, 1991, rewrote this section to the extent that a detailed comparison would be impracticable.

**The 1990 amendment**, effective May 16, 1990, inserted "governing authority of a state agency" in the catchline and in the first sentence of Subsection A and "or governing authority" following "local school board", "or state agency" following "school district", and "local" before "superintendent" throughout the section; added the final four sentences in Subsection A; in Subsection B, substituted "five working days" for "five calendar days" in two places and deleted "local school board's" preceding "action to terminate him" at the end of the second sentence; in Subsection C, inserted "state agency" in Subparagraph (c) of Paragraph (2); substituted "ten working days" for "five calendar days" in the third sentence of Subsection D; and, in Subsection E, substituted "in no less than five or more than fifteen working days" for "within ten calendar days"

in the first sentence and "five working days" for "five calendar days" in the final sentence.

## ANNOTATIONS

### I. GENERAL CONSIDERATION.

#### II. TENURE RIGHTS.

##### A. GENERALLY.

##### B. PROCEDURE FOR REFUSAL TO REEMPLOY.

##### C. HEARINGS.

### I. GENERAL CONSIDERATION.

**Effect of 1994 amendment.** — The 1994 amendment to this section and Section 22-10-14.1 NMSA 1978 (now Section 22-10A-25 NMSA 1978) does not protect a non-certified public school employee who was terminated a few days after the effective date of the amendment when the termination was authorized by the terms of a contract that predated the effective date of the amendment. *Gadsden Fed'n of Teachers v. Board of Educ.*, 1996-NMCA-069, 122 N.M. 98, 920 P.2d 1052.

### II. TENURE RIGHTS.

#### A. GENERALLY.

**Compiler's notes.** — Most of the cases cited in the notes below were decided under this section as it existed prior to the 1986 reenactment. Prior to the reenactment, the section provided for tenure rights for certified school instructors employed for three consecutive school years and having entered into an employment contract for a fourth consecutive school year. See now 22-10-11E NMSA 1978 [now 22-10A-21 NMSA 1978], which provides that, except as provided in 22-10-12 NMSA 1978 [now 22-10A-22 NMSA 1978], no person employed by contract pursuant to 22-10-11 NMSA 1978 [now 22-10A-21 NMSA 1978] shall have a legitimate objective expectancy of reemployment, and Subsection F of this section.

**Drawing on facts predating statute not retroactive application.** — The supreme court has held that teacher tenure laws are prospective in application. However, a statute is not applied retroactively merely because it draws upon antecedent facts for its operation. *Lucero v. Board of Regents*, 1978-NMSC-054, 91 N.M. 770, 581 P.2d 458.

**Persons to whom applicable.** — Only certified school instructors with three or more years of service are entitled to procedural due process prior to nonrenewal; the statutory scheme does not give similar protection to administrators at the expiration and nonrenewal of their contracts. *Cole v. Ruidoso Mun. Sch.*, 947 F.2d 903 (10th Cir. 1991).

**Tenure rights of administrators.** — While certified school instructors have procedural due process and certain other rights under the School Personnel Act, administrators have no tenure rights and therefore have no expectation of continued employment. *Swinney v. Deming Bd. of Educ.*, 1994-NMSC-039, 117 N.M. 492, 873 P.2d 238.

The legislature purposely excluded school administrators from the protections afforded certified school instructors. *Naranjo v. Board of Educ. of Española Pub. Schs.*, 1995-NMSC-015, 119 N.M. 401, 891 P.2d 542.

**Teacher at state school held entitled to tenure.** — Where a certified teacher seeking recognition as a tenured teacher had been employed for three consecutive years prior to the effective date of the 1975 amendment making this section applicable to state agencies, and had entered into a contract for the fourth consecutive year after the amendment became effective, his years of service prior to that date could be counted towards the required number of years of employment, since a contract had been entered into after the effective date of the amendment. *Lucero v. Board of Regents*, 1978-NMSC-054, 91 N.M. 770, 581 P.2d 458.

**Section required only that a certified school instructor be employed by a school district; it did not**



limit that employment to teaching positions or to employment in a single school within that district. *Penasco Indep. Sch. Dist. No. 4 v. Lucero*, 1974-NMCA-099, 86 N.M. 683, 526 P.2d 825.

**Instructor lost tenure rights upon employment as administrator.** — A certified school instructor who had previously acquired tenure rights as a certified school instructor with a public school district lost those tenure rights as a result of being reemployed for the next consecutive school year as a certified school administrator. *Atencio v. Board of Educ.*, 1982-NMSC-140, 99 N.M. 168, 655 P.2d 1012 (decided prior to 1983 amendment adding last sentence of Subsection B), superseded by statute. *Naranjo v. Board of Educ. of Española Pub. Schs.*, 1995-NMSC-015, 119 N.M. 401, 891 P.2d 542.

An individual who voluntarily changed his teacher status to become a certified school administrator did not retain a property interest as a tenured certified school instructor entitled to protection by due process. *Atencio v. Board of Educ.*, 1982-NMSC-140, 99 N.M. 168, 655 P.2d 1012 (decided prior to 1983 amendment), superseded by statute. *Naranjo v. Board of Educ. of Española Pub. Schs.*, 1995-NMSC-015, 119 N.M. 401, 891 P.2d 542.

**Reduction in force or staff realignment.** — A tenured teacher subject to termination under a reduction-in-force plan is entitled to bump a non-tenured teacher holding a position for which both are certified, or take priority over a non-tenured teacher in obtaining the necessary certification for a vacant position for which neither is presently certified. However, a tenured teacher can be terminated and a non-tenured teacher retained as an alternative to a staff realignment which would seriously affect the educational program. *N.M. State Bd. of Educ. v. Abeyta*, 1988-NMSC-017, 107 N.M. 1, 751 P.2d 685.

**Reemployment offer to come from school board.** — An official offer to reemploy can come only from the school board; thus, a teacher's purported acceptance of employment based on a memorandum from his supervisors of their intent to recommend his reemployment did not form an employment contract. *Giangreco v. Murlless*, 1997-NMCA-061, 123 N.M. 498, 943 P.2d 532.

#### B. PROCEDURE FOR REFUSAL TO REEMPLOY.

**Service of notice of termination during third year of employment.** — A certified teacher who is served during, but prior to the completion of, the teacher's third year of teaching with notice of the school board's intent not to renew the teacher's contract may be terminated only after a hearing and based upon good cause. *Weiss v. Board of Educ. of Santa Fe Pub. Sch.*, 2014-NMCA-100, cert. denied, 2014-NMCERT-009.

Where plaintiff, who was a certified teacher, received notice that the school board would not renew plaintiff's teaching contract for a fourth year; the notice was given to plaintiff two weeks before plaintiff had completed plaintiff's third consecutive year of teaching; and the school board denied plaintiff's request for a hearing, the school board could terminate plaintiff only after a hearing and based upon good cause. *Weiss v. Board of Educ. of Santa Fe Pub. Sch.*, 2014-NMCA-100, cert. denied, 2014-NMCERT-009.

**Sufficiency of notice of termination.** — Where teacher with tenure rights was only given two days notice - excluding the date of service - before the end of the school year, and under the regulations prescribed by the state board she was entitled to no less than 14 days notice before the end of the school year, the conduct of the local board in failing to follow the regulation amounted to unfairness, and although teacher may have known her principal was going to recommend to the local board that she not be reemployed, this placed no burden upon her to employ an attorney, or to otherwise begin the preparation

of her defense, in anticipation of the ruling of the local board. She was entitled, insofar as the section and the rule permitted, to a timely notice, pursuant to the requirements of the rule. *Brininstool v. N.M. State Bd. of Educ.*, 1970-NMCA-034, 81 N.M. 319, 466 P.2d 885.

**Formality of notice of termination.** — Evaluation reports by a school principal and a supervisor addressed "To Whom It May Concern," copies of which were sent to counsel for teacher, did not constitute the written statement of the cause or causes for his dismissal even though the letter by which these evaluation reports were transmitted referred to them as formal charges on file with the local board, and also advised of complaints and observations made against teacher by school patrons and parents. *Belen Mun. Bd. of Educ. v. Sanchez*, 1965-NMSC-088, 75 N.M. 386, 405 P.2d 229.

**Grounds for termination.** — Absent grounds personal to a teacher, to terminate his services it is necessary to show affirmatively that there is no position available which he is qualified to teach, and where a local board asserts no grounds personal to the teacher, it is up to them to prove that no position is available for which he is qualified. *Penasco Indep. Sch. Dist. No. 4 v. Lucero*, 1974-NMCA-099, 86 N.M. 683, 526 P.2d 825; *Fort Sumner Mun. Sch. Bd. v. Parsons*, 1971-NMCA-066, 82 N.M. 610, 485 P.2d 366, cert. denied, 82 N.M. 601, 485 P.2d 357.

#### C. HEARINGS.

**Due process required.** — Exhaustion of administrative remedies as a precursor to plaintiff's suit for wrongful termination was not required where school district did not inform plaintiff of his right to attend the board meeting where his termination would be discussed, and thereby deprived plaintiff of his due process right to employ the administrative process mandated by this section. *Franco v. Carlsbad Mun. Schs.*, 2001-NMCA-042, 130 N.M. 543, 28 P.3d 531.

**Hearing prerequisite to appeal.** — It is well settled that a teacher must first seek a hearing before the local board and, if dissatisfied there, appeal from an adverse decision of the local board to the state board of education. *Shepard v. Board of Educ.*, 1970-NMSC-067, 81 N.M. 585, 470 P.2d 306; (decided under former Section 22-10-19 NMSA 1978, repealed in 1986).

The right to appeal to the state board, affirmatively authorized, is from a decision of the local board "after a hearing." The negative implication is that where no hearing has been held, an appeal to the state board is not authorized. Absent a hearing before the local board, neither the state board nor the court of appeals has jurisdiction over any matter presented. *Quintana v. State Bd. of Educ.*, 1970-NMCA-074, 81 N.M. 671, 472 P.2d 385, cert. denied, 81 N.M. 668, 472 P.2d 382 (decided under former Section 22-10-19 NMSA 1978, repealed in 1986).

A teacher whose contract was not renewed and who so desired had an obligation to call for a hearing before the local school board, to be followed by an appeal to state board of education in event decision of the local board was unsatisfactory, before resorting to the courts for relief. *Jones v. Board of Sch. Dirs.*, 1951-NMSC-025, 55 N.M. 195, 230 P.2d 231 (decided under former Section 22-10-19 NMSA 1978, repealed in 1986).

**Local board's decision must rest on its conclusion of law and the conclusion must in turn be supported by one or more findings of fact.** *Morgan v. N.M. State Bd. of Educ.*, 1971-NMCA-102, 83 N.M. 106, 488 P.2d 1210, cert. denied, 83 N.M. 105, 488 P.2d 1209 (decided under former Section 22-10-19 NMSA 1978, repealed in 1986).

**Admission of hearsay evidence.** — Where discharged school principal, appealing from his discharge for insubordination, complained of the admission of four written exhibits at the local board hearing on the basis



that the documents were hearsay and prejudicial to his interest, and where none of the four exhibits contained evidence of insubordination during the term of the current contract, but each tended to establish that principal's insubordination during the current contract was willful, admission of the written hearsay was not error, since it could not have said that principal's right to a fair hearing, or his interests, was substantially prejudiced thereby. *McAlister v. N.M. State Bd. of Educ.*, 1971-NMCA-088, 82 N.M. 731, 487 P.2d 159 (decided under former Section 22-10-19 NMSA 1978, repealed in 1986).

**Constitutionality.** — The procedures in this section, 22-10-14.1 (now 22-10A-25 NMSA 1978), 22-10-17 (now 22-10A-27 NMSA 1978), and 22-10-17.1 NMSA 1978 (now 22-10A-28 NMSA 1978) satisfy the requirements of the due process clause of the fourteenth amendment to the constitution of the United States. 1988 Op. Att'y Gen. No. 88-05.

**"Employed"** required that a contract be entered into for four consecutive years and services be rendered. 1968 Op. Att'y Gen. No. 68-70.

**Teacher did not acquire tenure** where the three years of service were not consecutive, being interrupted

by a leave of absence for one year. 1968 Op. Att'y Gen. No. 68-70.

**Policy behind tenure statute.** — The legislature recognized the sound public policy of retaining in the public school system teachers who had become increasingly valuable by reason of their experience and had by statute assured these public servants an indefinite tenure of position during satisfactory performance of their duties. 1963-64 Op. Att'y Gen. No. 63-152.

**Law reviews.** — For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Request for hearing, sufficiency under statute requiring hearing on request before discharge, 89 A.L.R.2d 1018.

Who is "teacher" for purposes of tenure statute, 94 A.L.R.3d 141.

Termination of teacher's tenure status by resignation, 9 A.L.R.4th 729.

Validity and construction of statutes, ordinances, or regulations requiring competency tests of schoolteachers, 64 A.L.R.4th 642.

## 22-10A-25. Appeals; independent arbitrator; qualifications; procedure; binding decision.

A. An employee who is still aggrieved by a decision of a local school board or governing authority rendered pursuant to Section 22-10A-24 NMSA 1978 may appeal the decision to an arbitrator. A written appeal shall be submitted to the local superintendent or administrator within five working days from the receipt of the local school board's or governing authority's written decision or the refusal of the board or authority to grant a hearing. The appeal shall be accompanied by a statement of particulars specifying the grounds on which it is contended that the decision was impermissible pursuant to Subsection E of Section 22-10A-24 NMSA 1978 and including a statement of facts supporting the contentions. Failure of the employee to submit a timely appeal or a statement of particulars with the appeal shall disqualify the employee for any appeal and render the local school board's or governing authority's decision final.

B. The local school board or governing authority and the employee shall meet within ten working days from the receipt of the request for an appeal and select an independent arbitrator to conduct the appeal. If the parties fail to agree on an independent arbitrator, they shall request the presiding judge in the judicial district in which the employee's public school is located to select one. The presiding judge shall select the independent arbitrator within five working days from the date of the parties' request.

C. A qualified independent arbitrator shall be appointed who is versed in employment practices and school procedures and who preferably has experience in the practice of law. No person shall be appointed to serve as the independent arbitrator who has any direct or indirect financial interest in the outcome of the proceeding, has any relationship to any party in the proceeding, is employed by the local school board or governing authority or is a member of or employed by any professional or labor organization of which the employee is a member.

D. Appeals from the decision of the local school board or governing authority shall be decided after a de novo hearing before the independent arbitrator. The issue to be decided by the independent arbitrator is whether there was just cause for the decision of the local school board or governing authority to terminate the employee.

E. The de novo hearing shall be held within thirty working days from the selection of the independent arbitrator. The arbitrator shall give written notice of the date, time and place of the hearing, and such notice shall be sent to the employee and the local school board or governing authority.

F. Each party has the right to be represented by counsel at the hearing before the independent arbitrator.



G. Discovery shall be limited to depositions and requests for production of documents on a time schedule to be established by the independent arbitrator.

H. The independent arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence and shall have the power to administer oaths. Subpoenas so issued shall be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

I. The rules of civil procedure shall not apply to the de novo hearing, but it shall be conducted so that both contentions and responses are amply and fairly presented. To this end, the independent arbitrator shall permit either party to call and examine witnesses, cross-examine witnesses and introduce exhibits. The technical rules of evidence shall not apply, but, in ruling on the admissibility of evidence, the independent arbitrator shall require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt.

J. The local school board or governing authority has the burden of proof and shall prove by a preponderance of the evidence that, at the time the notice of termination was served on the employee, the local school board or governing authority had just cause to terminate the employee. If the local school board or governing authority proves by a preponderance of the evidence that there was just cause for its action, then the burden shifts to the employee to rebut the evidence presented by the local school board or governing authority.

K. The independent arbitrator shall uphold the local school board's or governing authority's decision only if it proves by a preponderance of the evidence that, at the time the notice of termination was served on the employee, the local school board or governing authority had just cause to terminate the employee. If the local school board or governing authority fails to meet its burden of proof or if the employee rebuts the proof offered by the local school board or governing authority, the arbitrator shall reverse the decision of the local school board or governing authority.

L. Either party desiring a record of the arbitration proceedings may, at the party's own expense, record or otherwise provide for a transcript of the proceedings; provided, however, that the record so provided shall not imply any right of automatic appeal or review.

M. The independent arbitrator shall render a written decision affirming or reversing the action of the local school board or governing authority. The decision shall contain findings of fact and conclusions of law. The parties shall receive actual written notice of the decision of the independent arbitrator within ten working days from the conclusion of the de novo hearing.

N. The sole remedies available under this section shall be reinstatement or payment of compensation reinstated in full but subject to any additional compensation allowed other employees of like qualifications and experience employed by the school district or state agency and including reimbursement for compensation during the entire period for which compensation was terminated, or both, less an offset for any compensation received by the employee during the period the compensation was terminated.

O. Unless a party can demonstrate prejudice arising from a departure from the procedures established in this section and in Section 22-10A-24 NMSA 1978, such departure shall be presumed to be harmless error.

P. The decision of the independent arbitrator shall be binding on both parties and shall be final and nonappealable except where the decision was procured by corruption, fraud, deception or collusion, in which case it shall be appealed to the district court in the judicial district in which the public school or state agency is located.

Q. Each party shall bear its own costs and expenses. The independent arbitrator's fees and other expenses incurred in the conduct of the arbitration shall be assigned at the discretion of the independent arbitrator.

R. School districts shall file a record with the department of all terminations and all actions arising from terminations annually.

**History:** 1978 Comp., § 22-10-14.1, enacted by Laws 1986, ch. 33, § 23; 1990, ch. 90, § 3; 1991, ch. 187, § 5; 1994, ch. 110, § 3; recompiled as § 22-10A-25 by Laws 2003, ch. 153, § 72; 2021, ch. 94, § 7.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-14.1 NMSA 1978, as 22-10A-25 NMSA 1978, effective April 4, 2003.

**The 2021 amendment,** effective June 18, 2021, amended references to a recompiled section of law, and removed provisions related to official transcripts of school



personnel appeals hearings; changed each occurrence of "22-10-14" to "22-10A-24" throughout; in Subsection L, deleted "No official record shall be made of the hearing", and after "shall not", deleted "be deemed an official transcript of the proceedings nor shall it"; and in Subsection R, deleted "Local".

**The 1994 amendment**, effective May 18, 1994, substituted "employee" for "certified school instructor" throughout the section, substituted "Subsection E of Section 22-10-14 NMSA 1978" for "Subsection D of Section 22-10-14 NMSA 1978" in Subsection A, and substituted "professional or labor organization" for "teachers' organization" in Subsection C.

**The 1991 amendment**, effective June 14, 1991, rewrote this section to the extent that a detailed comparison would be impracticable.

**The 1990 amendment**, effective May 16, 1990, inserted "or governing authority" following "local school board" throughout the section; in Subsection A, deleted "who has been employed by a school district for three consecutive years and" following "school instructor", rewrote the second sentence which read "A written request for an appeal shall be submitted to the local superintendent within five calendar days from the receipt of the local school board's written decision or the refusal of the board to grant a hearing"; in Subsection B, substituted "ten working days" for "ten calendar days" in the first sentence and "five working days" for "five calendar days" in the third sentence; substituted "thirty working days" for "thirty calendar days" in Subsection E; substituted "ten working days" for "ten calendar days" in the third sentence of Subsection M; inserted "or state agency" following "school district" in two places in Subsection N and following "public school" near the end of Subsection P; and, in Subsection Q, substituted "assigned at the discretion of the arbitrator" for "borne by the school district; provided that if the certified school instructor does not prevail in the proceeding, he shall be responsible for reimbursing the school district for the costs incurred in the conduct of the arbitration proceedings and the arbitrator's fees" at the end thereof.

#### ANNOTATIONS

**Effect of 1994 amendment.** — The 1994 amendment to this section and Section 22-10-14, NMSA 1978 (now Sections 22-10A-24 NMSA 1978) does not protect a non-certified public school employee who was terminated a few days after the effective date of the amendment when the termination was authorized by the terms of a contract that predated the effective date of the amendment. *Gadsden Fed'n of Teachers v. Board of Educ.*, 1996-NMCA-069, 122 N.M. 98, 920 P.2d 1052.

**Adequate review necessary for reversal.** — Before the state board opts to reject the decision of its hearing officer, particularly when the credibility of the witnesses is at

issue, at the very least it must review so much of the transcript of the proceedings before the hearing officer as is necessary to support its decision. *Board of Educ. v. New Mexico State Bd. of Educ.*, 1987-NMCA-084, 106 N.M. 129, 740 P.2d 123 (decided under former Section 22-10-20 NMSA 1978).

**Arbitration not required.** — Plaintiff was not required to appeal his termination by a school district to an independent arbitrator before filing suit for wrongful termination, where the district's own procedures successfully thwarted any possible effort by plaintiff to utilize available administrative procedures. *Franco v. Carlsbad Mun. Schs.*, 2001-NMCA-042, 130 N.M. 543, 28 P.3d 531.

**Board's reversal of hearing officer held erroneous.** — The state board improvidently found that the local board did not establish sufficient cause for its discharge of a teacher by a preponderance of the evidence, in light of the number of witnesses testifying before the local board as to the teacher's sexual advances and the nature of their testimony. *Board of Educ. v. N.M. State Bd. of Educ.*, 1987-NMCA-084, 106 N.M. 129, 740 P.2d 123 (decided under former Section 22-10-20 NMSA 1978).

**Appeals to state board under former Section 22-10-20 NMSA 1978.** *Board of Educ. v. State Bd. of Educ.*, 1968-NMCA-040, 79 N.M. 332, 443 P.2d 502; *Morgan v. State Bd. of Educ.*, 1969-NMCA-104, 80 N.M. 754, 461 P.2d 236, cert. denied, 81 N.M. 41, 462 P.2d 626 (1970); *Wickersham v. N.M. State Bd. of Educ.*, 1970-NMCA-012, 81 N.M. 188, 464 P.2d 918; *Shepard v. Board of Educ.*, 1970-NMSC-067, 81 N.M. 585, 470 P.2d 306; *Quintana v. State Bd. of Educ.*, 1970-NMCA-074, 81 N.M. 671, 472 P.2d 385, cert. denied, 81 N.M. 668, 472 P.2d 382; *Fort Sumner Mun. Sch. Bd. v. Parsons*, 1971-NMCA-066, 82 N.M. 610, 485 P.2d 366, cert. denied, 82 N.M. 601, 485 P.2d 357; *McAlister v. N.M. State Bd. of Educ.*, 1971-NMCA-088, 82 N.M. 731, 487 P.2d 159; *Brown v. N.M. State Bd. of Educ.*, 1971-NMSC-089, 83 N.M. 99, 488 P.2d 734; *Morgan v. N.M. State Bd. of Educ.*, 1971-NMCA-102, 83 N.M. 106, 488 P.2d 1210, cert. denied, 83 N.M. 105, 488 P.2d 1209; *Board of Educ. v. N.M. State Bd. of Educ.*, 1975-NMCA-057, 88 N.M. 10, 536 P.2d 274; *Bertrand v. N.M. State Bd. of Educ.*, 1975-NMCA-145, 88 N.M. 611, 544 P.2d 1176, cert. denied, 89 N.M. 5, 546 P.2d 70 (1976); *N.M. State Bd. of Educ. v. Stoudt*, 1977-NMSC-099, 91 N.M. 183, 571 P.2d 1186; *Board of Educ. v. Jennings*, 1982-NMCA-135, 98 N.M. 602, 651 P.2d 1037 (specially concurring opinion); *Redman v. Board of Regents*, 1984-NMCA-117, 102 N.M. 234, 693 P.2d 1266.

**Constitutionality.** — The procedures in Section 22-10-14 [now Section 22-10A-24 NMSA 1978], these sections, 22-10-17 (now 22-10A-27 NMSA 1978), and 22-10-17.1 NMSA 1978 (now 22-10A-28 NMSA 1978) satisfy the requirements of the due process clause of the fourteenth amendment to the constitution of the United States. 1988 Op. Att'y Gen. No. 88-05.

## 22-10A-26. Excepted from provisions.

Sections 22-10A-22 through 22-10A-25 NMSA 1978 do not apply to the following:

- A. a licensed school employee employed to fill the position of a licensed school employee entering military service;
- B. a licensed school administrator who is employed as a licensed school administrator;
- C. an unlicensed school employee employed to perform primarily district-wide management functions; or
- D. a person who does not hold a valid license or has not submitted a complete application for licensure within the first three months from beginning employment duties pursuant to Subsection C of Section 22-10A-3 NMSA 1978.



**History:** 1953 Comp., § 77-8-13, enacted by Laws 1967, ch. 16, § 118; 1975, ch. 191, § 1; 1983, ch. 103, § 2; 1991, ch. 187, § 6; 1993, ch. 226, § 28; 1994, ch. 110, § 4; 1978 Comp., § 22-10-16, recompiled as § 22-10A-26 by Laws 2003, ch. 153, § 72; 2019, ch. 238, § 7.

**Cross references.** — For the Rules of Civil Procedure, see 1-001 NMRA.

For service of subpoenas in the district court, see 1-045 NMRA.

**Compiler's notes.** — Sections 22-10-12 through 22-10-14.1 NMSA 1978 were recompiled by Laws 2003, ch. 153, § 72 as 22-10A-22, 22-10A-23, 22-10A-24 and 22-10A-25 NMSA 1978, respectively, effective April 4, 2003.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-16 NMSA 1978 as 22-10A-26 NMSA 1978, effective April 4, 2003.

**The 2019 amendment,** effective June 14, 2019, clarified certain terms and provisions throughout the section" deleted "certified" and added "licensed" preceding each occurrence of "school employee" throughout the section; after "Sections", changed "22-10-12 through 22-10-14.1" to "22-10A-22 through 22-10A-25"; in Subsection C, deleted "a non-certified" and added "an unlicensed" preceding "school employee"; and added new Subsection D.

**The 1994 amendment,** effective May 18, 1994, substituted "Sections 22-10-12 through 22-10-14.1" for "Sections 22-10-12 through 22-10-15" near the beginning of the section, deleted former Subsection A, which read "a person not holding a standard certificate", redesignated former Subsection B as Subsection A, added present Subsection B, and rewrote Subsection C, which read "a person not qualified to teach".

**The 1993 amendment,** effective July 1, 1993, deleted former Subsection C, which read "a person attaining seventy years of age prior to the last day of the school year"; redesignated former Subsection D as Subsection C; and made a minor stylistic change.

**The 1991 amendment,** effective June 14, 1991, substituted "seventy years" for "sixty-five years" in Subsection C.

#### ANNOTATIONS

**Former exceptions construed.** *Penasco Indep. School Dist. No. 4 v. Lucero*, 1974-NMCA-099, 86 N.M. 683, 526 P.2d 825; *Atencio v. Board of Educ.*, 1982-NMSC-140, 99 N.M. 168, 655 P.2d 1012, superseded by statute *Naranjo v. Board of Educ. of Española Pub. Schs.*, 1995-NMSC-015, 119 N.M. 401, 891 P.2d 542.

**Administrators have no tenure rights.** — While certified school instructors have procedural due process and certain other rights under the School Personnel Act, administrators have no tenure rights and therefore have no expectation of continued employment. *Swinney v. Deming Bd. of Educ.*, 1994-NMSC-039, 117 N.M. 492, 873 P.2d 238.

**No property interest in position of principal.** — Where plaintiff's one-year contract to serve as a principal of a middle school was not renewed due to budgetary restraints and plaintiff was reassigned to a teaching position, plaintiff did not have a property interest that was subject to federal constitutional guarantees. *Cole v. Rudoso Mun. Schs.*, 947 F.2d 903 (10th Cir. 1991).

### 22-10A-27. Discharge hearing; licensed school employees; procedures.

A. A superintendent may recommend to the governing authority the discharge of a licensed school employee during the term of a contract authorized pursuant to Section 22-10A-21 NMSA 1978 only for just cause according to the following procedure:

(1) the superintendent shall serve a written notice of intent to recommend discharge on the licensed school employee in accordance with the law for service of process in civil actions; and

(2) the superintendent shall state in the notice of intent to recommend discharge the cause for the recommendation and shall advise the licensed school employee of the licensed school employee's right to a discharge hearing before the governing authority as provided in this section. If the licensed school employee does not exercise that right to hearing, the superintendent shall discharge the licensed school employee.

B. A licensed school employee who receives a notice of intent to recommend discharge pursuant to Subsection A of this section may exercise the licensed school employee's right to a hearing before the governing authority by giving the superintendent written notice of that election within ten working days of the licensed school employee's receipt of the notice of intent to recommend discharge.

C. The governing authority shall hold a discharge hearing no less than twenty and no more than forty working days after the superintendent receives the written election from the licensed school employee and shall give the licensed school employee at least ten days written notice of the date, time and place of the discharge hearing.

D. Each party, the superintendent and the licensed school employee, may each be accompanied by a person of the party's choice.

E. The parties shall complete and respond to discovery by deposition and production of documents prior to the discharge hearing.

F. The governing authority shall have the authority to issue subpoenas for the attendance of witnesses and to produce books, records, documents and other evidence at the request of either party and shall have the power to administer oaths.



G. The superintendent shall have the burden of proving by a preponderance of the evidence that, at the time of the notice of intent to recommend discharge, the superintendent had just cause to recommend discharge of the licensed school employee.

H. The superintendent shall present evidence first, with the licensed school employee presenting evidence thereafter. The governing authority shall permit either party to call, examine and cross-examine witnesses and to introduce documentary evidence.

I. An official record shall be made of the hearing. Either party may have one copy of the record at the expense of the governing authority.

J. The governing authority shall render its written decision within twenty days of the conclusion of the discharge hearing.

**History:** 1953 Comp., § 77-8-14, enacted by Laws 1967, ch. 16, § 119; 1975, ch. 306, § 12; reenacted by Laws 1986, ch. 33, § 24; 1989, ch. 281, § 1; 1990, ch. 90, § 4; 1991, ch. 187, § 7; 1978 Comp., § 22-10-17, recompiled as § 22-10A-27 by Laws 2003, ch. 153, § 72; 2019, ch. 238, § 8.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-17 NMSA 1978, as 22-10A-27 NMSA 1978, effective April 4, 2003.

**The 2019 amendment,** effective June 14, 2019, provided that the superintendent shall discharge a licensed school employee who does not exercise the licensed school employee's right to a discharge hearing, and clarified certain terms in the section; in the section heading, added "licensed school employees"; in Subsection A, after "licensed school employee", added "during the term of a contract authorized pursuant to Section 22-10A-21 NMSA 1978", and in Paragraph A(2), after "provided in this section.", added "if the licensed school employee does not exercise that right to hearing, the superintendent shall discharge the licensed school employee."

**The 1991 amendment,** effective June 14, 1991, rewrote this section to the extent that a detailed comparison would be impracticable.

**The 1990 amendment,** effective May 16, 1990, inserted "or governing authority" following "local school board" and "or administrator" following "superintendent" throughout the section; substituted "ten working days" for "five calendar days" near the end of Subsection B; substituted "in no less than five and no more than fifteen working days" for "within ten calendar days" in the fourth sentence and "five working days" for "five calendar days" in the final sentence of Subsection C; and, near the middle of Subsection D substituted "five working days" for "five calendar days."

**The 1989 amendment,** effective June 16, 1989, inserted references to "certified school instructor" and "certified school administrator" throughout the section and added the last sentence in Subsection C.

## ANNOTATIONS

### I. GENERAL CONSIDERATION. II. DISCHARGE PROCEDURE.

#### I. GENERAL CONSIDERATION.

**Constitutionality.** — Considered together, the pre- and post-termination procedures of the School Personnel Act, Sections 22-10A-27 to -28 NMSA 1978, comport with due process requirements. *West v. San Jon Bd. of Educ.*, 2003-NMCA-130, 134 N.M. 498, 79 P.3d 842, cert. denied, 2003-NMCERT-002, 134 N.M. 723, 82 P.3d 533.

**Arbitration decision acts as collateral estoppel.** — Where plaintiff was a certified teacher; defendant gave plaintiff notice of intent to discharge; plaintiff did not request a hearing before the school board; after defendant discharged plaintiff, plaintiff requested a hearing before the school board or before an arbitrator; defendant subsequently filed an action in district court for breach of

contract and violation of due process; the district court ordered arbitration and stayed the proceedings pending the outcome of the arbitration; plaintiff was afforded an arbitration hearing before an independent arbitrator; the parties to the arbitration and the district court hearing were the same; the issue in the arbitration and the district court was the same; in the arbitration, plaintiff had notice of the allegations against plaintiff, was represented by counsel, and presented evidence and cross-examined witnesses; and the arbitrator upheld plaintiff's discharge and concluded that the procedural errors concerning plaintiff's request for a hearing before the school board were mooted by the district court's ruling requiring arbitration, plaintiff's claim for damages in district court was determined by the arbitrator and was barred by collateral estoppel. *Larsen v. Farmington Mun. Sch.*, 2010-NMCA-094, 148 N.M. 926, 242 P.3d 493, cert. denied, 2010-NMCERT-009, 149 N.M. 49, 243 P.3d 753.

**The legislature can constitutionally prescribe the methods for adjudicating a dispute over termination** of a certified school employee's right to continued employment because that right is a public right created by statute. *Board of Educ. of Carlsbad Mun. Schs. v. Harrell*, 1994-NMSC-096, 118 N.M. 470, 882 P.2d 511.

**"Discharge" includes temporary or permanent removal.** — "Discharge," as used in this section, prohibiting the discharge of certified instructors without an opportunity for notice and hearing, includes removing the teacher either temporarily or permanently from employment. *Board of Educ. v. Singleton*, 1985-NMCA-112, 103 N.M. 722, 712 P.2d 1384.

**Reduction in force as just cause.** — Statutory "just cause" allows for discharge of a teacher when exigent fiscal circumstances justify a reduction in force, but the teacher's competence, turpitude and performance do not. *Aguilera v. Board of Educ.*, 2006-NMSC-015, 139 N.M. 330, 132 P.3d 587.

**Standard for reduction in force discharge.** — When a school board is forced to reduce its teaching staff by way of a reduction in force, it must prove that there is no other position for which the teacher, who is to be discharged, is qualified consistent with the academic necessities of the district. *Aguilera v. Board of Educ.*, 2006-NMSC-015, 139 N.M. 330, 132 P.3d 587.

**Justification for discharge for reduction in force.** — Unlike termination, which applies to the coming year, discharge results in a teacher losing his or her job in the middle of the school year when there may be no opportunity to find other employment. Given the extreme hardship to the teacher, the justifications must be substantial to allow a school board to lay off a qualified teacher in the middle of a school year pursuant to a reduction in force. The school board has to show not just projected financial burdens in the future, but that it cannot survive financially in the present year, which is already underway. *Aguilera v. Board of Educ.*, 2006-NMSC-015, 139 N.M. 330, 132 P.3d 587.



## II. DISCHARGE PROCEDURE.

**Adequate notice.** — Where plaintiff, who was a certified teacher, was discharged; the notice of intent to recommend discharge alleged that plaintiff proposed to a student that the student pose for lewd photographs; the student at the arbitration hearing testified that plaintiff wanted the student to go with plaintiff somewhere in the woods after school to take pictures; the arbitrator found that defendant did not prove allegations that the proposed photographs were lewd; the arbitrator found only that plaintiff suggested to a student that the student pose for pictures outside the classroom and outside the presence of anyone else and that the photography was not part of a school project; and the arbitrator concluded that this suggestion alone constituted just cause for termination of plaintiff, plaintiff was not denied due process because the notice was sufficient to apprise plaintiff of the charges against plaintiff and the arbitrator's decision was not based on new charges but on information presented at the arbitration hearing which did not differ from the allegations contained in the notice. *Larsen v. Bd. of Educ. of the Farmington Mun. Sch.*, 2010-NMCA-093, 148 N.M. 926, 242 P.3d 487, cert. denied, 2010-NMCERT-009, 149 N.M. 49, 243 P.3d 753.

**The school board is required to conduct discharge hearings.** — Where the Albuquerque public school district (APS) sought to discharge a teacher by providing the teacher a discharge hearing before the superintendent and where the school board asserted that changes made to the Public School Code in 2003 divested school boards of all authority to act on any personnel matters and vested exclusive authority to act on all personnel matters in the local school superintendent, the district court did not err in issuing a permanent writ of mandamus to APS and its superintendent, directing that a proposed discharge hearing be conducted by the APS school board, because APS had a clear, legal duty under this section to provide the teacher with a discharge hearing before the school board. *Alarcon v. Albuquerque Pub. Schs. Bd. of Educ.*, 2018-NMCA-021, cert. denied.

**Reduction in force.** — A school board cannot discharge a certified school teacher before her current employment contract expires solely because of a reduction in force. *Aguilera v. Board of Educ.*, 2005-NMCA-069, 137 N.M. 642, 114 P.3d 322, cert. granted, 2005-NMCERT-006, 137 N.M. 767, 115 P.3d 230.

**Preponderance of evidence.** — It is incumbent upon a school board to demonstrate by a preponderance of the evidence that teacher's "discharge" was based upon her performance, competence, or turpitude. *Aguilera v. Board of Educ.*, 2005-NMCA-069, 137 N.M. 642, 114 P.3d 322, cert. granted, 2005-NMCERT-006, 137 N.M. 767, 115 P.3d 230.

**Construction of this section and Section 22-10-21 NMSA 1978 (now Section 22-10A-30 NMSA 1978).** *Morgan v. New Mexico State Bd. of Educ.*, 1971-NMCA-102, 83 N.M. 106, 488 P.2d 1210, cert. denied, 83 N.M. 105, 488 P.2d 1209 (decided prior to 1986 reenactment).

**Section inapplicable to suspensions with pay for duration of contract.** — School board's action in suspending school superintendent with pay for the duration of his contract period did not amount to a discharge and was not protected by the statutory requirements for a hearing. *Black v. Board of Educ.*, 1974-NMSC-095, 87 N.M. 45, 529 P.2d 271 (decided prior to 1986 reenactment).

**Neutral tribunal not required at pre-termination hearing,** because the statutory framework of the School Personnel Act, Sections 22-10A-27 to -28 NMSA 1978, provides for the opportunity to appeal the board's decision to an independent arbitrator in a post-termination hearing, followed by meaningful district court (now court of appeals) review. *West v. San Jon Bd. of Educ.*,

2003-NMCA-130, 134 N.M. 498, 79 P.3d 842, cert. denied, 2003-NMCERT-002, 134 N.M. 723, 82 P.3d 533.

**Exhaustion of administrative remedies required.** — By not completing her appeal of the board's decision to an independent arbitrator, a discharged teacher failed to exhaust her administrative remedies under the procedures set forth by the School Personnel Act, Sections 22-10A-27 to -28 NMSA 1978. *West v. San Jon Bd. of Educ.*, 2003-NMCA-130, 134 N.M. 498, 79 P.3d 842, cert. denied, 2003-NMCERT-002, 134 N.M. 723, 82 P.3d 533.

**Whether discharged teacher was entitled to pre-discharge work conferences** was a factual question where allegations against her were based on insubordination and willful misconduct. *West v. San Jon Bd. of Educ.*, 2003-NMCA-130, 134 N.M. 498, 79 P.3d 842, cert. denied, 2003-NMCERT-002, 134 N.M. 723, 82 P.3d 533.

**Determination as to good cause for discharge.** — In the absence of a statutory definition of the term, it is the function of the state board of education in the exercise of its sound discretion to determine the question of "good cause," and its determination is conclusive unless the evidence discloses that it acted unlawfully, arbitrarily or capriciously. *Lopez v. State Bd. of Educ.*, 1962-NMSC-070, 70 N.M. 166, 372 P.2d 121 (decided prior to enactment of Section 22-10A-2 NMSA 1978).

**School boards may discharge superintendent without interim appointment.** — The school board may discharge those employees of the school district that it directly employs, specifically superintendents, and is not required to hire an interim employee to fulfill this task or wait for the superintendent to recommend his own discharge. *Stanley v. Raton Bd. of Educ.*, 1994-NMSC-059, 117 N.M. 717, 876 P.2d 232.

**Assault while intoxicated.** — State board of education did not act unlawfully, arbitrarily or capriciously in finding good cause for the termination of a teacher's contract where teacher assaulted a woman in a bar while intoxicated. *Lopez v. State Bd. of Educ.*, 1962-NMSC-070, 70 N.M. 166, 372 P.2d 121.

**Insubordination.** — A principal's permitting a reading program which departed from the self-contained classroom basis established in the school system constituted insubordination. *McAlister v. N.M. State Bd. of Educ.*, 1971-NMCA-088, 82 N.M. 731, 487 P.2d 159.

**Harmless error applies to untimely request for discharge hearing.** — The explicit application of the harmless error provision in 22-10A-28(L) NMSA 1978 to this section's provision for requesting a discharge hearing unambiguously expresses the legislature's intent that failure to comply with the five-day time limit, 22-10A-27(B) NMSA 1978, is deemed harmless error, absent a showing of prejudice. *National Educ. Ass'n of N.M. v. Santa Fe Pub. Sch.*, 2016-NMCA-009.

Where petitioner, who received notice of the Santa Fe public schools' intent to discharge him from his teaching and coaching positions, filed a request for hearing two days after the five-day time limit had passed, petitioner's departure from the five-day time requirement, 22-10A-27(B) NMSA 1978, was harmless error where respondent failed to demonstrate prejudice. *National Educ. Ass'n of N.M. v. Santa Fe Pub. Sch.*, 2016-NMCA-009.

**Timing of hearing mandatory.** — The time specified for conducting a dismissal hearing pursuant to this section is mandatory, unless waived by the parties or unless a continuance is sought and obtained for good cause. *Board of Educ. v. Singleton*, 1985-NMCA-112, 103 N.M. 722, 712 P.2d 1384.

**Appeal limited to issues urged at hearing.** — A school board's delay in according a dismissed teacher a timely hearing under this section and the provisions of her contract could not be urged as a basis for dismissal of the board's appeal, where this ground was not initially argued in the administrative hearing below. *Board of*



*Educ. v. Singleton*, 1985-NMCA-112, 103 N.M. 722, 712 P.2d 1384.

**Constitutionality.** — The procedures in Section 22-10-14 (now Section 22-10A-24), Section 22-10-14.1 (now Section 22-10A-25), this section, and Section 22-10-17.1 NMSA 1978 (now Section 22-10A-28 NMSA 1978) satisfy the requirements of the due process clause of the fourteenth amendment to the constitution of the United States. 1988 Op. Att'y Gen. No. 88-05.

**Law reviews.** — For annual survey of New Mexico employment law, see 16 N.M.L. Rev. 39 (1986).

For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools § 204 et seq.

Validity of governmental requirement of oath of allegiance or loyalty, 18 A.L.R.2d 268.

Dismissal or rejection of public schoolteacher because of disloyalty, 27 A.L.R.2d 487.

Assertion of immunity as grounds for discharge of teacher, 44 A.L.R.2d 799.

Right to dismiss public schoolteacher on the grounds that services are no longer needed, 100 A.L.R.2d 1141.

Incompetency: what constitutes "incompetency" or "inefficiency" as a ground for dismissal or demotion of a public schoolteacher, 4 A.L.R.3d 1090.

Elements and measure of damages in action by schoolteacher for wrongful discharge, 22 A.L.R.3d 1047.

Use of illegal drugs as grounds for dismissal of teacher, or denial or cancellation of teacher's certificate, 47 A.L.R.3d 754.

Appearance: dismissal of, or disciplinary action against, public schoolteachers for violation of regulation as to dress or personal appearance of teachers, 58 A.L.R.3d 1227.

Sexual conduct as ground for dismissal of teacher or denial or revocation of teaching certificate, 78 A.L.R.3d 19.

Insubordination: what constitutes "insubordination" as ground for dismissal of public schoolteacher, 78 A.L.R.3d 83.

Tardiness: dismissal of public schoolteacher because of unauthorized absence or tardiness, 78 A.L.R.3d 117.

Sufficiency of notice of intention to discharge or not to rehire teacher, under statutes requiring such notice, 52 A.L.R.4th 301.

Liability of school authorities for hiring or retaining incompetent or otherwise unsuitable teacher, 60 A.L.R.4th 260.

Maternity leave: mandatory maternity leave rules or policies for public schoolteachers as constituting violation of equal protection clause of fourteenth amendment to federal constitution, 17 A.L.R. Fed. 768.

78 C.J.S. Schools and School Districts § 270 et seq.

## **22-10A-28. Discharge appeals; licensed school employees; independent arbitrator; qualifications; procedure; binding decision.**

A. A licensed school employee aggrieved by a decision of the governing authority to discharge the licensed school employee after a discharge hearing held pursuant to Section 22-10A-27 NMSA 1978 may appeal the decision to an independent arbitrator. A written notice of appeal shall be submitted to the governing authority within ten working days from the receipt of the copy of the written decision of the governing authority.

B. The governing authority may delegate responsibility for the arbitration to the superintendent. The superintendent as delegate of the governing authority and the licensed school employee shall meet within ten calendar days from the receipt of the notice of appeal and select an independent arbitrator to conduct the appeal, or, in the event the parties fail to agree on an independent arbitrator, they shall request the presiding judge in the judicial district in which the public school is located to select the independent arbitrator. The presiding judge shall select the independent arbitrator within five working days from the date of the parties' request.

C. A qualified independent arbitrator shall be appointed who is versed in employment practices and school procedures. No person shall be appointed to serve as the independent arbitrator who has any direct or indirect financial interest in the outcome of the proceeding, has any relationship to any party in the proceeding, is employed by the superintendent or is a member of or employed by any professional organization of which the licensed school employee is a member.

D. Appeals from the decision of the governing authority shall be decided after a de novo hearing before the independent arbitrator. The superintendent, as delegate of the governing authority, shall have the burden of proving by a preponderance of the evidence that, at the time of the notice of intent to recommend discharge, the superintendent had just cause to discharge the licensed school employee. The superintendent shall present evidence first, with the licensed school employee presenting evidence thereafter.

E. The hearing shall be held within thirty working days from the selection of the independent arbitrator. The independent arbitrator shall give written notice of the date, time and place of the hearing, and such notice shall be sent to the licensed school employee and the governing authority.

F. Each party has the right to be represented by counsel at the hearing before the independent arbitrator.



G. Discovery shall be limited to depositions and requests for production of documents on a time schedule to be established by the independent arbitrator.

H. The independent arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence and shall have the power to administer oaths. Subpoenas so issued shall be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action or in the manner provided by the American arbitration association's voluntary labor arbitration rules if that entity is used by the parties.

I. The rules of civil procedure shall not apply to the hearing, but it shall be conducted so that both contentions and responses are amply and fairly presented. To this end, the independent arbitrator shall permit either party to call and examine witnesses, cross-examine witnesses and introduce exhibits. The technical rules of evidence shall not apply, but, in ruling on the admissibility of evidence, the independent arbitrator may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt.

J. An official record shall be made of the hearing. Either party may order a transcript of the record at the party's own expense.

K. The independent arbitrator shall render a written decision affirming or reversing the action of the governing authority. The decision shall contain findings of fact and conclusions of law. The parties shall receive the written decision of the independent arbitrator within thirty working days from the conclusion of the hearing.

L. Unless a party can demonstrate prejudice arising from a departure from the procedures established in this section and in Section 22-10A-27 NMSA 1978, such departure shall be presumed to be harmless error.

M. The decision of the independent arbitrator shall be final and binding on both parties and shall be nonappealable except where the decision was procured by corruption, fraud, deception or collusion, in which case it may be appealed to the court of appeals by filing a notice of appeal as provided by the New Mexico rules of appellate procedure.

N. Each party shall bear its own costs and expenses. The independent arbitrator's fees and other expenses incurred in the conduct of the arbitration shall be assigned at the discretion of the independent arbitrator.

**History:** 1978 Comp., § 22-10-17.1, enacted by Laws 1986, ch. 33, § 25; 1990, ch. 90, § 5; 1991, ch. 187, § 8; recompiled as § 22-10A-28 by Laws 2003, ch. 153, § 72; 2019, ch. 238, § 9.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-17.1 NMSA 1978, as 22-10A-28 NMSA 1978, effective April 4, 2003.

**Cross references.** — For New Mexico Rules of Appellate Procedure, see 12-101 NMRA.

For issuance of subpoenas in civil actions, see 1-045 NMRA.

**The 2019 amendment**, effective June 14, 2019, provided that the governing authority may delegate responsibility for the arbitration to the superintendent, and clarified certain terms and provisions in the section; added "Discharge" preceding "appeals", and after "appeals", added "licensed school employees"; in Subsection B, after "governing authority", added "may delegate responsibility for the arbitration to the superintendent. The superintendent as delegate of the governing authority"; and in Subsection L, after "Section", changed "22-10-17" to "22-10A-27".

**The 1991 amendment**, effective June 14, 1991, substituted "employee" for "instructor or certified school administrator" throughout the section; substituted "notice of appeal" for "request for an appeal" in the second sentence in Subsection A and in the first sentence in Subsection B; in Subsection A, substituted "a discharge hearing held" for "his statement to the local school board presented" in the first sentence and deleted the former third sentence which read "The appeal shall be accompanied by a statement of particulars specifying the grounds on which it is contended that the decision was not based on good and just cause"; in Subsection C substituted "professional organization" for

"teachers' or administrators' organization"; in Subsection D, inserted "de novo" in the first sentence and substituted the second and third sentences for the former second sentence which read "The issue to be decided by the independent arbitrator is whether the board's decision to discharge the certified school instructor or certified school administrator was based on good and just cause"; and made minor stylistic changes throughout the section.

**The 1990 amendment**, effective May 16, 1990, inserted "or governing authority" following "local school board" throughout the section; in Subsection A, in the first sentence, inserted "local school" preceding "board" the second time the reference appears and substituted "may appeal the decision" for "may request an appeal"; in the second sentence, inserted "or administrator" and substituted "five working days" for "five calendar days" and, in the third sentence, substituted "The appeal shall be" for "The request for an appeal to an independent arbitrator shall be"; substituted "five working days" for "five calendar days" in the final sentence of Subsection B; in Subsection E, substituted "thirty working days" for "thirty calendar days" in the first sentence and inserted "or certified school administrator" in the second sentence; substituted "labor arbitration rules" for "rules for arbitration" near the end of Subsection H; substituted "thirty working days" for "thirty calendar days" in the third sentence of Subsection K; in Subsection N, substituted "Each party" for "Either party" at the beginning of the first sentence and rewrote the second sentence which read "The arbitrator's fees and other expenses incurred in the conduct of the arbitration shall be borne by the school districts; provided that if the certified school instructor or administrator does not prevail in the proceeding, he shall be responsible for reimbursing the school district for the



costs incurred in the conduct of the arbitration proceeding and the arbitrator's fees"; and deleted former Subsection O relating to compliance with the American arbitration association's rules.

#### ANNOTATIONS

**Considered together, the pre- and post-termination procedures of the School Personnel Act, 22-10A-27 and 22-10A-28 NMSA 1978,** comport with due process requirements. *West v. San Jon Bd. of Educ.*, 2003-NMCA-130, 134 N.M. 498, 79 P.3d 842, cert. denied, 2003-NMCERT-002, 134 N.M. 723, 82 P.3d 533.

**Neutral tribunal not required at pre-termination hearing,** because the statutory framework of the School Personnel Act, 22-10A-27 and 22-10A-28 NMSA 1978, provides for the opportunity to appeal the board's decision to an independent arbitrator in a post-termination hearing, followed by meaningful district court (now court of appeals) review. *West v. San Jon Bd. of Educ.*, 2003-NMCA-130, 134 N.M. 498, 79 P.3d 842, cert. denied, 2003-NMCERT-002, 134 N.M. 723, 82 P.3d 533.

**Exhaustion of administrative remedies required.** — By not completing her appeal of the board's decision to an independent arbitrator, a discharged teacher failed to exhaust her administrative remedies under the procedures set forth in this section. *West v. San Jon Bd. of Educ.*, 2003-NMCA-130, 134 N.M. 498, 79 P.3d 842, cert. denied, 2003-NMCERT-002, 134 N.M. 723, 82 P.3d 533.

**Compulsory arbitration is constitutional** and the procedures used in judicial tribunals need not be used in compulsory arbitration, so long as the arbitration procedures are sufficient to guarantee a fair proceeding. Therefore, the provisions of this section mandating compulsory arbitration of the grievances of discharged school employees do not violate an employee's right of access to the courts, or right to jury trial; nor do these provisions unconstitutionally delegate power to a nonjudicial tribunal. *Board of Educ. of Carlsbad Mun. Schs. v. Harrell*, 1994-NMSC-096, 118 N.M. 470, 882 P.2d 511 (1994).

**Unconstitutional limit on judicial review.** — Because due process and the separation of powers principle requires that parties to statutorily mandated arbitration be offered meaningful review of the arbitrator's decision, the provision of Subsection M limiting judicial review of the arbitrator's decision to cases "where the decision was procured by corruption, fraud, deception or collusion" must be stricken as a violation of due process and as an unconstitutional delegation of judicial power. *Board of Educ. of Carlsbad Mun. Schs. v. Harrell*, 1994-NMSC-096, 118 N.M. 470, 882 P.2d 511.

**Standard of review.** — Subsection D requires the reviewing entity to determine whether the alleged misconduct actually occurred and constitutes just cause for discharge. *Santa Fe Pub. Schs. v. Romero*, 2001-NMCA-103, 131 N.M. 383, 37 P.3d 100.

**Harmless error applies to untimely request for discharge hearing.** — The explicit application of the harmless error provision in 22-10A-28(L) NMSA 1978 to 22-10A-27 NMSA 1978, the provision for requesting a discharge hearing, unambiguously expresses the legislature's intent that failure to comply with the five-day time limit, 22-10A-27(B), is deemed harmless error, absent a showing of prejudice. *National Educ. Ass'n of N.M. v. Santa Fe Pub. Schs.*, 2016-NMCA-009.

Where petitioner, who received notice of the Santa Fe public schools' intent to discharge him from his teaching and coaching positions, filed a request for hearing two days after the five-day time limit had passed, petitioner's departure from the five-day time requirement, 22-10A-27(B) NMSA 1978, was harmless error where respondent failed to demonstrate prejudice. *National Educ. Ass'n of N.M. v. Santa Fe Pub. Schs.*, 2016-NMCA-009.

**Constitutionality.** — The procedures in Section 22-10-14 (now Section 22-10A-24 NMSA 1978), Section 22-10-14.1 (now Section 22-10A-25 NMSA 1978), Section 22-10-17 (now Section 22-10A-27 NMSA 1978), and this section satisfy the requirements of the due process clause of the fourteenth amendment to the constitution of the United States. 1988 Op. Att'y Gen. No. 88-05.

## 22-10A-29. Compensation payments to discharged personnel.

A. Payment of compensation to a licensed school employee employed by a public school and payment of compensation to a superintendent employed by a governing authority shall terminate as of the date, after a hearing, that a written copy of the decision of the governing authority to discharge the licensed school employee or superintendent is served on the licensed school employee or superintendent. If the compensation of the licensed school employee or superintendent discharged during the term of a written employment contract is to be paid monthly during a twelve-month period for services to be performed during a period less than twelve months, the licensed school employee or superintendent shall be entitled to a pro rata share of the compensation payments due for the period during the twelve months in which no services were to be performed.

B. In the event the action of the governing authority in discharging a licensed school employee or superintendent is reversed on appeal, payment of compensation to the licensed school employee or superintendent shall be reinstated in full but subject to any additional compensation allowed other licensed school employees or superintendents of like qualifications and experience employed by the public school and including reimbursement for compensation during the entire period the compensation was terminated less an offset for any compensation received by the licensed school employee or superintendent from the public school during the period the compensation was terminated.

**History:** 1953 Comp., § 77-8-15, enacted by Laws 1967, ch. 16, § 120; 1975, ch. 306, § 13; 1978 Comp., § 22-10-18, recompiled as § 22-10A-29 by Laws 2003, ch. 153, § 72; 2019, ch. 238, § 10.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-18 NMSA 1978 as 22-10A-29 NMSA 1978, effective April 4, 2003.



The 2019 amendment, effective June 14, 2019, clarified certain terms in the section; replaced each occurrence of "school instructor" with "licensed school employee", and replaced each occurrence of "local school board" with "governing authority".

#### ANNOTATIONS

The legislature can constitutionally prescribe the methods for adjudicating a dispute over termination of a certified school employee's right to continued

employment because that right is a public right created by statute. *Board of Educ. of Carlsbad Mun. Schs. v. Harrell*, 1994-NMSC-096, 118 N.M. 470, 882 P.2d 511.

**Offset provision in Subsection B is not exclusive;** rather, a school district or state agency may offset an award by any compensation that a terminated employee received from any source during his period of termination. *Board of Educ. v. Jennings*, 1985-NMSC-054, 102 N.M. 762, 701 P.2d 361.

## 22-10A-30. Supervision and correction procedures.

The state board [department] shall prescribe by regulations procedures to be followed by a local school board or the governing authority of a state agency in supervising and correcting unsatisfactory work performance of certified school personnel before notice of intent to discharge is served upon them and by the governing authority of a state agency in supervising and correcting unsatisfactory work performance of certified school instructors before notice of intent to discharge is served upon them. These regulations shall provide that written records shall be kept on all action taken by a local school board or the governing authority of a state agency to improve any person's unsatisfactory work performance and all improvements made in the person's work performance. These written records shall be introduced as evidence at any hearing for the person conducted by the local school board or the governing authority of the state agency.

**History:** 1953 Comp., § 77-8-18, enacted by Laws 1967, ch. 16, § 123; 1975, ch. 306, § 16; 1986, ch. 33, § 26; 1978 Comp., § 22-10-21, recompiled as § 22-10A-30 by Laws 2003, ch. 153, § 72.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-21 NMSA 1978 as 22-10A-30 NMSA 1978, effective April 4, 2003.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

#### ANNOTATIONS

**Section is consistent with Section 22-10-17 NMSA 1978.** — Under this section the notice of discharge provided for in Section 22-10-17 NMSA 1978 [now Section 22-10A-27 NMSA 1978] is not to be served until the procedures of the state board regulations have been followed. *Morgan v. N.M. State Bd. of Educ.*, 1971-NMCA-102, 83

N.M. 106, 488 P.2d 1210, cert. denied, 83 N.M. 105, 488 P.2d 1209 (decided prior to 1986 changes to this section and Section 22-10-17 NMSA 1978).

**Purpose of work conferences** is to allow certified school personnel to work harmoniously with a supervisor to perform appointed tasks adequately. *Board of Educ. v. Jennings*, 1982-NMCA-135, 98 N.M. 602, 651 P.2d 1037 (specially concurring opinion).

**Meaning of "unsatisfactory work performance."** Punishment inflicted by a teacher imposed upon children under the teacher's supervision and control and while the teacher was acting as a classroom teacher inflicted in violation of school policy as set forth in the local board handbook comes within unsatisfactory work performance. *Morgan v. N.M. State Bd. of Educ.*, 1971-NMCA-102, 83 N.M. 106, 488 P.2d 1210, cert. denied, 83 N.M. 105, 488 P.2d 1209.

**Sexual harassment** constitutes "unsatisfactory work performance," therefore requiring work conferences. *Board of Educ. v. Jennings*, 1982-NMCA-135, 98 N.M. 602, 651 P.2d 1037.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity and construction of statutes, ordinances, or regulations requiring competency tests of schoolteachers, 64 A.L.R.4th 642.

## 22-10A-31. Denial, suspension and revocation of licenses.

In accordance with the procedures provided in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], the department may deny, suspend or revoke a department-issued license for incompetency, moral turpitude, ethical misconduct or any other good and just cause.

**History:** 1953 Comp., § 77-8-19, enacted by Laws 1967, ch. 16, § 124; 1973, ch. 124, § 3; 1997, ch. 238, § 4; 1998, ch. 55, § 31; 1999, ch. 265, § 33; 1978 Comp., § 22-10-22, recompiled and amended as § 22-10A-31 by Laws 2003, ch. 153, § 52; 2021, ch. 94, § 8.

**Recompilations.** — Laws 2003, ch. 153, § 52 recompiled and amended former 22-10-22 NMSA 1978 as 22-10A-31 NMSA 1978, effective April 4, 2003.

**The 2021 amendment**, effective June 18, 2021, added ethical misconduct to the list of reasons for which the department may deny, suspend or revoke a department-issued license; and after "Uniform Licensing Act, the", deleted "state board" and added "department", and after "moral turpitude", added "ethical misconduct".

**The 2003 amendment**, effective April 4, 2003, rewrote this section to the extent that a detailed comparison is impracticable.



**The 1999 amendment**, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection D.

**The 1998 amendment**, effective September 1, 1998, rewrote Subsection D and made minor stylistic changes.

**The 1997 amendment**, effective June 20, 1997, deleted "for" following "immorality or" in Subsection A, in Paragraph B(1), substituted "describe the rights of the person holding the certificate and include instructions for requesting a hearing" for "also designate a place, time and date, not less than thirty days from the date of the service of the notice of the suspension or revocation, for a hearing" in the second sentence, and added the last two sentences in that paragraph, added Subsection C and redesignated the following subsection accordingly, and made minor stylistic changes.

#### ANNOTATIONS

**Authority of secretary of public education to revoke teachers' licenses.** — Article XII, Section 6 of the New Mexico Constitution, the Uniform Licensing Act, Sections 61-1-1 et seq. NMSA 1978, the Public Education Department Act, Chapter 9, Article 24 NMSA 1978, the Public School Code, Chapter 22 NMSA 1978, and the School Personnel Act, Chapter 22, Article 10A NMSA 1978, do not preclude the secretary of public education from having exclusive authority to make the final decision to revoke a teacher's license. *Skowronski v. N.M. Pub. Educ. Dep't*, 2013-NMCA-034, 298 P.3d 469, cert. granted, 2013-NMCERT-003.

**Secretary's authority to disregard hearing officer's credibility determination.** — Where plaintiff was charged with engaging in inappropriate and improper sexual behavior with a fourteen-year-old victim at a charter school; a hearing officer found that the charges against plaintiff had not been proven by a preponderance of the evidence and recommended that the disciplinary action against plaintiff be dismissed; the secretary of public education reviewed the record before the hearing officer, adopted some of the hearing officer's recommendations and rejected others, and concluded that a preponderance of the evidence warranted revocation and revoked plaintiff's license to teach; the essential difference between the hearing officer's view of the case and that of the secretary was how they viewed the credibility of plaintiff and the victim and the believability of their testimony; the regulations of the public education department provided that the hearing officer had the duty to make proposed findings and conclusions; the secretary was not an appellate reviewer of the hearing officer's findings and conclusions, the secretary had the authority, after reviewing the record, to

modify the hearing officer's findings and conclusions; and the secretary was ultimately responsible for issuing a final decision; and after reviewing the record, the secretary made independent findings of fact that were supported by references to the hearing transcript, the secretary did not exceed the secretary's authority by making the secretary's own credibility or fact-based determinations. *Skowronski v. N.M. Pub. Educ. Dep't*, 2013-NMCA-034, 298 P.3d 469, cert. granted, 2013-NMCERT-003.

**Revocation of teacher's license did not violate due process.** — Where plaintiff was charged with engaging in inappropriate and improper sexual behavior with a fourteen-year-old victim at a charter school; a hearing officer found that the charges against plaintiff had not been proven by a preponderance of the evidence, based in part on the credibility of the witnesses, and recommended that the disciplinary action against plaintiff be dismissed; the secretary of public education reviewed the record and concluded that a preponderance of the evidence warranted revocation; the secretary's conclusions were supported by the record and were based on the secretary's analysis of the facts presented by the witnesses, the contradictions in the facts, and the victim's written statement, plaintiff was not denied due process by the fact that the secretary failed to observe the witnesses' demeanor or by the secretary's failure to defer to the hearing officer's proposed findings of fact. *Skowronski v. N.M. Pub. Educ. Dep't*, 2013-NMCA-034, 298 P.3d 469, cert. granted, 2013-NMCERT-003.

**Revocation of teacher's license was supported by substantial evidence.** — Where plaintiff was charged with engaging in inappropriate and improper sexual behavior with a fourteen-year-old victim; the victim was considering attending the charter school; the owners and operators of the school, who were the godparents of the victim, hosted an event in their home; the victim and plaintiff stayed overnight and slept in the living room where the alleged contact occurred when the victim and plaintiff were alone, the decision of the secretary of public education to revoke plaintiff's teacher's license was supported by substantial evidence. *Skowronski v. N.M. Pub. Educ. Dep't*, 2013-NMCA-034, 298 P.3d 469, cert. granted, 2013-NMCERT-003.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Revocation of teacher's certificate for moral unfitness, 97 A.L.R.2d 827.

Drugs and narcotics: use of illegal drugs as ground for dismissal of teacher, or denial or cancellation of teacher's certificate, 47 A.L.R.3d 754.

Sexual conduct as ground for dismissal of teacher or denial or revocation of teaching certificate, 78 A.L.R.3d 19.

## 22-10A-32. School district personnel, school employees, school volunteers, contractors and contractors' employees; required training program.

A. All school district personnel, school employees, school volunteers, contractors and contractors' employees shall be required to complete training in the detection and reporting of child abuse and neglect, ethical misconduct, professional responsibilities, sexual abuse and assault and substance abuse. Except as otherwise provided in this subsection, this requirement shall be completed within the school district employee's, school employee's, school volunteer's, contractor's or contractor's employee's first year of employment.

B. The department shall develop or adopt training programs, including training materials and necessary training staff, to meet the requirements of Subsection A of this section to make the training available in every public school. The department shall promulgate rules for the administration of the training programs. The department shall coordinate the development of the programs with appropriate staff in school districts and at public schools, the human services department, the



department of health, the early childhood education and care department and the children, youth and families department. The department shall consult with the federal centers for disease control and prevention when developing or adopting the evidence-based training component on child sexual abuse and assault to include methods and materials that have proven to be effective. At a minimum, training required under this section shall include:

- (1) reporting requirements, including minimal standards triggering reporting;
- (2) trauma-informed instruction;
- (3) identification of circumstances and factors that are indicators of likely abuse or inappropriate behaviors;
- (4) ethical misconduct;
- (5) professional responsibilities;
- (6) investigations and procedures; and
- (7) relevant legal and regulatory definitions.

C. The training programs developed or adopted pursuant to this section shall be made available by the department to the deans of every college of education in New Mexico for use in providing such training to students seeking elementary and secondary education licensure.

**History:** Laws 1988, ch. 48, § 1; 1993, ch. 226, § 25; 1978 Comp., § 22-10-3.2, recompiled and amended as § 22-10A-32 by Laws 2003, ch. 153, § 53; 2014, ch. 9, § 1; 2021, ch. 94, § 9.

**Recompilations.** — Laws 2003, ch. 153, § 53 recompiled and amended former 22-10-3.2 NMSA 1978 as 22-10A-32 NMSA 1978, effective April 4, 2003.

**Cross references.** — For references to the former state board of education, see 9-24-15 NMSA 1978.

**The 2021 amendment**, effective June 18, 2021, added the topics of "ethical misconduct" and "professional responsibilities" to school training programs, and made conforming changes; in the heading, deleted "Licensed" and added "School district personnel", after "school employees", added "school volunteers, contractors and contractors' employees"; in Subsection A, after "All", deleted "licensed" and added school district personnel", after "school employees", added "school volunteers, contractors and contractors' employees", after "child abuse and neglect", deleted "including" and added "ethical misconduct, professional responsibilities", after "within the", deleted "licensed" and added "school district employees", after "school employee's", added "school volunteer's, contractor's or contractor's employee's", and after "first year of employment", deleted the remainder of the subsection; in Subsection B, after "develop", deleted "a" and added "or adopt", after "available in every", deleted "school district" and added "public school. The department shall promulgate rules for the administration of the training programs", after "department of health", added "the early childhood education and care department", and after "proven to be effective", added "At a minimum, training required under this section shall include", and added Paragraphs B(1) through B(7); and in Subsection C, after "developed", added "or adopted".

**The 2014 amendment**, effective May 21, 2014, required licensed school employees to be trained in detecting and reporting child sexual abuse and assault; in Subsection A, in the first sentence, after "neglect", added "including sexual abuse and assault", in the second sentence, added "Except as otherwise provided in this subsection", and added the third sentence; and in Subsection B, in the first sentence, deleted "Pursuant to the policy and rules adopted by the state board", in the second sentence, after "appropriate staff", added "in school districts and", after "human services department" deleted "and", and after "department of health", added "and the children youth and families department", and added the third sentence.

**Applicability.** — Laws 2014, ch. 9, § 4 provided that the provisions of Laws 2014, ch. 9, §§ 1 through 3 apply to the 2014-2015 school year and subsequent school years.

**The 2003 amendment**, effective April 4, 2003, deleted "of education" following "the department" throughout the section; substituted "Licensed school employees" for "Certified school personnel and school nurses" in the section heading; in Subsection A, substituted "licensed school employees" for "certified school personnel and school nurses" following "All" at the beginning, substituted "licensed school employees" for "person's" near the end and deleted "in the state" at the end; in Subsection B, substituted "rules" for "regulations" following "the policy" near the beginning of the first sentence, deleted "in the state" at the end of the first sentence; and substituted "licensure" for "certification" at the end of Subsection C.

**The 1993 amendment**, effective July 1, 1993, deleted "by July 1, 1991 or, after that date" following "completed" in the second sentence of Subsection A and substituted "department of health" for "health and environment department" at the end of Subsection B.

## 22-10A-33. Repealed.

**Repeals.** — Laws 2017, ch. 65, § 4 repealed 22-10A-33 NMSA 1978, as enacted by Laws 1989, ch. 344, § 2, relating to violence, vandalism, reporting, effective June 16,

2017. For provisions of former section, see the 2016 NMSA 1978 on *NMOneSource.com*.

## 22-10A-34. Repealed.

**Repeals.** — Laws 2017, ch. 87, § 31 repealed 22-10A-34 NMSA 1978, as enacted by Laws 1967, ch. 16, § 112, relating to communicable diseases, prohibited employment,

penalty, effective June 16, 2017. For provisions of former section, see the 2016 NMSA 1978 on *NMOneSource.com*.



## 22-10A-35. Local sabbatical leave program authorized.

A local school board may provide as part of its compensation plan a program of sabbatical leave for its certified employees. The governing authority of a state agency may provide a program of sabbatical leave for its certified school instructors.

**History:** 1953 Comp., § 77-8-20, enacted by Laws 1969, ch. 116, § 1; 1975, ch. 306, § 17; 1978 Comp., § 22-10-23, recompiled as § 22-10A-35 by Laws 2003, ch. 153, § 72.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-23 NMSA 1978 as 22-10A-35 NMSA 1978, effective April 4, 2003.

**Cross references.** — For definition of "sabbatical leave," see 22-10A-2 NMSA 1978.

## 22-10A-36. Approved program required for sabbatical leave.

Sabbatical leave may be granted only upon the presentation and approval by the state department of education [public education department] of a full program of study or travel related to the certified employee's duties and showing direct benefit to the instructional program.

**History:** 1953 Comp., § 77-8-22, enacted by Laws 1969, ch. 116, § 3; 1975, ch. 306, § 18; 1978 Comp., § 22-10-24, recompiled as § 22-10A-36 by Laws 2003, ch. 153, § 72.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-24 NMSA 1978 as 22-10A-36 NMSA 1978, effective April 4, 2003.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

## 22-10A-37. Minimum conditions for sabbatical leave.

Any sabbatical leave program adopted by a local school district or a state agency shall provide the following as minimum conditions:

A. only those certified employees who have completed at least six years of continuous service in a certified capacity with the school district or those certified school instructors who have completed at least six years of continuous service in a certified capacity with the state agency are eligible. For purposes of this section, a leave of absence without pay shall not be considered as an interruption of continuous service but the leave of absence without pay shall not be counted in determining the six-year requirement;

B. further sabbatical leave may be granted in the seventh year of service following a period of sabbatical leave under the same conditions as other sabbatical leaves are granted;

C. sabbatical leave shall be granted only upon agreement by the employee to return to the school system or state agency for at least two years following the leave or repayment to the school district or state agency of the salary received during the period of leave. Such agreement shall be placed in a supplementary contract executed prior to authorization for the sabbatical leave;

D. the maximum term of any one period of sabbatical leave shall be one year;

E. the employee shall be guaranteed an equivalent or better position upon return to the school system or state agency;

F. if regular salary increments for length of service are contained in the salary schedule, the period of leave shall be counted as period of service in the computation of future length of service increments; and

G. the employee may continue his participation in the educational retirement plan by making appropriate contributions as agreed by the local school board or the governing authority of the state agency and the educational retirement board.

**History:** 1953 Comp., § 77-8-23, enacted by Laws 1969, ch. 116, § 4; 1975, ch. 306, § 19; 1978 Comp., § 22-10-25, recompiled as § 22-10A-37 by Laws 2003, ch. 153, § 72.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-25 NMSA 1978 as 22-10A-37 NMSA 1978, effective April 4, 2003.

**Cross references.** — For the educational retirement board, see 22-11-3 NMSA 1978.

## 22-10A-38. Pay for sabbatical leave.

Sabbatical leave pay may be allowed in any amount up to one-half of the employee's regular salary for the year immediately preceding the leave and payment shall be made by one of the two following methods:

A. one-half to be paid at the end of the first year after return and one-half at the end of the second year after return; or

B. during the term of the leave upon the furnishing of security satisfactory to the local school board or the governing authority of the state agency assuring the employee's remaining in the system for two years after the leave or repayment to the school district or state agency of the salary received during the period of leave.

**History:** 1953 Comp., § 77-8-24, enacted by Laws 1969, ch. 119, § 5; 1975, ch. 306, § 20; 1978 Comp., § 22-10-26, recompiled as § 22-10A-38 by Laws 2003, ch. 153, § 72.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-26 NMSA 1978 as 22-10A-38 NMSA 1978, effective April 4, 2003.

## 22-10A-39. Noncertified school personnel; salaries.

Notwithstanding the provisions of Section 50-4-22 NMSA 1978, a local school district shall pay a minimum wage rate of six dollars (\$6.00) per hour to all noncertified school personnel.

**History:** Laws 1994, ch. 95, § 1; 1978 Comp., § 22-10-27, recompiled as § 22-10A-39 by Laws 2003, ch. 153, § 72.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-27 NMSA 1978 as 22-10A-39 NMSA 1978, effective April 4, 2003.

## 22-10A-40. School security personnel; definitions; required training.

A. As used in this section:

(1) "firearm" means a handgun recommended by the department of public safety and authorized by the public school insurance authority;

(2) "local school board" includes governing bodies of charter schools;

(3) "school district" includes charter schools;

(4) "school premises" means:

(a) the buildings and grounds, including playgrounds, playing fields and parking areas, and any school bus of a public school, whether owned by the school district or under contract, in or on which school or school-related activities are being conducted under the supervision of the local school board; or

(b) any other public buildings or grounds, including playing fields and parking areas that are not public school property, in or on which school-related and school-sanctioned activities are being performed; and

(5) "school security personnel" means retired or former certified and commissioned law enforcement officers who are employed by a school district and authorized by department rules and local school board policy to carry a firearm on school premises.

B. The department shall promulgate rules to carry out the purposes of this section.

C. The department shall promulgate rules pertaining to persons who are prohibited from employment as school security personnel, including:

(1) the applicability of Paragraph (1) or (3) of Subsection A of Section 28-2-4 NMSA 1978 for criminal offenders;

(2) the commitment of a felony; a misdemeanor involving moral turpitude that has bearing on the job of school security personnel; formal discipline for the use of excessive force; or misconduct or crimes that include inappropriate touching, sexual harassment, sexual assault, sexual abuse, discrimination, behavior intended to induce a child into engaging in illegal, immoral or other prohibited behavior, crimes against children and dependents or sexual exploitation of children; and



(3) negligent or illegal use of a firearm.

D. Prior to an offer of employment, the school district shall require for each potential school security personnel:

- (1) proof that the retired or former law enforcement officer was certified and commissioned for no less than three years and left law enforcement in good standing;
- (2) successful completion of school security personnel training;
- (3) proof of up-to-date firearms training;
- (4) a background check that indicates the person has not been convicted of a crime or engaged in behavior that violates the School Personnel Act; and
- (5) any other conditions required by law, department rule or school district policy.

E. School security personnel shall not perform any other job in the school district, by title or duty, other than school security while carrying a firearm.

F. Prior to school security personnel being allowed to carry firearms authorized by department rules and local school board policy, the school security personnel must successfully pass a physical and psychological evaluation as prescribed by the department in consultation with the public school insurance authority to determine suitability to carry a firearm. The school district shall pay the cost of the physical and psychological evaluations for current and potential school security personnel.

G. The department and the public school insurance authority shall approve one or more school security personnel and firearms training programs. Approved programs must include working with students with special needs, cultural competency and prohibited profiling practices. The department of public safety shall make recommendations for firearms training.

**History:** Laws 2019, ch. 189, § 3. **Effective dates.** — Laws 2019, ch. 189, § 5 made Laws 2019, ch. 189, § 3 effective July 1, 2020.

## 22-10A-40.1. Construction.

Nothing in this 2019 act shall be construed as:

- A. allowing an armed school security personnel to carry firearms on school premises if doing so would be a violation of state or federal law; or
- B. applying to school resource officers.

**History:** Laws 2019, ch. 189, § 4. **Compiler's notes.** — The reference to "this 2019 act" refers to the provisions of Laws 2019, ch. 189.  
**Effective dates.** — Laws 2019, ch. 189, § 5 made Laws 2019, ch. 189, § 4 effective July 1, 2020.

# ARTICLE 10B

## Teacher Residency

Sec.		Sec.	
22-10B-1.	Short title.	22-10B-6.	Teacher residency program participant selection requirements.
22-10B-2.	Definitions.	22-10B-7.	Rulemaking authority.
22-10B-3.	Teacher residency program; created.	22-10B-8.	Teacher residency fund; created; purpose.
22-10B-4.	Teacher residency program components.	22-10B-9.	Reporting requirements.
22-10B-5.	Teacher residency program eligibility.		

### 22-10B-1. Short title.

This act [22-10B-1 to 22-10B-9 NMSA 1978] may be cited as the "Teacher Residency Act".

**History:** Laws 2020, ch. 25, § 1. **Effective dates.** — Laws 2020, ch. 25 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 20, 2020, 90 days after adjournment of the legislature.

## 22-10B-2. Definitions.

As used in the Teacher Residency Act:

A. "department-approved teacher preparation program" means a department-approved teacher preparation program at a public post-secondary educational institution or tribal college;

B. "program" means a teacher residency program created pursuant to the Teacher Residency Act that is designed to result in teacher licensure; and

C. "teaching resident" means a participant in a department-approved teacher residency program.

**History:** Laws 2020, ch. 25, § 2.

**Effective dates.** — Laws 2020, ch. 25 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 20, 2020, 90 days after adjournment of the legislature.

## 22-10B-3. Teacher residency program; created.

A. On or before July 1 of each year, the secretary, in partnership with a department-approved teacher preparation program, shall establish and maintain department-approved New Mexico teacher residency programs at public post-secondary educational institutions and tribal colleges that have a department-approved teacher preparation program and have developed a commitment to investing in teacher education. The secretary shall ensure that the department-approved New Mexico teacher residency programs include representation from rural, urban and suburban areas across the state.

B. The public post-secondary educational institution or tribal college shall form a partnership with one or more school districts or charter schools to coadminister the teacher residency program and to provide employment to residents in the program following completion of all licensure requirements.

C. The program shall be designed to:

(1) diversify the teaching profession with teaching residents that reflect the diversity of students in the public schools in the state or the geographic area where the school is located;

(2) fill high-need teaching positions within the state and ensure that teaching residents are prepared for a department-issued teaching license at the end of the program; and

(3) provide at least one full academic year of rigorous department-approved teacher preparation program coursework while concurrently providing a full academic year of guided apprenticeship in the classroom of a level two or level three teacher at the partner area school district or charter school.

D. The public post-secondary educational institution or tribal college shall ensure faculty or university supervisors who work with the teacher residency program visit residency sites no less than one time per month to monitor teacher residents' programs.

**History:** Laws 2020, ch. 25, § 3; 2022, ch. 17, § 1.

The 2022 amendment, effective May 18, 2022, required the public education department to partner with department-approved teacher preparation programs to establish residency programs; in Subsection A, after "the secretary", added "in partnership with a department-approved teacher preparation program", after "shall", deleted "through a competitive selection process, provide grants to", after "establish", added "and maintain department-approved", and deleted "In selecting grant recipients, the department shall ensure, to the extent practicable, that grant recipients" and added "The secretary

shall ensure that the department-approved New Mexico teacher residency programs"; in Subsection B, after "in the program following", deleted "their graduation" and added "completion of all licensure requirements"; in Subsection C, in the introductory clause, after "The program", deleted "must" and added "shall", in Paragraph C(3), after "program coursework", deleted "and provide" and added "while concurrently providing", and after "in the classroom of", deleted "an expert" and added "a level two or level three"; and in Subsection D, after "no less than", deleted "three times" and added "one time".

## 22-10B-4. Teacher residency program components.

A teacher residency program established pursuant to the Teacher Residency Act shall include:

A. competitive admission requirements with multiple criteria;



B. rigorous department-approved teacher preparation program coursework, which shall be offered while the teaching resident undertakes a full academic year of guided apprenticeship in the classroom of a level two or level three teacher at the partner area school district or charter school;

C. a co-teaching approach to expose teaching residents to a variety of teaching methods, philosophies and classroom environments;

D. clear criteria for the selection of level two and level three teachers based on measures of teacher effectiveness and the appropriate subject area knowledge;

E. providing level two and level three teachers with ongoing evidence-based training in coaching and mentoring teaching residents and compensation for time and added responsibility;

F. grouping teaching residents in cohorts to facilitate professional collaboration among residents and placing teaching residents in teaching schools or professional development programs that are organized to support a high-quality teacher learning experience in a supportive work environment;

G. measures of appropriate progress through the program;

H. a stipend of no less than thirty-five thousand dollars (\$35,000) per year for teaching residents;

I. a stipend of no less than two thousand dollars (\$2,000) per year for level two and level three teachers participating in the program;

J. a stipend of no less than two thousand dollars (\$2,000) per year for principals or head administrators at the partner school district or charter school;

K. funding of no less than fifty thousand dollars (\$50,000) per year for teacher residency program coordinators at each department-approved New Mexico teacher residency program;

L. a post-completion commitment by teaching residents to serve a minimum of three years at schools in the sponsoring school district;

M. an expectation of employment for the teaching resident from the partner school district or charter school;

N. support for teaching residents for not less than one year following the resident's completion of the program through the provision of mentoring, professional development and networking opportunities; and

O. demonstration of the integral role and responsibilities of the partner area school district or charter school in fulfilling the purpose of the program.

**History:** Laws 2020, ch. 25, § 4; 2022, ch. 17, § 2.

The 2022 amendment, effective May 18, 2022, increased the stipend for teaching residents from twenty thousand dollars to thirty-five thousand dollars, provided a two thousand dollar stipend to partnering classroom teachers, provided a two thousand dollar stipend to principals or head administrators at partner schools, and provided a minimum of fifty thousand dollars for teacher residency program coordinators at each teacher residency program; in Subsection B, after "apprenticeship in the classrooms of", deleted "an expert" and added "a level two or level three"; in Subsection C, after "a",

deleted "team mentorship" and added "co-teaching"; in Subsection D, after "for the selection of", deleted "expert" and added "level two and level three"; in Subsection E, after "providing", deleted "expert" and added "level two and level three"; in Subsection H, after "no less than", deleted "twenty thousand dollars (\$20,000)" and added "thirty-five thousand dollars (\$35,000)"; added new Subsections I through K and redesignated former Subsections I through L as Subsections L through O, respectively; and in Subsection L, after "residents to serve", added "a minimum".

## 22-10B-5. Teacher residency program eligibility.

To be eligible to be admitted and hired as a teaching resident under the program, an individual shall not hold a level one, two or three-A teaching license and shall:

A. be in the final year of a department-approved undergraduate teacher preparation program; or

B. hold a bachelor's degree, be a professional from outside the field of education and have strong content knowledge or a record of achievement.

**History:** Laws 2020, ch. 25, § 5; 2022, ch. 17, § 3.

The 2022 amendment, effective May 18, 2022, clarified that candidates shall not hold a level one, two, or three-A

teaching license, and provided that eligible candidates for a teacher residency may include undergraduate seniors who are in the final year of a department-approved teacher

preparation program; in the introductory clause, after "an individual", deleted "must" and added "shall not hold a level one, two or three-A teaching license and shall"; added

a new Subsection A and redesignated former Subsection A as Subsection B; and deleted former Subsection C.

## **22-10B-6. Teacher residency program participant selection requirements.**

The public post-secondary educational institution or tribal college shall establish criteria for selection of individuals to participate in the program. The selection criteria shall include:

- A. a demonstration of comprehensive subject area knowledge or a record of accomplishment or professional experience in the field or subject area to be taught;
- B. strong verbal and written communication skills, which may be demonstrated by performance on appropriate tests or performance assessments;
- C. other dispositions linked to effective teaching, which may be determined by interviews or performance assessments; and
- D. consideration given to a participant's ability to increase the racial, ethnic or linguistic diversity of the teacher workforce.

**History:** Laws 2020, ch. 25, § 6.

**Effective dates.** — Laws 2020, ch. 25 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 20, 2020, 90 days after adjournment of the legislature.

## **22-10B-7. Rulemaking authority.**

The department shall adopt rules as necessary to implement the Teacher Residency Act.

**History:** Laws 2020, ch. 25, § 7.

**Effective dates.** — Laws 2020, ch. 25 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 20, 2020, 90 days after adjournment of the legislature.

## **22-10B-8. Teacher residency fund; created; purpose.**

The "teacher residency fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants and donations to the fund. Money in the fund is subject to appropriation by the legislature to implement the provisions of the Teacher Residency Act. Disbursements from the fund shall be made by warrants of the secretary of finance and administration pursuant to vouchers signed by the secretary of public education or the secretary's authorized representative.

**History:** Laws 2020, ch. 25, § 8.

**Effective dates.** — Laws 2020, ch. 25 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 20, 2020, 90 days after adjournment of the legislature.

## **22-10B-9. Reporting requirements.**

Public post-secondary educational institutions and tribal colleges shall collaborate with their partner school district or charter school to submit data to the department no later than July 1 of each year. The department shall compile data from all residency sites and submit a report to the legislature no later than November of each year. The report shall include the following indicators of teacher residency program success:

- A. the standards for entering and exiting the program;
- B. the number of credit hours required to complete the program;
- C. the number and percentage of teaching residents completing the program;
- D. the number and types of teaching licenses teaching residents are obtaining, including endorsements;



- E. the educator evaluation rating for teaching residents during their first five years of teaching;
- F. the educator evaluation rating for level two and level three teachers during their time supporting a teacher resident;
- G. the number and percentage of teaching residents who continue to teach in New Mexico school districts or charter schools after one, two, three, four and five years;
- H. the percentage of teaching residents who are diverse candidates that reflect the diversity of the public schools in the state or the geographic area where the school is located;
- I. academic performance of pre-kindergarten through twelfth grade students in classes taught by residency graduates in comparison to students in classes taught by other trained teachers;
- J. principal perception surveys of teaching resident and level two and level three teacher effectiveness;
- K. state-student perception surveys;
- L. the residency program graduate achievement, as determined by first-time pass rates on the state teaching performance assessment; and
- M. other data as determined by the department.

**History:** Laws 2020, ch. 25, § 9; 2022, ch. 17, § 4.

**The 2022 amendment,** effective May 18, 2022, provided that the data report required to be submitted by this section shall include the educator evaluation rating for level two and level three teachers during their time supporting a teacher resident and principal perception

surveys of level two and level three teacher effectiveness; in Subsection F, after "evaluation rating for", deleted "expert" and added "level two and level three"; and in Subsection J, after "teaching resident and", deleted "expert" and added "level two and level three".

## ARTICLE 10C

### National Board Certification Scholarship

**Sec. 22-10C-1.** Short title.  
**22-10C-2.** Definition.

**Sec. 22-10C-3.** Scholarship program; department powers and duties; qualifications; applications; preferences; reports.  
**22-10C-4.** Fund created; method of payment.

#### 22-10C-1. Short title.

This act [22-10C-1 to 22-10C-4 NMSA 1978] may be cited as the "National Board Certification Scholarship Act".

**History:** Laws 2020, ch. 26, § 1.

**Effective dates.** — Laws 2020, ch. 26 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 20, 2020, 90 days after adjournment of the legislature.

#### 22-10C-2. Definition.

As used in the National Board Certification Scholarship Act, "school principal" includes a charter school head administrator.

**History:** Laws 2020, ch. 26, § 2.

**Effective dates.** — Laws 2020, ch. 26 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 20, 2020, 90 days after adjournment of the legislature.

### 22-10C-3. Scholarship program; department powers and duties; qualifications; applications; preferences; reports.

A. The department may award a "national board certification scholarship" to an eligible teacher seeking certification from the national board for professional teaching standards, which scholarship shall be equal to the certification fees assessed by the national board. A scholarship shall be for no longer than three years, paid annually upon notification that the teacher is still an active participant in the certification process, unless the department finds that exigent circumstances prevent the teacher from finishing the certification process within three years. The department shall provide by rule what circumstances qualify as exigent circumstances.

B. A teacher is eligible to apply for a national board certification scholarship if the teacher:

- (1) is a New Mexico resident;
- (2) holds a valid level two or higher teaching license;
- (3) is teaching in a New Mexico public school; and
- (4) submits a reference letter from the teacher's school principal.

C. Applications shall be submitted to the department on forms and in a manner provided by rule of the department.

D. The department may provide by rule for scholarship contractual terms and application evaluation and other criteria to implement the scholarship program, including subject matter and grade-level preferences if there are more applications than available funding. The department may interview applicants.

E. The department shall provide an annual report on the national board certification scholarship program to the governor and the legislature, including the:

- (1) number of teachers who receive scholarships each year and the value of each scholarship;
- (2) number of teachers who receive national board certification each year through the scholarship program;
- (3) length of time each teacher takes to receive certification;
- (4) educator evaluation rating for scholarship recipients during their first five years of teaching as board-certified teachers;
- (5) name of the school district and public school where the scholarship recipient is employed; and
- (6) performance of students in classes taught by scholarship-supported board-certified teachers in comparison to students taught by non-board-certified teachers in the school district or charter school.

**History:** Laws 2020, ch. 26, § 3.

**Effective dates.** — Laws 2020, ch. 26 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 20, 2020, 90 days after adjournment of the legislature.

### 22-10C-4. Fund created; method of payment.

The "national board certification scholarship fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants and donations. The fund is subject to appropriation by the legislature. Money in the fund shall be expended solely for the purpose of awarding scholarships pursuant to the National Board Certification Scholarship Act. Payments from the fund shall be on warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of public education or the secretary's authorized representative.

**History:** Laws 2020, ch. 26, § 4.

**Effective dates.** — Laws 2020, ch. 26 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 20, 2020, 90 days after adjournment of the legislature.



# ARTICLE 11

## Educational Retirement

Sec.

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Sec.

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### 22-11-1. Short title.

Chapter 22, Article 11 NMSA 1978 may be cited as the "Educational Retirement Act".

**History:** 1953 Comp., § 77-9-1, enacted by Laws 1967, ch. 16, § 125; 1991, ch. 118, § 2.

**The 1991 amendment,** effective July 1, 1991, substituted "Chapter 22, Article 11 NMSA 1978" for "Sections 77-9-1 through 77-9-45 New Mexico Statutes Annotated, 1953 Compilation".

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 78 C.J.S. Schools and School Districts § 338 et seq.

### 22-11-2. Definitions.

As used in the Educational Retirement Act:

- A. "member" means an employee, except for a participant or a retired member, coming within the provisions of the Educational Retirement Act;
- B. "regular member" means:
- (1) a person regularly employed by a state educational institution, except for:
    - (a) a participant; or
    - (b) all employees of a general hospital or outpatient clinics thereof operated by a state educational institution named in Article 12, Section 11 of the constitution of New Mexico;
  - (2) a person regularly employed by a junior college or community college created pursuant to Chapter 21, Article 13 NMSA 1978, except for a participant;
  - (3) a person regularly employed by a technical and vocational institute created pursuant to the Technical and Vocational Institute Act [Chapter 21, Article 16 NMSA 1978], except for a participant;
  - (4) a person regularly employed by the New Mexico boys' school, the girls' welfare home, the Los Lunas medical center or a school district or as a licensed school employee of a state institution or agency providing an educational program and holding a license issued by the department, except for a participant;
  - (5) a person regularly employed by the department holding a license issued by the department at the time of commencement of such employment;
  - (6) a member classified as a regular member in accordance with the rules of the board;
  - (7) a person regularly employed by the New Mexico activities association holding a license issued by the department at the time of commencement of such employment; or
  - (8) a person regularly employed by a regional education cooperative holding a license issued by the department at the time of commencement of such employment;
- C. "provisional member" means a person described in Section 22-11-17 NMSA 1978;
- D. "local administrative unit" means an employing agency however constituted that is directly responsible for the payment of compensation for the employment of members or participants;
- E. "beneficiary" means a person having an insurable interest in the life of a member or a participant designated by written instrument duly executed by the member or participant and filed with the director to receive a benefit pursuant to the Educational Retirement Act that may be received by someone other than the member or participant;
- F. "employment" means employment by a local administrative unit that qualifies a person to be a member or participant;
- G. "service employment" means employment that qualifies a person to be a regular member;
- H. "provisional service employment" means employment that qualifies a person to be a provisional member;
- I. "prior employment" means employment performed prior to the effective date of the Educational Retirement Act that would be service employment or provisional service employment if performed thereafter;
- J. "service credit" means that period of time with which a member is accredited for the purpose of determining the member's eligibility for and computation of retirement or disability benefits;
- K. "earned service credit" means that period of time during which a member was engaged in employment or prior employment with which the member is accredited for the purpose of determining the member's eligibility for retirement or disability benefits;
- L. "allowed service credit" means that period of time during which a member has performed certain nonservice employment with which the member may be accredited, as provided in the Educational Retirement Act, for the purpose of computing retirement or disability benefits;
- M. "retirement benefit" means an annuity paid monthly to members whose employment has been terminated by reason of their age;
- N. "disability benefit" means an annuity paid monthly to members whose employment has been terminated by reason of a disability;
- O. "board" means the educational retirement board;
- P. "fund" means the educational retirement fund;
- Q. "director" means the educational retirement director;



R. "medical authority" means a medical doctor or medical review panel designated or employed by the board to examine medical records and report on the medical condition of applicants for or recipients of disability benefits;

S. "actuary" means a person trained and regularly engaged in the occupation of calculating present and projected monetary assets and liabilities under annuity or insurance programs;

T. "actuarial equivalent" means a sum paid as a current or deferred benefit that is equal in value to a regular benefit, computed upon the basis of interest rates and mortality tables;

U. "contributory employment" means employment for which contributions have been made by both a member and a local administrative unit pursuant to the Educational Retirement Act;

V. "qualifying state educational institution" means the university of New Mexico, New Mexico state university, New Mexico institute of mining and technology, New Mexico highlands university, eastern New Mexico university, western New Mexico university, central New Mexico community college, Clovis community college, Luna community college, Mesalands community college, New Mexico junior college, northern New Mexico state school, San Juan college and Santa Fe community college;

W. "participant" means:

(1) a person regularly employed as a faculty or professional employee of the university of New Mexico, New Mexico state university, New Mexico institute of mining and technology, New Mexico highlands university, eastern New Mexico university or western New Mexico university who first becomes employed with such an educational institution on or after July 1, 1991, or a person regularly employed as a faculty or professional employee of the central New Mexico community college, Clovis community college, Luna community college, Mesalands community college, New Mexico junior college, northern New Mexico state school, San Juan college or Santa Fe community college who is first employed by the institution on or after July 1, 1999 and who elects, pursuant to Section 22-11-47 NMSA 1978, to participate in the alternative retirement plan; and

(2) a person regularly employed who performs research or other services pursuant to a contract between a qualifying state educational institution and the United States government or any of its agencies who elects, pursuant to Section 22-11-47 NMSA 1978, to participate in the alternative retirement plan; provided that the research or other services are performed outside the state;

X. "salary" means the compensation or wages paid to a member or participant by any local administrative unit for services rendered. "Salary" includes payments made for annual or sick leave and payments for additional service provided to related activities, but does not include payments for sick leave not taken unless the payment for the unused sick leave is made through continuation of the member on the regular payroll for the period represented by that payment and does not include allowances or reimbursements for travel, housing, food, equipment or similar items;

Y. "alternative retirement plan" means the retirement plan provided for in Sections 22-11-47 through 22-11-52 NMSA 1978; and

Z. "retired member" means a person whose employment has been terminated by reason of age and who is receiving or is eligible to receive retirement benefits.

**History:** 1953 Comp., § 77-9-2, enacted by Laws 1967, ch. 16, § 126; 1975, ch. 306, § 21; 1978, ch. 167, § 1; 1982, ch. 37, § 1; 1991, ch. 118, § 3; 1993, ch. 69, § 1; 1993, ch. 232, § 7; 1995, ch. 148, § 1; 1999, ch. 261, § 1; 2001, ch. 283, § 1; 2003, ch. 39, § 1; 2004, ch. 27, § 26; 2017, ch. 21, § 1.

**The 2017 amendment**, effective June 16, 2017, revised the definitions of "regular member", "provisional member", and "medical authority" in the Educational Retirement Act; changed "he" and "his" to "the member" and the "the member's" throughout the section; in Subsection B, Paragraphs B(1), (2), (3) and (4), after "employed", deleted "as a teaching, nursing or administrative employee of" and added "by"; in Paragraph B(4), after "boys"

school, the", deleted "New Mexico", and after "girls", deleted "school" and added "welfare home"; in Subsection C, after "means a person", deleted "not eligible to be a regular member but who is employed by a local administrative unit designated in Subsection B of this section, provided, however, that employees of a general hospital or outpatient clinics thereof operated by a state educational institution named in Article 12, Section 11 of the constitution of New Mexico are not provisional members" and added "described in Section 22-11-17 NMSA 1978"; in Subsection R, after "medical doctor", deleted "within the state or as provided in Subsection D of Section 22-11-36 NMSA 1978 either" and added "or medical review panel", after "to examine", added "medical records", and after



"report on the", deleted "physical" and added "medical"; in Subsection V, after "western New Mexico university", deleted "Albuquerque technical vocational institute" and added "central New Mexico community college", and after "Luna", deleted "vocational technical institute, Mesa technical" and added "community college, Mesalands community"; and in Paragraph W(1), after "professional employee of the", deleted "Albuquerque technical vocational institute" and added "central New Mexico community college", and after "Luna", deleted "vocational technical institute, Mesa technical" and added "community college, Mesalands community".

**The 2004 amendment**, effective May 19, 2004, amended Paragraph (4) of Subsection B to change "certified school instructor" to "licensed school employee" and change "state board to" "department", and amended Paragraphs (5), (7) and (8) of Subsection B to change "state board" to "department" and to change "standard certificate" to "license".

**The 2003 amendment**, effective June 20, 2003, added "Salary" includes payments made for annual or sick leave and payments for additional service provided to related activities, but does not include payments for sick leave not taken unless the payment for the unused sick leave is made through continuation of the member on the regular payroll for the period represented by that payment and does not include allowances or reimbursements for travel, housing, food, equipment or similar items;" at the end of Subsection X.

**The 2001 amendment**, effective June 15, 2001, inserted "or retired member" in Subsection A; and added Subsection Z.

**The 1999 amendment**, effective June 18, 1999, deleted "except for a participant" at the end of Subsections B(2) to B(4); added the language beginning "Albuquerque technical-vocational institute" at the end of Subsection V; and in Subsection W(1), substituted the language beginning "the university of New Mexico" and ending "or western New Mexico university" for "a qualifying state educational institution", and added the language beginning "or a person regularly employed" and ending "on or after July 1, 1999".

**The 1995 amendment**, effective July 1, 1995, added Subsection X and redesignated former Subsection X as Subsection Y.

**The 1993 amendment**, effective July 1, 1993, inserted "or community college" and substituting "Chapter 21, Article 13 NMSA 1978" for "the Junior College Act" in Paragraph (2) of Subsection B; substituted "New Mexico girls' school" for "girls' welfare home" and "Los Lunas medical center" for "Los Lunas mental hospital" in Paragraph (4) of Subsection B; deleted "or the public school finance division" following "or the board" in Paragraph (5) of Subsection B; added Paragraph (8) of Subsection B; substituted "current" for "present" in Subsection T; substituted "22-11-47 through 22-11-52" for "22-11-46 through 22-11-51" in Subsection X; and made minor stylistic changes throughout the section.

**The 1991 amendment**, effective July 1, 1991, in Subsection A, inserted "except for a participant"; in Subsection B, divided former Paragraph (1) into Paragraphs (1) through (3) and designated its subsequent paragraphs accordingly, in Paragraph (1), added Subparagraph (a) and the designation for Subparagraph (b) and inserted "a person regularly employed as a teaching, nursing and administrative employee" in Paragraphs (2) and (3); in Subsection C, inserted "but who is"; in Subsections D to F, inserted references to participants; added Subsections V to X; and made minor stylistic changes throughout the section.

### ANNOTATIONS

#### **Retired legislator entitled to benefits from educational and public employees' retirement systems.**

— When a legislator is retired and no longer an employee, he is not, pursuant to this section, a "regular member" under the Educational Retirement Act and is not excluded from membership and participation in another state retirement program by Section 22-11-16 NMSA 1978; therefore he may receive benefits from both the educational retirement system and the public employees' retirement system. 1979 Op. Att'y Gen. No. 79-05.

**Public Employees Retirement Act (PERA) retiree** who returns to employment with a governmental entity whose employees are covered exclusively under the provisions of the Educational Retirement Act (ERA) for retirement purposes may not continue to receive PERA benefits. Such retiree's benefits must be suspended. That retiree is employed by an affiliated public employer and his "membership," within the meaning of that term, is not provided for in the ERA. 1987 Op. Att'y Gen. No. 87-79.

## **22-11-3. Educational retirement board; members; terms; vacancies.**

- A. The "educational retirement board" is created.
- B. The board shall be composed of nine members, consisting of the following:
  - (1) the secretary of public education, or a designee of the secretary who:
    - (a) is a resident of New Mexico;
    - (b) is a current employee of the public education department; and
    - (c) possesses experience relevant to the financial or fiduciary aspects of pension or investment fund management;
  - (2) the state treasurer, or a designee of the treasurer who:
    - (a) is a resident of New Mexico;
    - (b) is a current employee of the state treasurer's office; and
    - (c) possesses experience relevant to the financial or fiduciary aspects of pension or investment fund management;
  - (3) one member to be elected for a term of four years by members of the New Mexico association of educational retirees;
  - (4) one member to be elected for a term of four years by the members of the national education association of New Mexico;
  - (5) one member to be elected for a term of four years by the New Mexico members of the American association of university professors;



(6) two members to be appointed by the governor for terms of four years each. Each member appointed pursuant to this paragraph shall have a background in investments, finance or pension fund administration;

(7) one member to be elected for a term of four years by the members of the American federation of teachers New Mexico; and

(8) the secretary of higher education, or a designee of the secretary who:

(a) is a resident of New Mexico;

(b) is a current employee of the higher education department; and

(c) possesses experience relevant to the financial or fiduciary aspects of pension or investment fund management.

C. A designee of a board member shall have the same responsibilities, duties, liabilities and immunities as the board member, including the indemnification provided by Subsection H of Section 22-11-13 NMSA 1978. The appointment of a designee does not relieve the board member of the member's responsibilities, duties, liabilities and immunities as a board member, and the board member shall be fully responsible and liable for the actions of the designee while serving on the board.

D. In the initial composition of the board, the member elected by the members of the American association of university professors shall serve for a term of three years; one member appointed by the governor shall serve for a term of two years; and the other member appointed by the governor shall serve for a term of one year. In electing or appointing new members after the enactment of this 2021 act, the member elected by the American federation of teachers New Mexico shall serve an initial term of three years; thereafter, the members shall serve a term of four years.

E. Vacancies occurring in the terms of office of those members appointed by the governor or elected by an association shall be filled either by the governor appointing or the association electing a new member to fill the unexpired term.

**History:** 1953 Comp., § 77-9-3, enacted by Laws 1967, ch. 16, § 127; 1977, ch. 246, § 65; 1988, ch. 64, § 40; 2011, ch. 160, § 1; 2021, ch. 78, § 1.

**Cross references.** — For references to the former superintendent of public instruction, see 9-24-15 NMSA 1978.

**The 2021 amendment,** effective June 18, 2021, revised the number and composition of the educational retirement board, and provided for staggered terms; in Subsection B, after "composed of", changed "seven" to "nine", and added Paragraphs B(7) and B(8); and in Subsection D, added the last sentence of the subsection.

**The 2011 amendment,** effective June 17, 2011, authorized the secretary of education and the state treasurer to appoint designees to serve on the board; specified the qualifications and authority of designees appointed by the secretary of education and the state treasurer; and in Subsection B(6), specified the qualifications of the members appointed by the governor.

**Temporary provisions.** — Laws 2011, ch. 160, § 3 provided that the provisions Section 22-11-3B(6) NMSA 1978 shall apply only to appointments made after June 17, 2011 (effective date of Laws 2011, ch. 160, § 1), and shall not affect the status of existing appointees to the educational retirement board.

**Appropriations.** — Laws 2009, ch. 125, § 41, effective June 19, 2009, appropriated \$2,500,000 from the educational retirement fund to the educational retirement board for expenditure in fiscal years 2009 through 2013 to acquire land for and plan, design and construct a building or acquire and renovate an existing building for the educational retirement board in Santa Fe in Santa Fe county.

**The 1988 amendment,** effective May 18, 1988, deleted Subsection B(2) which read "the director of public school finance" and redesignated former Subsection B(3) as present Subsection B(2); added present Subsection B(3); and made a minor stylistic change in Subsection D.

#### ANNOTATIONS

**The educational retirement board** is an arm of the state rather than an independent political subdivision. *N.M. ex rel. National Educ. Ass'n of N.M. v. Austin Capital Mgmt. Ltd.*, 671 F. Supp. 2d 1248 (D.N.M. 2009).

**Member of board has right to resign** his office, and where no particular method of resigning is provided by law, no formal method is necessary or required. 1963-64 Op. Att'y Gen. No. 63-35.

## 22-11-4. Board; regular and special meetings.

A. The board shall hold regular meetings four times each year and may provide for additional regular meetings. Prior to each regular meeting, written notice shall be given to each member of the board specifying the time and place of the regular meeting.

B. Special meetings of the board may be called by the chair or by any three members of the board. Written notice of the special meeting shall be sent to each member of the board at least three days in advance of the special meeting.

C. If not in violation of Subsection A or B of this section, the rules of the board or the Open Meetings Act [Chapter 10, Article 15 NMSA 1978], the chair or any of three members of the board may cancel or reschedule a meeting.

**History:** 1953 Comp., § 77-9-4, enacted by Laws 1967, ch. 16, § 128; 2003, ch. 39, § 2; 2017, ch. 21, § 2.

The 2017 amendment, effective June 16, 2017, in Subsection A, after "each year and may", deleted "by its bylaws"; in Subsection B, after "called by the", deleted "chairman" and added "chair"; and in Subsection C, after

"Open Meetings Act, the", deleted "chairman" and added "chair".

The 2003 amendment, effective June 20, 2003, inserted "by" following "the chairman or" near the middle of Subsection B; and inserted Subsection C.

## 22-11-5. Board; record; quorum; compensation.

- A. The board shall elect from its membership a chairman and a vice chairman.
- B. A record shall be taken and preserved of all meetings of the board.
- C. A quorum of the board shall be required for the transaction of any business. A majority of the members of the board constitute a quorum. Each member of the board shall have one vote and a proposal shall pass by the affirmative vote of a majority of the members present at the meeting.
- D. While performing their duties, each member of the board shall be entitled to receive per diem and mileage as provided by the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978], and shall receive no other compensation, perquisite or allowance.

**History:** 1953 Comp., § 77-9-5, enacted by Laws 1967, ch. 16, § 129.

### 22-11-5.1. Restrictions on receipt of gifts.

Except for gifts of food or beverage given in a place of public accommodation, consumed at the time of receipt, not exceeding fifty dollars (\$50.00) for a single gift and the aggregate value of which gifts may not exceed one hundred fifty dollars (\$150) in a calendar year, neither a board member nor an employee of the board shall receive or accept anything of value directly or indirectly from a person who:

- A. has a current contract with the board;
- B. is a potential bidder, offeror or contractor for the provision of services or personal property to the board;
- C. is authorized to invest public funds pursuant to state or federal law or is an employee or agent of such a person; or
- D. is an organization, association or other entity having a membership that includes persons described in Subsections A through C of this section.

**History:** Laws 1999, ch. 153, § 2; 2017, ch. 21, § 3.

The 2017 amendment, effective June 16, 2017, made technical changes; in the catchline, deleted "restriction on campaign contribution; required reporting"; redesignated former Paragraphs A(1) through A(4) as Subsections A through D, respectively; in Subsection A, after "with the",

deleted "retirement", and deleted "or association"; in Subsection B, after "property to the", deleted "retirement", and deleted "or association"; and in Subsection D, after "described in", deleted "Paragraphs (1) through (3) of this subsection" and added "Subsections A through C of this section".

## 22-11-6. Board; powers; duties.

- A. The board shall:
  - (1) properly and uniformly enforce the Educational Retirement Act;
  - (2) hire employees and delegate administrative authority to these employees;
  - (3) make an actuarial report on the financial operation of the Educational Retirement Act to the legislature at each regular session every odd-numbered year;
  - (4) accept donations, gifts or bequests to the fund; and
  - (5) adopt regulations pursuant to the Educational Retirement Act.
- B. The board may:



(1) select and contract for the services of one or more custodial banks. For purposes of this subsection, "custodial bank" means a financial institution with the general fiduciary duties to manage, control and collect the assets of an investment fund, including receiving all deposits and paying all disbursements as directed by staff, safekeeping of assets, coordination of asset transfers, timely settlement of securities transactions and accurate and timely reporting by individual account and in total; and

(2) contract for legal services for litigation matters on a contingent fee basis, subject to the provisions of the Procurement Code [13-1-28 through 13-1-199 NMSA 1978]; provided that:

(a) the board shall submit each proposed contract to the attorney general for review of the contingency fee. The attorney general shall review a proposed contract within thirty days after receiving the contract. The review shall take into account the complexity of the factual and legal issues presented by the claims to be pursued under the contract. If the attorney general advises the board that the proposed contingency fee is not reasonable, the board may nevertheless approve the contract and the contingency fee if no fewer than four members vote for approval;

(b) each prospective contractor seeking to represent the board on a contingency fee basis shall file with the board the disclosure required by Section 13-1-191.1 NMSA 1978 disclosing all campaign contributions made to the governor, attorney general, state treasurer or any member of the board, or to a political committee that is intended to aid or promote the nomination or election of any candidate to a state office if the committee is: 1) established by any of the foregoing persons or their agents; 2) established in consultation with or at the request of any of the foregoing persons or their agents; or 3) controlled by one of the foregoing persons or their agents; and

(c) nothing in this paragraph shall prejudice or impair the rights of a qui tam plaintiff pursuant to the Fraud Against Taxpayers Act [44-9-1 through 44-9-14 NMSA 1978].

**History:** 1953 Comp., § 77-9-6, enacted by Laws 1967, ch. 16, § 130; 2011, ch. 157, § 1; 2017, ch. 21, § 4.

**The 2017 amendment**, effective June 16, 2017, in Paragraph A(4), after "gifts or bequests", added "to the fund".

**The 2011 amendment**, effective June 17, 2011, authorized the board to select a custodial bank and to

contract for legal services for contingent fee litigation, subject to the attorney general's review of the contingent fee and subject to the disclosure of campaign contributions by prospective contractors for contingent fee representation.

## 22-11-7. Educational retirement director; bond.

A. The board shall employ an educational retirement director. The director shall be the administrative officer for the board in carrying out the provisions of the Educational Retirement Act and shall have those additional duties provided in the rules of the board.

B. Before assuming the duties of office, the director shall obtain an official bond payable to the fund and conditioned upon the faithful performance of the director's duties during the director's term of office. The bond shall be executed by a corporate surety company authorized to do business in this state. The amount of the bond shall be not less than twenty-five thousand dollars (\$25,000). The board may elect to obtain a schedule or blanket corporate surety bond covering the director and employees of the board for any period not exceeding four years. The cost of a bond obtained pursuant to this section shall be paid from the fund. Any bond obtained shall be approved by the board and filed with the secretary of state.

**History:** 1953 Comp., § 77-9-7, enacted by Laws 1967, ch. 16, § 131; 2017, ch. 21, § 5.

**Cross references.** — For official bonds of state officers and employees, see the Surety Bond Act, 10-2-13 NMSA 1978.

**The 2017 amendment**, effective June 16, 2017, made technical changes; in Subsection A, after "provided in the", deleted "regulations" and added "rules"; and in Subsection B, substituted "the director's" for "his" throughout the subsection, and after "director and employees of the", deleted "division" and added "board".

## 22-11-8. Medical authority; fees.

A. The board shall employ the services of a medical authority. The medical authority may examine, make reports of and certify the medical condition of applicants for and recipients of disability benefits pursuant to the Educational Retirement Act.

B. The board shall pay the medical authority a reasonable fee for professional services.

**History:** 1953 Comp., § 77-9-8, enacted by Laws 1967, ch. 16, § 132; 2017, ch. 21, § 6.

The 2017 amendment, effective June 16, 2017, removed the provision regarding mandatory medical examinations of applicants for and recipients of disability

benefits; in Subsection A, after "The medical authority", deleted "shall" and added "may", after "make reports", added "of", and after "certify the", deleted "physical" and added "medical"; and in Subsection B, after "reasonable fee for", deleted "his".

## 22-11-9. Actuary; fees.

A. The board shall employ the services of an actuary. The actuary shall prepare a table of actuarial equivalents for use of the board and the director in computing the value of advanced, deferred or optional payment of benefits pursuant to the Educational Retirement Act. The actuary shall also study the financial operations of the Educational Retirement Act and shall make written reports thereon to the board.

B. The board shall pay the actuary a reasonable fee for professional services.

C. Unless otherwise required by the governmental accounting standards board of the American institute of certified public accountants, an actuarial report shall be conducted at least once every three years.

**History:** 1953 Comp., § 77-9-9, enacted by Laws 1967, ch. 16, § 133; 2003, ch. 39, § 3; 2017, ch. 21, § 7.

The 2017 amendment, effective June 16, 2017, in Subsection B, after "reasonable fee for", deleted "his".

The 2003 amendment, effective June 20, 2003, added Subsection C.

## 22-11-10. Salaries; fees; expenditures.

A. The amount of salaries and fees to be paid by the board shall be fixed by the regulations of the board.

B. Salaries and fees paid, and all other necessary expenditures of the board, shall be paid out of the fund unless otherwise provided by law.

**History:** 1953 Comp., § 77-9-10, enacted by Laws 1967, ch. 16, § 134.

## 22-11-11. Educational retirement fund; suspense fund.

A. The "educational retirement fund" and the "educational retirement suspense fund" are created.

B. The state treasurer shall be the custodian of the funds, and the board shall be the trustee of the funds.

C. All membership fees, contributions from members and local administrative units, securities evidencing the investment of money from the fund, interest, gifts, grants or bequests shall be deposited in the educational retirement fund.

D. All amounts received in satisfaction of a claim brought by private attorneys on behalf of the board shall be deposited into the educational retirement suspense fund. The board shall disburse the compensation due the private attorneys, together with reimbursement for reasonable costs and expenses, in accordance with the terms of the contract with the attorneys. After the disbursements have been made, the balance of each deposit shall be distributed to the educational retirement fund.

**History:** 1953 Comp., § 77-9-11, enacted by Laws 1967, ch. 16, § 135; 2011, ch. 157, § 2.

The 2011 amendment, effective June 17, 2011, created the educational retirement suspense fund for deposit

of funds received in satisfaction of claims brought by private attorneys and payment of attorney fees and cost.



## 22-11-12. Fund; suspense fund; disbursements.

The state treasurer shall make disbursements from the educational retirement fund or the educational retirement suspense fund only on warrants issued by the department of finance and administration or through any other process as approved by the department of finance and administration. Warrants for disbursements from the educational retirement fund or the educational retirement suspense fund shall be issued by the department of finance and administration only upon voucher of the director.

**History:** 1953 Comp., § 77-9-12, enacted by Laws 1967, ch. 16, § 136; 1993, ch. 69, § 2; 2011, ch. 157, § 3.

The 2011 amendment, effective June 17, 2011, authorized the state treasurer to make disbursements from the educational retirement fund or the educational retirement

suspense fund only on warrants or through another approved process.

The 1993 amendment, effective June 18, 1993, added the language beginning "or through any other process" at the end of the first sentence.

## 22-11-13. Board authority to invest the fund; prudent investor standard; indemnification of board.

A. The board is authorized to invest or reinvest the fund in accordance with the Uniform Prudent Investor Act [45-7-601 through 45-7-612 NMSA 1978].

B. The board shall provide quarterly performance reports to the legislative finance committee and the department of finance and administration. Annually, the board shall ratify and provide its written investment policy, including any amendments, to the legislative finance committee and the department of finance and administration.

C. The board or its designated agent may enter into contracts for the temporary exchange of securities for the use by broker-dealers, banks or other recognized institutional investors, for periods not to exceed one year, for a specified fee or consideration. Such a contract shall not be entered into unless the contract is fully secured by a collateralized, irrevocable letter of credit running to the board, cash or equivalent collateral of at least one hundred two percent of the market value of the securities plus accrued interest temporarily exchanged. This collateral shall be delivered to the fiscal agent of New Mexico or its designee contemporaneously with the transfer of funds or delivery of the securities. Such contract may authorize the board to invest cash collateral in instruments or securities that are authorized fund investments and may authorize payment of a fee from the fund or from income generated by the investment of cash collateral to the borrower of securities providing cash as collateral. The board may apportion income derived from the investment of cash collateral to pay its agent in securities lending transactions.

D. Commissions paid for the purchase or sale of any securities pursuant to the provisions of the Educational Retirement Act shall not exceed brokerage rates prescribed and approved by national stock exchanges or by industry practice.

E. Securities purchased for the fund shall be held in the custody of the state treasurer. At the direction of the board, the state treasurer shall deposit with a bank or trust company the securities for safekeeping or servicing.

F. The board may consult with the state investment council or the state investment officer; may request from the state investment council or the state investment officer any information, advice or recommendations with respect to investment of the fund; may utilize the services of the state investment council or the state investment officer; and may act upon any advice or recommendations of the state investment council or the state investment officer. The state investment council or the state investment officer shall render investment advisory services to the board upon request and without expense to the board. The board may also employ the investment management services and related management services of a trust company or national bank exercising trust powers or of an investment counseling firm or brokers for the purchase and sale of securities, commission recapture and transitioning services and may pay reasonable compensation for those services from funds administered by the board.

G. The board shall annually provide for its members no less than eight hours of training in pension fund investing, fiduciary obligations or ethics. A member elected or appointed to the



board who fails to attend the training for two consecutive years shall be deemed to have resigned from the board.

H. Members of the board, including any designee authorized by Paragraph (1) or (2) of Subsection B of Section 22-11-3 NMSA 1978, jointly and individually, shall be indemnified from the fund by the state from all claims, demands, suits, actions, damages, judgments, costs, charges and expenses, including court costs and attorney fees, and against all liability, losses and damages of any nature whatsoever that members shall or may at any time sustain by reason of any decision made in the performance of their duties pursuant to this section.

**History:** 1953, Comp., § 77-9-13, enacted by Laws 1967, ch. 16, § 137; 1969, ch. 203, § 1; 1970, ch. 81, § 3; 1975, ch. 211, § 5; 1987, ch. 71, § 1; 1989, ch. 22, § 1; 1993, ch. 69, § 3; 2001, ch. 190, § 1; 2005, ch. 240, § 6; 2009, ch. 288, § 13; 2011, ch. 160, § 2.

**Cross references.** — For applicability of insurance or banking laws to administration of article, see 22-11-43 NMSA 1978.

For the federal Investment Company Act of 1940, see 15 U.S.C. § 80a-1 et seq.

For the legislative finance committee, see 2-5-1 NMSA 1978.

For the department of finance and administration, see 9-6-3 NMSA 1978.

**The 2011 amendment**, effective June 17, 2011, provided for the indemnification of designees appointed by the secretary of education and the state treasurer.

**The 2009 amendment**, effective July 1, 2009, added Subsection G.

**The 2005 amendment**, effective July 1, 2005, deleted former Subsections A(1) through (10), which provided the classes of securities and investments in which the retirement board could invest and reinvest funds; added Subsection A to authorize the board to invest and reinvest the fund in accordance with the Uniform Prudent Investor Act; added Subsection B which provided that the board shall provide reports and investment policies to the legislative finance committee and the department of finance and administration; deleted former Subsection D, which provided that the prudent man rule applies to investment of the fund; deleted the former provision of Subsection F, which provided that the board may employ investment advisory services and investment management services; and in Subsection F, provided that the board may employ the investment management services and related management services of a trust company or national bank exercising trust powers or an investment counseling firm or brokers for the purchase and sale of securities, commission recapture and transitioning services and may pay for the services from funds administered by the board.

**The 2001 amendment**, effective June 15, 2001, in Paragraphs A(5) and A(7), substituted "debentures, instruments, conditional sales agreements, securities or other evidence of indebtedness of any corporation, partnership or trust" for "or commercial paper of any corporation", inserted "or any security convertible to common stock" following "common stock", inserted "partnership or trust" preceding "organized", and deleted "that the corporation shall have a minimum net worth of twenty-five million dollars (\$25,000,000); and provided" preceding "that the fund shall not"; and in Paragraph A(10), deleted "and which has net assets of at least twenty-five million dollars (\$25,000,000)" following "United States".

**The 1993 amendment**, effective June 18, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

**The 1989 amendment**, effective March 10, 1989, in Subsection B, added "or consideration" at the end of the first sentence and added the fourth and fifth sentences.

## ANNOTATIONS

**Reimbursement for expenses of privately retained attorney.** — The indemnification authorized by Subsection H of Section 22-11-13 NMSA 1978 applies only when legal representation is not available under the Tort Claims Act, Section 41-4-1 NMSA 1978 et seq., or by the attorney general's office. 2010 Op. Att'y Gen. No. 10-05.

Where a member of the educational retirement board retained an attorney to represent the board member personally in a lawsuit under the Fraud Against Taxpayers Act, Section 44-9-1 NMSA 1978 et seq., and in connection with a securities and exchange commission investigation and the risk management division of the general services department assigned or made counsel available to represent the board member, the state was not required to reimburse the board member for expenses resulting from retaining private counsel. 2010 Op. Att'y Gen. No. 10-05.

**Reimbursement for expenses of public relations firm.** — Where a member of the educational retirement board, who was a defendant in lawsuit under the Fraud Against Taxpayers Act, Section 44-9-1 NMSA 1978 et seq., and the subject of an investigation by the securities and exchange commission, personally incurred expenses for advice and consultation provided by a public relations firm; the board member did not incur the expense of hiring a public relations firm because of the board member's decisions as an educational retirement board member; and the board member incurred the expense as a result of the board member's independent, personal decision that the board member required the services of the public relations firm, the state was not required to reimburse the board member for the cost of hiring the public relations firm. 2010 Op. Att'y Gen. No. 10-05.

**Indemnification of an entity owned by a board member.** — Indemnification is not allowed under Subsection H of Section 22-11-13 NMSA 1978 where an entity in which an educational retirement board member has an ownership interest is sued as a result of decisions made by the board member as a member of the educational retirement board. 2010 Op. Att'y Gen. No. 10-05.

**Indemnification in criminal matters.** — Indemnification is allowed under Subsection H of Section 22-11-13 NMSA 1978 where an educational retirement board member is charged with a crime provided that the charges result from a decision the member made in the performance of the board member's duties and the board member successfully defends against the charges. Indemnification for expenses incurred by a board member in a criminal defense should be strictly limited to reimbursement. 2010 Op. Att'y Gen. No. 10-05.

**Authority to implement Subsection H.** — The powers granted the educational retirement board by Subsections A and E of Section 22-11-6 NMSA 1978 and Subsection B of Section 22-11-14 NMSA 1978 provide sufficient authority to the educational retirement board to implement Subsection H of Section 22-11-13 NMSA 1978. 2010 Op. Att'y Gen. No. 10-05.

The educational retirement board has the right and duty to approve attorneys who represent board members



under Subsection H of Section 22-11-13 NMSA 1978. 2010 Op. Att'y Gen. No. 10-05.

**Fiduciary duty with regard to indemnification of board members.** — The educational retirement board has the fiduciary duty to implement and apply Subsection

H of Section 22-11-13 NMSA 1978 so that any expenditures made from the educational retirement fund to indemnify educational retirement board members are reasonable, necessary and appropriate. 2010 Op. Att'y Gen. No. 10-05.

## 22-11-14. Fund; restrictions.

A. No member of the board or employee of the board shall have any interest, directly or indirectly, in the gains or profits of any investments made by the board, except for regular salaries and per diem and mileage allowances authorized pursuant to the Educational Retirement Act.

B. No member of the board or employee of the board shall, directly or indirectly for himself or as an agent or partner for others, borrow from the fund or deposits of the board, or in any manner use the fund or deposits except to make current and necessary disbursements authorized by the board.

C. No member of the board or employee of the board shall become an endorser or surety or become in any manner an obligor for moneys loaned or borrowed by the board.

**History:** 1953 Comp., § 77-9-14, enacted by Laws 1967, ch. 16, § 138.

**Cross references.** — For compensation of members of board, see 22-11-5 NMSA 1978.

For payment of salaries and fees by board, see 22-11-10 NMSA 1978.

## 22-11-15. Fund; refunds; payments.

A. After filing written demand with the director, a member is entitled to a refund of the total amount of the member's contributions plus interest at a rate set by the board, reduced by the sum of any disability benefits previously received by the member, if:

- (1) the member terminates employment for reasons other than by retirement, disability or death;
- (2) the member has exempted himself from the Educational Retirement Act; or
- (3) the member was not reemployed following a period of disability during which he received disability benefits.

B. The director may, at the request of a member, make payment on behalf of the member for any or all of the refund to an individual retirement account or a qualified retirement plan that accepts rollovers.

C. If the amount of a deceased member's contribution or residual contribution does not exceed the sum of one thousand dollars (\$1,000) and no written claim is made to the board for it within one year from the date of the member's death, by his surviving beneficiary or the member's estate, payment thereof may be made to the named beneficiary or, if none is named, to the person the board determines to be entitled to the contribution under the laws of New Mexico. Any payment made by the board pursuant to this subsection shall be a bar to a claim by any other person.

D. The interest provided for in Subsection A of this section shall apply only to contributions paid to the fund after July 1, 1971 and on deposit in the fund for a period of at least one fiscal year; provided that no such interest shall be allowed on refunds of contributions that were paid into the fund prior to July 1, 1971.

**History:** 1953 Comp., § 77-9-15, enacted by Laws 1967, ch. 16, § 139; 1971, ch. 12, § 1; 1984, ch. 19, § 1; 1993, ch. 69, § 4; 2003, ch. 39, § 4.

**Cross references.** — For payment of benefits upon death during reemployment, see 22-11-26 NMSA 1978.

For retirement benefit options, see 22-11-29 NMSA 1978.

For disability benefits, see 22-11-35 to 22-11-40 NMSA 1978.

**The 2003 amendment**, effective June 20, 2003, substituted "set by the board" for "equal to seventy-five percent of the average rate earned by the fund during the five fiscal years preceding the fiscal year of refund" near the middle of Subsection A.

**The 1993 amendment**, effective June 18, 1993, added present Subsection B; redesignated former Subsections B and C as Subsections C and D; and made a minor stylistic change.

## 22-11-16. Regular membership.

Except as otherwise provided in the Educational Retirement Act, being a regular member shall be a condition of employment and shall exclude membership and participation in any other state retirement program.

**History:** 1953 Comp., § 77-9-16, enacted by Laws 1967, ch. 16, § 140.

**Cross references.** — For optional coverage of persons qualified to be regular members and covered by retirement program for federal civil service employees, *see* 22-11-19 NMSA 1978.

### ANNOTATIONS

**Retired legislator entitled to benefits from educational and public employees' retirement systems.**

— Since when a legislator is retired and no longer an employee he is not, pursuant to Section 22-11-2 NMSA 1978,

a "regular member" under the Education-Retirement Act and is not excluded from membership and participation in another state retirement program by this section, therefore he may receive benefits from both the educational retirement system and the public employees' retirement system. 1979 Op. Att'y Gen. No. 79-05.

**Public employees retirement association.** — Full-time city public school teacher who was a member of the educational retirement system, and who was simultaneously employed on a part-time basis by the city, was not required to be a member of the public employees retirement association. 1988 Op. Att'y Gen. No. 88-70.

### 22-11-16.1. Regular membership continuation of certain transferred employees.

Notwithstanding Subparagraph (b) of Paragraph (1) of Subsection B of Section 22-11-2 NMSA 1978, a regular member who is an employee of a local administrative unit that is a state educational institution named in Article 12, Section 11 of the constitution of New Mexico and who transfers to a general hospital or outpatient clinics of that hospital operated by the local administrative unit will have the option to continue his regular membership rather than become a member of a retirement plan offered by the general hospital or outpatient clinics of that hospital. The option shall be exercised by filing a written election with both the educational retirement director and the designated officer of the local administrative unit. This election shall be made within sixty days after the effective date of the regular member's transfer and shall be irrevocable as long as the employee is employed by the general hospital or outpatient clinics of that hospital operated by the local administrative unit.

**History:** 1978 Comp., § 22-11-16.1, enacted by Laws 1999, ch. 290, § 1.

### 22-11-16.2. Substitutes; membership status.

An employee engaged on a day-to-day basis to replace another employee who is temporarily absent shall be considered a substitute and shall not be covered under the Educational Retirement Act. An employee engaged to fill a vacant position, including a position vacated by a leave of absence of at least ninety days, shall not be considered a substitute and is subject to the requirements of the Educational Retirement Act.

**History:** Laws 2019, ch. 258, § 7; repealed and re-enacted by Laws 2020, ch. 10, § 2.

**Repeals and reenactments.** — Laws 2020, ch. 10, § 2 repealed former 22-11-16.2 NMSA 1978, and enacted a new section, effective May 20, 2020.

## 22-11-17. Provisional membership.

A provisional member is a person who is employed by the board, the department, the New Mexico school for the deaf, the northern New Mexico state school, the New Mexico school for the blind and visually impaired, the girls' welfare home, the New Mexico boys' school or the Los Lunas medical center and who has the option of qualifying for coverage under either the Educational Retirement Act or the public employees retirement association. This option shall be exercised by filing a written election with both the director and the executive secretary of the public employees



retirement association. This election shall be made within six months after employment and shall be irrevocable regardless of subsequent employment or reemployment in any administrative unit enumerated in this section. Until this election is made, the provisional member shall be covered and shall be required to make contributions under the Educational Retirement Act.

**History:** 1953 Comp., § 77-9-17, enacted by Laws 1967, ch. 16, § 141; 1971, ch. 268, § 1; 1973, ch. 382, § 1; 1983, ch. 101, § 1; 1987, ch. 208, § 1; 1989, ch. 30, § 1; 1993, ch. 69, § 5; 2003, ch. 227, § 1; 2017, ch. 21, § 8.

**Cross references.** — For the Social Security Act, see 42 U.S.C. § 301 et seq.

For the school for the deaf, see 21-6-1 NMSA 1978.

For the northern New Mexico state school, see 21-4-1 NMSA 1978.

For the New Mexico school for the blind and visually impaired, see 21-5-2 NMSA 1978.

For the New Mexico boys' school, see N.M. Const. art. XIV, § 1.

For the girls' welfare home, see N.M. Const. art. XIV, § 1.

**The 2017 amendment**, effective June 16, 2017, clarified the requirements for provisional membership; deleted Subsections A through D and removed the subsection designation for former Subsection E; in the undesignated paragraph, after "provisional member", added "is a person who is", after "the department", deleted "of education", after "New Mexico school for the", added "blind and", after "visually", deleted "handicapped" and added "impaired", after the next occurrence of "the", deleted "New Mexico", after "girls'", deleted "school" and added "welfare home", after "Los Lunas medical center", deleted "shall have" and added "and who has", after each occurrence of "public employees retirement association", deleted "of New Mexico", after "written election with both the", deleted "educational retirement", and after "enumerated in this", deleted "subsection" and added "section".

**The 2003 amendment**, effective June 20, 2003, inserted "by the local administrative unit" following "shall be informed" in Subsection C; added present Subsection D; redesignated former Subsection D as present Subsection E; in present Subsection E, substituted "medical center" for "mental hospital" following "the Los Lunas", and substituted "executive secretary" for "director" following "director and the".

**The 1993 amendment**, effective June 18, 1993, deleted a portion of Subsection C, pertaining to conditions governing the right of a provisional member to acquire earned

service credit for periods of employment during which the exemption or exemptions were in force and, in Subsection D, substituted "New Mexico girls' school" for "girls' welfare home" and made minor stylistic changes.

**The 1989 amendment**, effective July 1, 1989, in Subsection C, substituted all of the present language of Paragraph (1) beginning with "board's" for "average rate earned by the fund during the five fiscal years preceding the fiscal year in which payment is made", and substituted "1992" for "1986" in Paragraph (4).

## ANNOTATIONS

**Suspension of benefits upon resumption of employment.** — An employee of the department of finance and administration, retired pursuant to the provisions of the Public Employees Retirement Act, may not resume employment with the department of education without suspension of retirement benefits. 1987 Op. Att'y Gen. No. 87-37 (decided under former Section 10-11-22 NMSA 1978).

An employee of a public school system, retired pursuant to the provisions of the Educational Retirement Act, may not resume employment with the department of education without suspension of her educational retirement benefits. 1987 Op. Att'y Gen. No. 87-38 (decided under former Section 10-11-8 NMSA 1978).

**Public Employees Retirement Act annuitants whom the department of education subsequently employs** and who elect to participate in the educational retirement system by making contributions to that system do not "qualify for (retirement) coverage" under Paragraph D, since they are not considered as having acquired any service credit for purposes of educational retirement benefits. 1987 Op. Att'y Gen. No. 87-37 (decided under former Section 10-11-22 NMSA 1978).

**"Double dipping" disallowed.** — This section does not contemplate a useless act or a manipulative election of coverage under the Public Employees Retirement Act for the sole purpose of enabling the state employee to engage in "double dipping". 1987 Op. Att'y Gen. No. 87-38.

## 22-11-18. Repealed.

**Repeals.** — Laws 2017, ch. 21, § 20 repealed 22-11-18 NMSA 1978, as enacted by Laws 1971, ch. 73, § 1, relating to provisional members employed after July 1, 1971,

effective June 16, 2017. For provisions of former section, see the 2016 NMSA 1978 on *NMOneSource.com*.

## 22-11-19. Regular or provisional membership; optional coverage.

A. Any person qualified to be a regular or provisional member covered by a retirement program established for federal civil service employees shall have six months after the commencement of employment to file a written notice with the director of his election not to be covered by the Educational Retirement Act. If the person so elects, he may withdraw any contributions made pursuant to the Educational Retirement Act.

B. Any person qualified to be a regular or provisional member and who was employed by a regional education cooperative on July 1, 1993 shall have the right to exempt himself from Educational Retirement Act coverage within thirty days and such exemption shall be irrevocable as long as the person is employed by a regional cooperative.

**History:** 1953 Comp., § 77-9-18, enacted by Laws 1967, ch. 16, § 142; 1993, ch. 232, § 8.

The 1993 amendment, effective July 1, 1993, designated the formerly undesignated provisions as Subsection A and added Subsection B.

### **22-11-19.1. [Exemption of certain participants covered under Comprehensive Employment and Training Act.]**

All participants covered under the Comprehensive Employment and Training Act (Public Law 95-524) are exempt from coverage under the Educational Retirement Act, effective July 1, 1979, except for those employees who have vested in the plan by that date.

**History:** Laws 1979, ch. 316, § 1.

**Compiler's notes.** — The federal Comprehensive Employment and Training Act, referred to in this section, was

found at 29 U.S.C. §§ 801 to 999 before it was repealed in 1982 by P.L. 97-300, Title I, § 184(a)(1).

### **22-11-19.2. Regular or provisional membership; regional education cooperatives.**

Any person employed by a regional education cooperative and qualified to be a regular or provisional member shall have the right to acquire earned service credit for periods of employment with the regional education cooperative when the member was neither covered nor retired under the Educational Retirement Act, under the following conditions:

A. both the member and the administrative unit contributions, at the rates in effect during the periods of employment and applied to earnings of the member during such periods, are paid to the fund, together with interest, at a rate equal to the board's actuarial earnings assumption rate at the time of purchase;

B. both member and administrative unit contributions, together with interest, are paid by the member; or

C. the member tenders payment of his contributions, together with interest and the local administrative unit by which he was employed may, but shall not be obligated to, pay the administrative unit contributions, together with interest.

**History:** 1978 Comp., § 22-11-19.2, enacted by Laws 1993, ch. 232, § 9.

### **22-11-20. Repealed.**

**Repeals.** — Laws 1993, ch. 69, § 11 repealed 22-11-20 NMSA 1978, as enacted by Laws 1967, ch. 16, § 143, relating to membership fees, effective June 18, 1993. For

provisions of former section, see the 1992 NMSA 1978 on [NMSAOneSource.com](http://NMSAOneSource.com).

### **22-11-21. Contributions; members; local administrative units.**

A. Except as provided in Subsection D of this section, for a member whose annual salary is greater than twenty-four thousand dollars (\$24,000), the member shall make contributions to the fund at the rate of ten and seven-tenths percent of the member's annual salary.

B. For a member whose annual salary is twenty-four thousand dollars (\$24,000) or less, the member shall make contributions to the fund at the rate of seven and nine-tenths percent of the member's annual salary.

C. Except as provided in Subsection D of this section, each local administrative unit shall make an annual contribution to the fund according to the following schedule:

(1) from July 1, 2021 through June 30, 2022, at the rate of fifteen and fifteen-hundredths percent of the annual salary of each member employed by the local administrative unit;

(2) from July 1, 2022 through June 30, 2023, at the rate of seventeen and fifteen-hundredths percent of the annual salary of each member employed by the local administrative unit; and

(3) on and after July 1, 2023, at the rate of eighteen and fifteen-hundredths percent of the annual salary of each member employed by the local administrative unit.



D. If, in a calendar year, the salary of a member, initially employed by a local administrative unit on or after July 1, 1996, equals the annual compensation limit set pursuant to Section 401(a) (17) of the Internal Revenue Code of 1986, as amended, then:

(1) for the remainder of that calendar year, no additional member contributions or local administrative unit contributions for that member shall be made pursuant to this section; provided that no member shall be denied service credit solely because contributions are not made by the member or on behalf of the member pursuant to this subsection; and

(2) the amount of the annual compensation limit shall be divided into four equal portions, and, for purposes of attributing contributory employment and crediting service credit, each portion shall be attributable to one of the four quarters of the calendar year.

**History:** 1953 Comp., § 77-9-20, enacted by Laws 1967, ch. 16, § 144; 1974, ch. 5, § 1; 1981, ch. 293, § 1; 1984, ch. 19, § 2; 1991, ch. 140, § 1; 1992, ch. 117, § 1; 2005, ch. 273, § 1; 2008, ch. 68, § 1; 2009, ch. 127, § 11; 2010, ch. 67, § 1; 2011, ch. 178, § 13; 2013, ch. 61, § 1; 2019, ch. 237, § 18; 2019, ch. 258, § 1; 2021, ch. 44, § 1; 2022, ch. 29, § 1.

**Repeals.** — Laws 2021, ch. 44, § 5 repealed Laws 2019, ch. 237, § 18, effective July 1, 2021.

**Cross references.** — For Section 401(a)(17) of the Internal Revenue Code of 1986, see 26 U.S.C. 401.

**The 2022 amendment,** effective May 18, 2022, increased employer contributions to the educational retirement fund; and in Subsection C, added a new Paragraph C(2) and redesignated former Paragraph C(2) as Paragraph C(3), and in Paragraph C(3), after "July 1", deleted "2022" and added "2023", and after "at the rate of", deleted "sixteen" and added "eighteen".

**The 2021 amendment,** effective July 1, 2021, increased certain contributions, and revised the schedule for contributions, to the educational retirement fund; and in Subsection C, after "annual contribution to the fund", deleted "on and after July 1, 2019, at the rate of fourteen and fifteen-hundredths percent of the annual salary of each member employed by the local administrative unit" and added "according to the following schedule", and added Paragraphs C(1) and C(2).

**Temporary provisions.** — Laws 2021, ch. 44, § 4 provided that before July 1, 2022, the educational retirement board shall report to the department of finance and administration, any other affected agency, the legislative finance committee, legislative education study committee and any other appropriate interim legislative committees on fund status and options to improve pension plan solvency without additional contributions from public employers.

**The 2019 amendment,** effective July 1, 2019, raised the salary threshold for member contribution amounts; in Subsection A, in the introductory clause, after "greater than", deleted "twenty thousand dollars (\$20,000)" and added "twenty-four thousand dollars (\$24,000)", and after "fund", deleted "according to the following schedule", deleted Paragraph A(1), paragraph designation "(2)" and the language "On and after July 1, 2014"; in Subsection B, after the subsection designation, deleted "On and after July 1, 2008", after "annual salary is", deleted "twenty thousand dollars (\$20,000)" and added "twenty-four thousand dollars (\$24,000)", and after "member", deleted "contribution" and added "shall make contributions to the fund at the"; and in Subsection C, after "contribution to the fund", deleted "according to the following schedule:" and added "on and after July 1, 2019, at the rate of fourteen and fifteen-hundredths percent of the annual salary of each member employed by the local administrative unit", and deleted former Paragraphs C(1) and C(2).

**The 2013 amendment,** effective July 1, 2013, increased the contribution rate of members whose annual salary is greater than twenty thousand dollars; in Subsection A, in the introductory sentence, after "Subsection",

deleted "C" and added "D", and after "section", deleted "each" and added "for a member whose annual salary is greater than twenty thousand dollars (\$20,000), the"; deleted former Paragraphs (1) through (5) of Subsection A, which provided the contribution rates for members for fiscal years beginning in 2005 and ending in 2013; added Paragraphs (1) through (2) of Subsection A; added Subsection B; in Subsection C, in the introductory sentence, after "Subsection", deleted "C" and added "D"; deleted former Paragraphs (1) through (8) of Subsection B, which provided the contribution rates for local administrative units for fiscal years beginning in 2005 and ending in 2013; renumbered former Paragraphs (9) and (10) of Subsection B as Paragraphs (1) and (2) of Subsection B respectively; and renumbered former Subsection C as Subsection D.

**The 2011 amendment,** effective July 1, 2011, for the period from July 1, 2011 through June 30, 2012, increased the member contribution rate for members whose annual salary is more than twenty thousand dollars; for the period July 1, 2011 through June 30, 2012, decreased the local administrative unit contribution rate by different percentages depending on whether the annual salary of members is more or less than twenty thousand dollars; for the period July 1, 2012 through June 30, 2013, increased the local administrative unit contribution rate for members whose annual salary is twenty thousand dollars or less; and increased the local administrative unit contribution rate for the period July 1, 2013 through June 30, 2014 and for periods beginning on and after July 1, 2014.

**Temporary provisions.** — Laws 2011, ch. 178, § 14 provided:

A. No later than September 30, 2013, the retirement board of the public employees retirement association and the educational retirement board shall each cause an actuarial study to be conducted for each retirement system administered by the board. Each study shall analyze whether the higher employee contribution rates and lower employer contribution rates required by Laws 2011, Chapter 178 and Laws 2009, Chapter 127 have had or will have an adverse actuarial effect on the retirement system in violation of Article 20, Section 22 of the constitution of New Mexico. The results of each study shall be submitted to the legislative finance committee and the governor.

B. If a study concludes that a retirement system has had or will have an adverse actuarial effect as a result of the higher employee contribution rates and the lower employer contribution rates required by Laws 2011, Chapter 178 and Laws 2009, Chapter 127, the board that administers that retirement system shall submit a request for a supplemental appropriation to the second session of the fifty-first legislature in the amount that will rectify the adverse actuarial effect.

**The 2010 amendment,** effective July 1, 2010, in Subsection B(7), after "July 1", changed "2010" to "2011"; after "June 30", changed "2011" to "2012"; after "a sum equal to", deleted "eleven and sixty-five hundredths" and added "thirteen and fifteen-hundredths"; after "local administrative unit", deleted the former language, which provided that for



members whose annual salary is \$20,000 or less, the local administrative unit would contribute thirteen and fifteen-hundredths percent of the member's annual salary; and in Subsection B(8), after "July 1", changed "2011" to "2012".

**The 2009 amendment**, effective July 1, 2009, in Paragraph (5) of Subsection A, added the exception at the end of the sentence; in Paragraph (6) of Subsection B, changed "twelve and four-tenths" to "ten and nine-tenths"; and added the exception at the end of the sentence; and in Paragraph (7) of Subsection B, changed "eleven and fifteen-hundredths" to "eleven and sixty-five hundredths" and added the exception at the end of the sentence.

**The 2008 amendment**, effective July 1, 2008, added Subsection C.

**Temporary provision.** — Laws 2008, ch. 68, § 3, provided for additional contributions to the educational retirement fund and restoration of service credit for employees whose member contributions and local administrative unit contributions were incorrectly capped prior to July 1, 2008, because the employee's salary exceeded the annual compensation limit set pursuant to Section 401(a)(17) of the Internal Revenue Code.

**The 2005 amendment**, effective June 17, 2005, deleted the former provision of Subsection A that each member shall contribute seven and six-tenths percent of his annual

salary; provided in Subsections A(1) through (8) a schedule of annual contributions; deletes former provision of Subsection B which provided that each local administrative unit shall make an annual contribution of seven and six-tenths percent of the annual salary of each member employed by the administrative unit; provides in Subsections B(1) through (5) a schedule of annual contributions; and deleted former Subsection C, which provided that each administrative unit shall make an annual contribution of eight and sixty-five hundredths percent of the annual salary of each member employed by the administrative unit.

**The 1992 amendment**, effective March 10, 1992, substituted "1993" for "1992" near the beginning of Subsections B and C; and substituted "sixty-five hundredths" for "six-tenths" in Subsection C.

**The 1991 amendment**, effective June 14, 1991, added "Until July 1, 1992" at the beginning of Subsection B and added Subsection C.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity and effect of retroactive change in rate of employee's contribution to public pension fund, 78 A.L.R.2d 1197.

## 22-11-21.1. Member contributions; tax treatment.

Commencing on July 1, 1983, each local administrative unit shall, solely for the purpose of compliance with Section 414(h) of the Internal Revenue Code, pick up, for the purposes specified in that section, member contributions required by Subsection A of Section 22-11-21 NMSA 1978 for all annual salary earned by the member. Member contributions picked up under the provisions of this subsection shall be treated as local administrative unit contributions for purposes of determining income tax obligations under the Internal Revenue Code; however, such picked-up member contributions shall be included in the determination of the member's gross annual salary for all other purposes under federal and state laws. Members' contributions picked up under this section shall continue to be designated member contributions for all purposes of the Educational Retirement Act and shall be considered as part of the member's annual salary for purposes of determining the amount of the member's contribution. The provisions of this section are mandatory, and the member shall have no option concerning the pickup or to receive the contributed amounts directly instead of having them paid by the local administrative unit to the educational retirement system.

**History: 1978 Comp., § 22-11-21.1, enacted by Laws 1983, ch. 91, § 1.**

**Cross references.** — For the Internal Revenue Code, see 26 U.S.C. § 1 et seq. For Section 414(h) of the Internal Revenue Code, see 26 U.S.C. § 414(h).

## ANNOTATIONS

**Provisions are salary reductions subject to FICA tax.** — "Pickup" provisions of this section and Section 10-11-125 NMSA 1978, whereby the state designated certain employee pension contributions as employer contributions, constituted salary reduction agreements, and, as such, were subject to FICA taxes under 26 U.S.C. § 3121(v)(1)(B), 42 U.S.C. § 409(i)(2), and 26 U.S.C. § 3306(r)(1)(B), following the 1984 amendments to those sections. *Pub. Employees' Ret. Bd. v. Shalala*, 153 F.3d 1160 (10th Cir. 1998).

**Exemption from income tax permitted.** — The legislature may grant a special income tax exemption to one kind of public employee, teachers, yet deny the same exemption to other public employees. *Vaughn v. State Taxation & Revenue Dep't*, 1982-NMCA-112, 98 N.M. 362, 648 P.2d 820, superseded by statute, *Pierce v. State*, 1996-NMSC-001, 121 N.M. 212, 910 P.2d 288.

**Repeal of tax exemption.** — Because no private contractual rights were granted by the retirement plan,

there was no impairment or breach of contract resulting from the 1990 repeal of the tax exemption provision and, although the plan conferred property rights that vested upon accumulating minimum earned service credits, those rights did not include the right to receive pension benefits exempt from tax. *Pierce v. State*, 1996-NMSC-001, 121 N.M. 212, 910 P.2d 288.

Because the retirement plan provided no contractual or vested right to receive an irrevocable tax exemption, there was no constitutionally protected private interest in the tax exemption and there was no due process violation when the exemption was repealed. *Pierce v. State*, 1996-NMSC-001, 121 N.M. 212, 910 P.2d 288.

**"Trading" tax exemptions for health care.** — Repeal of the state income tax exemptions for teacher pensions and public employee pensions does not remedy constitutional defects of the proposed retiree health care act under a theory that those exemptions would be "traded" for retiree health care. Those exemptions are not property rights, irrepealable contractual entitlements, or pension benefits. Hence, elimination of the favorable tax treatment for current retirees is not consideration for a multi-million dollar health care plan that the state proposes to provide them. 1990 Op. Att'y Gen. No. 90-03.



## 22-11-21.2. Salary calculation; limitations.

In establishing a member's average annual salary for determination of retirement benefits, salary in excess of limitations set forth in Section 401(a)(17) of the Internal Revenue Code of 1986, as amended, shall be disregarded. The limitation on compensation for eligible employees shall not be less than the amount allowed pursuant to the Educational Retirement Act in effect on July 1, 1993. For purposes of this section, "eligible employee" means an individual who was a member or participant of the educational retirement plan or alternative retirement plan prior to the first plan year beginning after December 31, 1995. For a member who first becomes a clinical faculty member of the university of New Mexico health sciences center on or after July 1, 1999, the limitation on compensation shall not be in excess of the member's base salary as specified in the member's annual faculty contract or the limitations set forth in Section 401(a)(17) of the Internal Revenue Code of 1986, as amended, whichever is less.

**History:** 1978 Comp., § 22-11-21.2, enacted by Laws 1995, ch. 148, § 2; 1999, ch. 274, § 2.

**The 1999 amendment**, effective June 18, 1999, added the last sentence.

**Cross references.** — For Section 401 of the Internal Revenue Code of 1986, see 26 U.S.C. § 401.

## 22-11-21.3. Pick up; rollover.

A. Commencing on July 1, 1998, each local administrative unit may, solely for the purpose of compliance with Section 414(h) of the Internal Revenue Code of 1986, pick up, for the purposes specified in that section, member contributions permitted by Section 22-11-17 NMSA 1978; Subsection C of Section 22-11-33 NMSA 1978; or Paragraph (4) of Subsection A of Section 22-11-34 NMSA 1978. Member contributions picked up under the provisions of this subsection shall be treated as local administrative unit contributions for purposes of determining income tax obligations under the Internal Revenue Code of 1986; however, such picked-up member contributions shall be included in the determination of the member's gross annual salary for all other purposes under federal and state laws. Member contributions picked up under this section shall continue to be designated member contributions for all purposes of the Educational Retirement Act and shall be considered as part of the member's annual salary for purposes of determining the amount of the member's contribution. The provisions of this section are voluntary, and the member shall have no option concerning the pick up to receive the contributed amounts directly instead of having them paid by the local administrative unit to the fund. The contribution may be paid through the local administrative unit's payroll deduction.

B. Commencing July 1, 1998, the board may accept rollover contributions from other retirement funds solely for and subject to the restrictions set forth in Section 22-11-17 NMSA 1978 and Subsection B of Section 22-11-34 NMSA 1978 and the applicable restrictions set forth in the Internal Revenue Code of 1986 for pension plan qualification.

**History:** Laws 1998, ch. 38, § 1; 2003, ch. 227, § 2; 2017, ch. 21, § 9.

**Cross references.** — For the Internal Revenue Code of 1986, see 26 U.S.C.

**The 2017 amendment**, effective June 16, 2017, in Subsection A, after "member contributions permitted by", deleted "Subsection D of".

**The 2003 amendment**, effective June 20, 2003, inserted "of 1986" following "Internal Revenue Code".

throughout the section, in Subsection A inserted "Subsection D of Section 22-11-17 NMSA 1978; Subsection C of Section 22-11-33 NMSA 1978; or" following "member contributions permitted by," added the last sentence; in Subsection B, deleted "educational retirement" near the beginning, inserted "Section 22-11-17 NMSA 1978 and" following "set forth in."

## 22-11-22. Payment; records; audits.

A. Contributions shall be deducted from the salaries of members by the local administrative units as the salaries are paid. These contributions shall be forwarded monthly to the director for deposit in the fund.

B. Contributions of local administrative units shall be derived from revenue available to the local administrative unit and shall be forwarded monthly to the director for deposit in the fund. The board may assess an interest charge and a penalty charge on any remittance not made by its due date.

C. Each local administrative unit shall record and certify quarterly to the director an itemized account of the contributions paid by each member and the local administrative unit. The director shall keep a record of these itemized accounts.

D. The director or the director's authorized representative may audit the financial affairs, books and records, and may interview employees, of any local administrative unit at any time to ensure compliance with the Educational Retirement Act and rules adopted by the board. The local administrative unit shall cooperate with the director or the authorized representative and shall provide access to records, information and employees during regular business hours. If, during the course of the audit, the director or the director's designee finds discrepancies or violations of the Educational Retirement Act or rules adopted by the board, or if the director or the director's designee finds that a local administrative unit does not have adequate financial controls or procedures in place to allow the local administrative unit to properly account for and pay required contributions to the board:

(1) the director shall order the local administrative unit to implement measures to remedy those matters, including payment to the fund of any contributions not properly calculated or paid, together with interest thereon at a rate to be established by the board. The local administrative unit shall promptly comply with that order; and

(2) the director shall submit a report describing the discrepancy, violation or failure to maintain adequate financial controls or procedures to the board, the state auditor and the public education department or the higher education department as may be appropriate.

E. If the director or the director's designee finds or has reason to suspect criminal activity with respect to contributions, payments or the management of the funds of a local administrative unit, the director shall notify the attorney general, the state auditor and the appropriate law enforcement agency.

**History:** 1953 Comp., § 77-9-21, enacted by Laws 1967, ch. 16, § 145; 1984, ch. 19, § 3; 1993, ch. 69, § 6; 2009, ch. 209, § 1.

**The 2009 amendment**, effective June 19, 2009, added Subsections D and E.

**The 1993 amendment**, effective June 18, 1993, deleted "Membership fees and" at the beginning of Subsection A; added the second sentence of Subsection B; and deleted "and fees" following "contributions" in the first sentence of Subsection C.

## **22-11-23. Retirement eligibility; initial membership prior to July 1, 2010.**

A. A member who was a member on June 30, 2010, or was a member at any time prior to that date and had not, on that date, been refunded all member contributions pursuant to Subsection A of Section 22-11-15 NMSA 1978, shall be eligible for retirement benefits when:

(1) the member is any age and has twenty-five or more years of earned and allowed service credit;

(2) the member is at least sixty-five years of age and has five or more years of earned service credit; or

(3) the sum of the member's age and years of earned service credit equals at least seventy-five; provided that a member who retires pursuant to this paragraph shall be subject to the benefit reductions provided in Subsection G of Section 22-11-30 NMSA 1978.

B. A member shall be subject to the provisions of Subsection A of this section as they existed at the beginning of the member's last cumulated four quarters of earned service credit, regardless of later amendment.

**History:** 1953 Comp., § 77-9-22, enacted by Laws 1967, ch. 16, § 146; 1971, ch. 12, § 2; 1974, ch. 5, § 2; reenacted by 1981, ch. 293, § 2; 1984, ch. 19, § 4; 1993,

ch. 69, § 7; 2009, ch. 286, § 1; 2009, ch. 288, § 14; 2013, ch. 61, § 2.

**Cross references.** — For deferred retirement, see 22-11-27 NMSA 1978.



For earned service-credit generally, *see* 22-11-33 NMSA 1978.

For allowed service-credit generally, *see* 22-11-34 NMSA 1978.

For reciprocal service credit under Public Employees Retirement Reciprocity Act, *see* 10-13A-4 NMSA 1978.

**The 2013 amendment**, effective July 1, 2013, increased age and service retirement requirements; in Subsection A, in the introductory sentence, at the beginning of the sentence, deleted "The retirement eligibility for", after "A member who", deleted "either", and after "NMSA 1978", deleted "is as follows" and added "shall be eligible for retirement benefits when"; deleted former Paragraphs (1) through (3) of Subsection A, which provided age and service eligibility requirements for retirement benefits; added Paragraphs (1) through (3) of Subsection A; and in Subsection B, after "provisions of", deleted "Paragraphs (2) and (3) of".

**The 2009 amendment**, effective July 1, 2011, in Subsection A, deleted the introductory phrase "On or before July 1, 1984" and added the new introductory paragraph.

**Temporary provisions.** — Laws 2009, ch. 288, § 19, effective April 10, 2009, created a retirement systems solvency task force to study the actuarial soundness and solvency of the retirement plans of the public employees retirement association, the educational retirement association and the health care plan of the retiree health care authority, and prepare a solvency plan for each entity.

**The 1993 amendment**, effective June 18, 1993, substituted "cumulated four quarters" for "cumulated years" in Subsection B and made a minor stylistic change in Subsection A.

#### ANNOTATIONS

**Nature of retirement rights.** — Benefits under the Educational Retirement Act of this state are retirement allowances and not mere gratuities inasmuch as the employees themselves maintain in part the fund. When an employee meets all of the requirements for retirement - that is to say, when the contingency occurs on which payments are to be made - he or she acquires a vested right in his retirement benefits under the act and any subsequent discharge or other happenings cannot defeat this right. 1959-60 Op. Att'y Gen. No. 60-217.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Services included in computing period of services for purpose of teachers' retirement benefits, 2 A.L.R.2d 1033.

Disciplinary suspension of public employee as affecting computation of length of service for retirement or pension purposes, 6 A.L.R.2d 506.

Validity of repeal or modification of pension statute provisions, 52 A.L.R.2d 437.

Misconduct as affecting right to pension or retention of position in retirement system, 76 A.L.R.2d 566.

### 22-11-23.1. Retirement eligibility; initial membership on or after July 1, 2010.

A. A member who initially became a member on or after July 1, 2010, or a member who was a member at any time prior to that date and had, before that date, been refunded all member contributions pursuant to Subsection A of Section 22-11-15 NMSA 1978, shall be eligible for retirement benefits pursuant to the Educational Retirement Act when:

(1) the member is any age and has thirty or more years of earned service credit;

(2) the member is at least sixty-seven years of age and has five or more years of earned service credit; or

(3) the sum of the member's age and years of earned service credit equals at least eighty; provided that a member who retires pursuant to this paragraph shall be subject to the benefit reductions provided in Subsection H of Section 22-11-30 NMSA 1978.

B. A member shall be subject to the provisions of this section as they existed at the beginning of the member's last cumulated four quarters of earned service credit, regardless of later amendment.

**History: 1978 Comp., § 22-11-23.1, as enacted by Laws 2009, ch. 286, § 2; 2009, ch. 288, § 15; 2013, ch. 61, § 3.**

**The 2013 amendment**, effective July 1, 2013, modified references to amended sections that provide for reduced

benefits; in Subsection A, in the introductory sentence, after "Educational Retirement Act when", deleted "one of the following conditions occurs"; and in Paragraph (3) of Subsection A, after "benefit reductions provided in", deleted "Paragraphs (1) and (2) of".

### 22-11-23.2. Retirement eligibility membership on or after July 1, 2013.

A. A member who initially became a member on or after July 1, 2013 or a member who was a member at any time prior to July 1, 2013 and had, before that date, been refunded all member contributions pursuant to Subsection A of Section 22-11-15 NMSA 1978, and had not restored all refunded contributions and interest before July 1, 2013, shall be eligible for retirement benefits when:

(1) the member is any age and has thirty or more years of earned service credit; provided that the benefits of a member who retires pursuant to this paragraph prior to attaining the age of fifty-five years shall be reduced to an amount equal to the actuarial equivalent of the benefit the member would receive if the member had retired at the age of fifty-five years. The board shall

recalculate the actuarial factors on which benefits are reduced no less frequently than every ten years beginning July 1, 2013. The benefits of a retired member that have been reduced at the time of retirement pursuant to this paragraph shall not be subject to further change based upon the board's recalculation of the actuarial factors;

(2) the member is at least sixty-seven years of age and has five or more years of earned service credit; or

(3) the sum of the member's age and years of earned service credit equals at least eighty; provided that a member who retires pursuant to this paragraph shall be subject to the benefit reductions provided in Subsection I of Section 22-11-30 NMSA 1978.

B. A member shall be subject to the provisions of this section as they existed at the beginning of the member's last cumulated four quarters of earned service credit, regardless of later amendment.

**History:** 1978 Comp., § 22-11-23.2, enacted by Laws 2013, ch. 61, § 4.

**Effective dates.** — Laws 2013, ch. 61, § 8 made Laws 2013, ch. , § 3 effective July 1, 2013.

### **22-11-23.3. Retirement eligibility; initial membership on or after July 1, 2019.**

A member who initially became a member on or after July 1, 2019 or a member who was a member before July 1, 2019 and had, before that date, been refunded all member contributions in accordance with Subsection A of Section 22-11-15 NMSA 1978 and had not restored all refunded contributions and interest before July 1, 2019, is eligible for retirement benefits when:

A. the member is any age and has thirty or more years of earned service credit;

B. the member is at least sixty-seven years of age and has five or more years of earned service credit; or

C. the sum of the member's age and years of earned service credit equals at least eighty.

**History:** 1978 Comp., § 22-11-23.3, enacted by Laws 2019, ch. 258, § 2.

**Effective dates.** — Laws 2019, ch. 258, § 8 made Laws 2019, ch. 258, § 2 effective July 1, 2019.

### **22-11-24. Retirement benefits; minimum contributory employment.**

A. A member must have acquired not less than five years of contributory employment to be eligible for retirement benefits pursuant to the Educational Retirement Act.

B. A member desiring to retire before having completed five years of contributory employment shall be limited to the maximum benefit he would have been entitled to receive under any statute repealed by the Educational Retirement Act. A member may acquire five years or less of contributory employment by contributing to the fund, for each year of contributory employment desired, a sum equal to the prevailing combined contributions of the member and the local administrative unit in effect at the time the contributory employment is acquired. This contribution shall be computed on the member's average annual salary for the last five years of employment plus an additional sum as interest from the effective date of the Educational Retirement Act as fixed by the board, but not to exceed three percent a year.

C. Years of contributory employment purchased pursuant to this section shall not be considered as an addition to service actually performed in computing the sum of the member's retirement benefit.

D. The retirement benefits of members retired pursuant to the Educational Retirement Act prior to July 1, 1959 and who have acquired contributory employment years by purchase, shall be computed upon the basis of the amount paid therefor.

**History:** 1953 Comp., § 77-9-23, enacted by Laws 1967, ch. 16, § 147.

**Effective dates.** — The Educational Retirement Act, enacted as part of the Public School Code (Laws 1967, ch.

16), contains no effective date. However, Laws 1967, ch. 16, § 303, made the Public School Code effective on July 1, 1967.



## 22-11-25. Retirement; reemployment.

A. A member retired pursuant to the provisions of the Educational Retirement Act may be removed from retirement status by returning to employment. A reemployed member shall make regular contributions pursuant to the Educational Retirement Act. Upon termination of reemployment, the member shall be eligible for retirement benefits again based upon all service credit acquired. In no case shall the retirement benefits be less than the member was receiving prior to the member's reemployment.

B. At the time of retirement following a period of reemployment, the member's retirement benefits shall be paid in accordance with the terms of the option selected at the time of the first retirement.

**History:** 1953 Comp., § 77-9-24, enacted by Laws 1967, ch. 16, § 148; 2017, ch. 21, § 10.

**The 2017 amendment**, effective June 16, 2017, removed outdated provisions in the section regarding retirement benefits following reemployment; in Subsection A, after "Education Retirement Act may", deleted "remove himself" and added "be removed", after "based upon all", deleted "service credit" and added "service credit", after "receiving prior to", deleted "his" and added "the member's", and after the next occurrence of "reemployment", deleted the remainder of the subsection, which related to the amount of retirement benefits following reemployment; deleted former Subsection B and redesignated former Subsection C as Subsection B; and in Subsection B, after "first retirement.", deleted the remainder of the subsection.

### ANNOTATIONS

**Suspension of benefits upon resumption of employment.** — An employee of a public school system, retired pursuant to the provisions of the Educational Retirement Act, may not resume employment with the department of education without suspension of her educational retirement benefits. 1987 Op. Att'y Gen. No. 87-38 (decided under former Section 10-11-8 NMSA 1978).

**The suspension provisions of the disbursing system** apply to the benefits granted pursuant to the [Public Employees Retirement] Reciprocity Act to a member retired under the public employee retirement association and the educational retirement system who resumes employment. 1988 Op. Att'y Gen. No. 88-22.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity of legislation providing for additional retirement or disability allowances for public employees previously retired or disabled, 27 A.L.R.2d 1442.

## 22-11-25.1. Return to employment; benefits; contributions.

A. Except as otherwise provided in Subsections B, F, H and I of this section, until January 1, 2024, a retired member who begins employment with a local administrative unit at a level greater than one-quarter full-time employee, regardless of salary level, is required to suspend the member's retirement benefits until the end of that employment unless the member has not rendered service to a local administrative unit for at least twelve consecutive months after the date of retirement.

B. Until January 1, 2024, a retired member who retired on or before January 1, 2001, has not suspended or been required to suspend retirement benefits pursuant to the Educational Retirement Act and returns to employment with a local administrative unit is not required to suspend the member's retirement benefits.

C. A retired member who returns to employment with a local administrative unit in accordance with this section is entitled to receive retirement benefits during that employment but is not entitled to acquire or purchase service credit for that employment.

D. A retired member may return to employment with a local administrative unit only if the member submits an application to return to work, on a form prescribed by the board, the board approves the application and the applicant complies with other application rules promulgated by the board.

E. A retired member who returns to employment pursuant to Subsection A, B, F or I of this section shall make nonrefundable contributions to the fund as would be required by Section 22-11-21 NMSA 1978 if the retired member were a non-retired employee. The local administrative unit employing the retired member shall likewise make contributions as would be required by that section.

F. Until January 1, 2024, a retired member who retired on or before January 1, 2001, who suspended or was required to suspend retirement benefits under the Educational Retirement Act is not required to suspend the member's retirement benefits if the retired member has not rendered service to a local administrative unit for an additional twelve or more consecutive months, not



including any part of a summer or other scheduled break or vacation period, after the initial date of retirement.

G. A retired member who returns to employment with a local administrative unit shall make contributions to the retiree health care fund during the period of that employment and in the amount specified in Section 10-7C-15 NMSA 1978. The local administrative unit employing the retired member shall likewise make contributions during the period of that employment and in the amount specified in that section.

H. A retired member may return to employment with a local administrative unit without a suspension of the member's retirement benefits; provided that:

(1) the retired member has not rendered service to a local administrative unit for at least ninety days after the date of retirement;

(2) prior to the date of retirement, or within ninety days after the date of retirement, the retired member did not enter into any formal or informal agreement with a local administrative unit or with any contractor providing services to a local administrative unit to return to employment; and

(3) the retired member earns a salary of less than fifteen thousand dollars (\$15,000) per year.

I. A retired member may return to employment with a local administrative unit without a suspension of the member's retirement benefits; provided that:

(1) the retired member has not rendered service to a local administrative unit for at least ninety days after the date of retirement; and

(2) the retired member returns to employment for a period of no more than thirty-six consecutive or nonconsecutive months pursuant to this subsection.

J. As used in this section:

(1) "rendered service" includes employment, whether full or part time; substitute teaching; voluntarily performing duties that would otherwise be, or in the past have been, performed by a paid employee or independent contractor; and performing duties as an independent contractor or an employee of an independent contractor; and

(2) "local administrative unit" includes any entity incorporated, formed or otherwise organized by, or subject to the control of, a local administrative unit, regardless of whether the entity is created for profit or nonprofit purposes.

**History:** Laws 2001, ch. 283, § 2; 2003, ch. 80, § 1; 2003, ch. 145, § 1; 2009, ch. 288, § 16; 2011, ch. 6, § 1; 2019, ch. 258, § 3; 2020, ch. 10, § 1; 2021, ch. 44, § 2; 2022, ch. 20, § 1.

**The 2022 amendment**, effective May 18, 2022, permitted certain retirees to return to work without a suspension of retirement benefits; in Subsection A, after "H", added "and I"; in Subsection E, after "pursuant to Subsection A, B", deleted "or F" and added "F or I"; and added a new Subsection I and redesignated former Subsection I as Subsection J.

**The 2020 amendment**, effective May 20, 2020, removed the requirement for employees and employers to make nonrefundable contributions for certain retired members who have returned to part-time employment, and allowed retirees earning less than \$15,000 a year to return to work without a suspension of retirement benefits; in Subsection A, after "F", added "and H"; in Subsection E, deleted "In addition, on and after July 1, 2020, a retired member who has returned to employment at a level of one-fourth or less full-time employee, regardless of salary level, shall make nonrefundable contributions to the fund as would be required by Section 22-11-21 NMSA 1978 if the retired member were a non-retired employee. The local administrative unit employing the retired member shall likewise make contributions as would be required by that section."; and added a new Subsection H and redesignated the succeeding subsection accordingly.

**The 2019 amendment**, effective July 1, 2019, revised provisions related to retired members who return to work, and required employee and employer contributions from individuals who return to work; in the section heading, after "benefits", deleted "continued administrative unit"; in Subsection A, after "this section," deleted "beginning January 1, 2002 and continuing", after "local administrative unit", deleted "and shall not be" and added "at a level greater than one-quarter full-time employee, regardless of salary level, is", after "retirement benefits", deleted "if" and added "until the end of that employment unless", and after "date of retirement.", deleted the last sentence of the subsection, which related to retired members who return to work but have not completed twelve consecutive months of retirement; in Subsection B, after the subsection designation, added "Until January 1, 2022", after "Educational Retirement Act", deleted "may, at any time prior to January 1, 2022, return" and added "and returns"; in Subsection C, after "returns to employment", deleted "during retirement pursuant to Subsection A, B or F of" and added "with a local administrative unit in accordance with", and after "service credit", deleted "or to acquire or purchase service credit in the future for the period of the retired member's reemployment with a local administrative unit" and added "for that employment"; in Subsection D, after "A retired member", deleted "shall not be eligible to" and added "may", after "return to employment", deleted "pursuant to Subsection A, B or F of this section unless" and added "with a local administrative unit only



if the member submits"; in Subsection E, after "section shall", deleted "pay" and added "make nonrefundable contributions", after "member shall", deleted "pay to the fund an amount equal to the local administrative unit" and added "likewise make", and added the last sentence of the subsection; in Subsection F, after the subsection designation, deleted "Beginning July 1 2003 and continuing", and after "suspend retirement benefits", deleted "and who has not rendered service to a local administrative unit for at least ninety days, may begin employment at a local administrative unit without suspending" and added "under the Educational Retirement Act is not required to suspend the member's"; in Subsection G, after the subsection designation, deleted "Both the" and added "A", after "retiree health care fund", added "during the period of that employment and", after "specified in", deleted "Subsections A and B of", and after "NMSA 1978.", added the last sentence of the subsection; in Subsection H, in the introductory clause, after "used in", deleted "Subsections A and F of", and in Paragraph H(1), included "local administrative unit" to the definition of "rendered service".

**The 2011 amendment**, effective July 1, 2011, in Subsection E, required retired members who return to employment to pay the educational retirement fund a non-refundable amount equal to the contributions the member would be required to pay if the member were a non-retired employee; and reduced the amount of the local administrative unit contribution by eliminating the requirement that the local administrative unit contribute an amount

equal to the total of the member contribution in addition to the local administrative unit contribution specified in Section 22-11-21 NMSA 1978.

**The 2009 amendment**, effective July 1, 2009, in Subsection A, deleted "continuing until January 1, 2012"; deleted "been employed as an employer or independent contractor by" and added "rendered service to"; deleted "to the commencement of employment or reemployment with a local administrative unit"; in Subsection B, deleted "and is reemployed by a local administrative unit may continue employment at the" and added "may, at any time prior to January 1, 2022, return to employment for a"; in Subsection C, added the reference to Subsection F; added Subsection D; in Subsection E, added the reference to Subsection F; deleted "unit's contributions as specified in that act shall be paid to the fund as" and added new language; in Subsection F, deleted "continuing until January 1, 2012"; deleted "and who has not been employed as an employee or independent contractor" and added new language; and added Subsections G and H.

**The 2003 amendment**, effective June 20, 2003, inserted "Except as provided in Subsections B and E of this section" near the beginning of Subsection A, inserted present Subsections B and E; renumbered former Subsections B and C as Subsections C and D, inserted "or B" following "Subsection A" in present Subsection C; and in Subsection D, inserted "pursuant to Subsections A or B of this section" following "employment" and "local" preceding "administrative."

## 22-11-25.2. Persons receiving retirement benefits pursuant to the Public Employees Retirement Act.

A. An employee who is retired pursuant to the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978] and who has not suspended retirement benefits received pursuant to that act shall not make contributions to the fund as otherwise required by the Educational Retirement Act. A local administrative unit that employs such a retiree shall make contributions to the fund as required by that act.

B. An employee who receives retirement benefits pursuant to the Public Employees Retirement Act is not entitled to acquire or purchase service credit for the period of employment with a local administrative unit.

**History:** Laws 2003, ch. 248, § 1; 2019, ch. 258, § 4; 2020, ch. 10, § 3.

**The 2020 amendment**, effective May 20, 2020, exempted retirees under the Public Employees Retirement Act from contribution requirements under the Educational Retirement Act if they have not suspended retirement benefits; in Subsection A, after "shall", added "not"; and deleted former Subsection B, which related to certain employees exempted from contribution requirements, and redesignated the succeeding subsection accordingly.

**The 2019 amendment**, effective July 1, 2019, provided that an employee hired prior to July 1, 2019 by a local administrative unit as a police officer, who is

retired and who has not suspended retirement benefits, shall not make contributions to the fund so long as the employee remains working as a certified police officer, and provided that the local administrative unit that hired the certified police officer shall make contributions to the fund; in Subsection A, after "that act shall", deleted "not", and added the last sentence of the subsection; added new Subsection B and redesignated former Subsection B as Subsection C; in Subsection C, after "Retirement Act", deleted "and who does not make contributions to the fund", and after "service credit", deleted "or to acquire or purchase service credit in the future"; and deleted former Subsection C.

## 22-11-26. Death during reemployment.

If a member dies during a period of reemployment following retirement pursuant to the Educational Retirement Act, the benefits to be paid shall be determined according to the following:

A. if the member did not elect to exercise Option B or C pursuant to Subsection A of Section 22-11-29 NMSA 1978 at the time of first retirement, the member's beneficiary or estate shall receive an amount equal to the sum of the member's contributions, including contributions made by the

member during the period of last reemployment, plus accumulated interest at the rate set by the board, less the total benefits received prior to the last reemployment; or

B. if a retirement benefit has been paid to the member pursuant to either Option B or Option C of Subsection A of Section 22-11-29 NMSA 1978 prior to reemployment, the reemployed member shall be considered as retiring on the day preceding the date of death, and the benefits due the surviving beneficiary, computed as of that date, shall be commenced effective on the date of death in accordance with the terms of the option elected.

**History:** 1953 Comp., § 77-9-25, enacted by Laws 1967, ch. 16, § 149; 1981, ch. 294, § 1; 1993, ch. 69, § 8; 1999, ch. 93, § 1; 2003, ch. 39, § 5.

**The 2003 amendment**, effective June 20, 2003, in Subsection A inserted "Subsection A of" following "pursuant to" near the beginning and substituted "rate set by the board," for "average rate earned by the fund during the preceding five fiscal years," near the end; and inserted "of Subsection A" following "Option C" near the beginning of Subsection B.

**The 1999 amendment**, effective June 18, 1999, in Subsection A substituted the language beginning "an amount" to the end for "the difference, if any, between the member's total contribution and total benefits received prior to last reemployment, plus contributions made by the member during the period of last reemployment".

**The 1993 amendment**, effective June 18, 1993, substituted "retirement" for "retiring" in the introductory paragraph and substituted the language beginning "last reemployment" for "death" at the end of Subsection A.

## 22-11-27. Deferred retirement; restriction.

A. A member who is eligible for retirement may continue in employment and shall continue to pay contributions as provided by the Educational Retirement Act.

B. Provided that the contributions that the member has made are left in the fund, a member eligible for retirement benefits pursuant to the provisions of Section 22-11-23, 22-11-23.1 or 22-11-23.2 NMSA 1978 may terminate employment and retire at any time upon satisfying the applicable age and earned service requirements for retirement.

C. A member shall not be on a retirement status while engaged in employment unless the employment falls within an exception established by statute or rule of the board.

**History:** 1953 Comp., § 77-9-26, enacted by Laws 1967, ch. 16, § 150; 1971, ch. 12, § 3; 1974, ch. 5, § 3; 2003, ch. 39, § 6; 2013, ch. 61, § 5.

**Cross references.** — For retirement eligibility generally, see 22-11-23 NMSA 1978.

**The 2013 amendment**, effective July 1, 2013, permitted a member who is eligible for retirement benefits to retire upon satisfaction of the applicable age and earned service requirements; in Subsection A, after "A member", added "who is"; in Subsection B, at the beginning of the sentence, deleted "A member" and added "Provided that the contributions that the member has made are left in the fund, a member eligible for retirement benefits pursuant to the provisions of Section 22-11-23, 22-11-23.1 or

22-11-23.2 NMSA 1978" and after "at any time", deleted "after his age and his earned service credit equal the sum of seventy-five if the contributions he has made are left in the fund" and added "upon satisfying the applicable age and earned service requirements for retirement"; deleted former Subsection C, which provided for the retirement of a member who has five years or more of earned service credit; and in Subsection C, after "A member shall", added "not" and after "employment falls within", deleted "exceptions" and added "an exception".

**The 2003 amendment**, effective June 20, 2003, added "unless the employment falls within exceptions established by statute or rule of the board" at the end of Subsection D.

## 22-11-28. Applications for retirement; effective date.

A. Application for retirement shall be made by a member on forms provided by the board.

B. Retirement pursuant to the Educational Retirement Act shall become effective on July 1 following approval of the application for retirement by the board. With approval of the board and the local administrative unit employing the member, retirement pursuant to the Educational Retirement Act may become effective on the first day of any month during the year.

**History:** 1953 Comp., § 77-9-27, enacted by Laws 1967, ch. 16, § 151; 1975, ch. 191, § 2.

## 22-11-29. Retirement benefit options.

A. Upon retirement pursuant to the Educational Retirement Act, a member may elect, and, except as provided in Subsection D or E of this section, such election shall be irrevocable, to receive



the actuarial equivalent of the member's retirement benefit, as provided in Section 22-11-30 NMSA 1978, to be effective on the member's retirement in any one of the following optional forms:

(1) OPTION A. An unreduced retirement benefit pursuant to Section 22-11-30 NMSA 1978;

(2) OPTION B. A reduced annuity payable during the member's life with provision that upon the member's death the same annuity shall be continued during the life of and paid to the beneficiary designated by the member in writing at the time of electing this option; or

(3) OPTION C. A reduced annuity payable during the member's life with provision that upon the member's death one-half of this same annuity shall be continued during the life of and paid to the beneficiary designated by the member in writing at the time of electing this option.

B. In the case of Options B and C of Subsection A of this section, the actuarial equivalent of the member's retirement benefit shall be computed on the basis of the lives of both the member and the beneficiary.

C. In the event that the named beneficiary of a retired member who elected Option B or C of Subsection A of this section at the time of retirement predeceases the retired member, the annuity of the retired member shall be adjusted by adding an amount equal to the amount by which the annuity of the retired member was reduced at retirement as a result of the election of Option B or C. The adjustment authorized in this subsection shall be made as follows:

(1) beginning on the first month following the month in which the named beneficiary of a retiree dies applicable to an annuity received by a retiree who retires after June 30, 1987; or

(2) beginning on July 1, 1987 applicable to an annuity received by a retiree who retired prior to July 1, 1987 and otherwise qualifies for the adjustment; provided, however, no adjustment shall be made retroactively.

D. A retired member who is being paid an adjusted annuity pursuant to Subsection C of this section because of the death of the named beneficiary may exercise a one-time irrevocable option to designate another individual as the beneficiary and may select either Option B or Option C of Subsection A of this section; provided that:

(1) the amount of the annuity under the option selected shall be recalculated and have the same actuarial present value, computed on the effective date of the designation, as the annuity being paid to the retired member prior to the designation;

(2) the designation and the amount of the annuity shall be subject to a court order as provided for in Subsection B of Section 22-11-42 NMSA 1978; and

(3) the retired member shall pay one hundred dollars (\$100) to the board to defray the cost of determining the new annuity amount.

E. A retired member who is being paid an annuity under Option B or C of Subsection A of this section with a living designated beneficiary other than the retired member's spouse or former spouse may exercise a one-time irrevocable option to deselect the designated beneficiary and elect to:

(1) designate another beneficiary; provided that:

(a) the retired member shall not have an option to change from the current form of payment;

(b) the amount of the annuity under the form of payment shall be recalculated and shall have the same actuarial present value, computed as of the effective date of the designation, as the amount of annuity paid prior to the designation; and

(c) the retired member shall pay one hundred dollars (\$100) to the board to defray the cost of determining the new annuity amount; or

(2) have future annuity payments made without a reduction as a result of Option B or C.

F. In the event of the death of the member who has not retired and who has completed at least five years' earned service credit, the member shall be considered as retiring on the first day of the month following the date of death, and the benefits due the surviving beneficiary, computed as of that date, shall, except as provided in Subsection J of this section, be commenced effective on the first day of such month in accordance with the terms of Option B of Subsection A of this section. In lieu of the provisions of Option B, the surviving beneficiary may elect to receive payment of all the contributions made by the member, plus interest at the rate set by the board reduced by the sum of any disability benefits previously received by the member, or the surviving beneficiary may choose to defer receipt of the survivor's benefit to whatever age the beneficiary chooses up to the time



the member would have attained age sixty. If the benefit is thus deferred, it shall be calculated as though the member had retired on the first day of the month in which the beneficiary elects to receive the benefit. In the event of the death of the beneficiary after the death of the member and prior to the date on which the beneficiary has elected to receive the beneficiary's benefit, the estate of the beneficiary shall be entitled to a refund of the member's contributions plus interest at the rate earned by the fund during the preceding fiscal year, reduced by the sum of any disability benefits previously received by the member.

G. In the event of the death of a member who has not retired and who has completed at least five years' earned service credit, but who has not designated a beneficiary in writing pursuant to the Educational Retirement Act, the eligible surviving spouse or surviving domestic partner shall be the surviving beneficiary eligible for benefits in accordance with the provisions of Subsection F of this section.

H. In the case of death of a retired member who did not elect either Option B or C of Subsection A of this section and before the benefits paid to the member have equaled the sum of the member's accumulated contributions to the fund plus accumulated interest at the rate set by the board, the balance shall be paid to the beneficiary designated in writing to the director by the member or, if no beneficiary was designated, to the eligible surviving spouse or surviving domestic partner of the member or, if there is no eligible surviving spouse or domestic partner of the member, to the estate of the member.

I. No benefit shall be paid pursuant to this section if the member's contributions have been refunded pursuant to Section 22-11-15 NMSA 1978.

J. In the case of death of a member with less than five years' earned service credit or death of a member who has filed with the director a notice rejecting the provisions of Subsection F of this section, which notice shall be revocable by the member at any time prior to retirement, the member's contributions to the fund plus interest at the rate set by the board shall be paid to the beneficiary designated in writing to the director by the member or, if no beneficiary was designated, to the eligible surviving spouse or surviving domestic partner of the member or, if there is no eligible surviving spouse or domestic partner of the member, to the estate of the member.

**History:** 1953 Comp., § 77-9-28, enacted by Laws 1967, ch. 16, § 152; 1977, ch. 314, § 1; 1981, ch. 294, § 2; 1984, ch. 19, § 5; 1987, ch. 86, § 1; 1999, ch. 93, § 2; 2003, ch. 39, § 7; 2011, ch. 122, § 2; 2017, ch. 21, § 11; 2019, ch. 173, § 1.

**Cross references.** — For payment of benefits upon death during reemployment, see 22-11-26 NMSA 1978.

For disability benefits, see 22-11-35 to 22-11-40 NMSA 1978.

**The 2019 amendment**, effective June 14, 2019, provided that a surviving spouse, or surviving domestic partner, of a deceased member of the educational retirement plan be considered the beneficiary of the deceased member if the deceased member has not designated a beneficiary; added a new Subsection G and redesignated former Subsections G through I as Subsections H through J, respectively; in Subsection H, added "eligible surviving spouse or surviving domestic partner of the member or, if there is no eligible surviving spouse or domestic partner of the member, to the"; and in Subsection J, added "eligible surviving spouse or surviving domestic partner of the member or, if there is no eligible surviving spouse or domestic partner of the member, to the".

**The 2017 amendment**, effective June 16, 2017, added a new retirement benefits option; added new Paragraph A(1) and redesignated former Paragraphs A(1) and A(2) as Paragraphs A(2) and A(3), respectively; and deleted Subsection J, which related to certain void elections of benefit options.

**The 2011 amendment**, effective July 1, 2011, added Subsection D to permit a retired member who, because of the death of a designated beneficiary, is being paid an adjusted annuity pursuant to Subsection C to designate

another beneficiary upon the death of the initial designated beneficiary and to be paid under either option B or C, subject to recalculation of the amount of the pension, court-ordered divisions of community property and payment of child support obligations, and payment of the prescribed fee; added Subsection E to permit a retired member to deselect a living designated beneficiary and designate another beneficiary, subject to recalculation of the amount of the annuity and payment of the prescribed fee; and in Subsection J, provided that elections of payment options on file with the director on June 30, 1984 by members who have not retired prior to June 30, 1984 are void.

**The 2003 amendment**, effective June 20, 2003, inserted "of Subsection A of this section" following "Option B or C" near the beginning of Subsection C; in Subsection D, inserted "of Subsection A of this section" following "Option B" and substituted "set by the board" for "earned by the fund during the preceding fiscal year" following "plus interest at the rate" near the middle; in Subsection E, inserted "of Subsection A of this section" following "Option B or C" near the beginning and substituted "rate set by the board" for "average rate earned by the fund during the preceding five fiscal years" following "interest at the" near the middle; and substituted "rate set by the board" for "rate earned by the fund during the preceding fiscal year" following "interest at the rate" near the middle of Subsection G.

**The 1999 amendment**, effective June 18, 1999, inserted the language beginning "plus accumulated" and ending "fiscal years" in Subsection E, and made a minor stylistic change.



### ANNOTATIONS

**Amendment is not retroactive.** — The 1999 amendment (Laws 1999, ch. 93, § 2) to Subsection E of Section 22-11-29 NMSA 1978, which provided for the payment of interest on refunds of accumulated contributions, applies prospectively only. *Wood v. N.M. Educ. Ret. Bd.*, 2011-NMCA-020, 149 N.M. 455, 250 P.3d 881, cert. denied, 2011-NMCERT-001.

Where decedent elected to receive a single life annuity when decedent retired in 1998 and decedent died in 1998, the 1999 amendment (Laws 1999, ch. 93, § 2) to Subsection E of Section 22-11-29 NMSA 1978 did not apply, and decedent's beneficiary was not entitled to receive interest on the amount of decedent's accumulated contribution that was paid to the beneficiary. *Wood v. N.M. Educ. Ret. Bd.*, 2011-NMCA-020, 149 N.M. 455, 250 P.3d 881, cert. denied, 2011-NMCERT-001.

## 22-11-30. Retirement benefits; reductions.

A. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or before June 30, 1967 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the first four thousand dollars (\$4,000) of the member's average annual salary and one percent of the remainder of the member's average annual salary multiplied by the number of years of the member's total service credit.

B. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or after July 1, 1967 but on or before June 30, 1971 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the first six thousand six hundred dollars (\$6,600) of the member's average annual salary and one percent of the remainder of the member's average annual salary multiplied by the number of years of the member's total service credit.

C. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or after July 1, 1971 but on or before June 30, 1974 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the member's average annual salary multiplied by the number of years of the member's total service credit.

D. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or before June 30, 1974 but returning to employment on or after July 1, 1974 for a cumulation of one or more years shall be computed pursuant to Subsection E of this section. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or before June 30, 1974 but returning to employment on or after July 1, 1974 for a cumulation of less than one year shall be computed pursuant to Subsection A of this section if the member's date of last retirement was on or before June 30, 1967 or pursuant to Subsection B of this section if the member's date of last retirement was on or after July 1, 1967 but not later than June 30, 1971 or pursuant to Subsection C of this section if the member's date of last retirement was on or after July 1, 1971 but not later than June 30, 1974.

E. Retirement benefits for a member age sixty or over, retired pursuant to the Educational Retirement Act on or after July 1, 1974 but not later than June 30, 1987, shall be paid monthly and shall be one-twelfth of a sum equal to:

(1) one and one-half percent of the member's average annual salary multiplied by the number of years of service credit for:

(a) prior employment; and

(b) allowed service credit for service performed prior to July 1, 1957, except United States military service credit purchased pursuant to Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978; plus

(2) two percent of the member's average annual salary multiplied by the number of years of service credit for:

(a) contributory employment;

(b) allowed service credit for service performed after July 1, 1957; and

(c) United States military service credit for service performed prior to July 1, 1957 and purchased pursuant to Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978.

F. Retirement benefits for a member age sixty or over, retired pursuant to the Educational Retirement Act on or after July 1, 1987 but not later than June 30, 1991, shall be paid monthly and shall be one-twelfth of a sum equal to two and fifteen-hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that this subsection shall not apply to any member who was retired in any of the four quarters

ending on June 30, 1987 without having accumulated not less than 1.0 years earned service credit after June 30, 1987.

G. Retirement benefits for a member who retires pursuant to Section 22-11-23 NMSA 1978 on or after July 1, 1991 shall be paid monthly and shall be one-twelfth of a sum equal to two and thirty-five hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that:

(1) the benefit for a member who retires pursuant to Paragraph (3) of Subsection A of Section 22-11-23 NMSA 1978 shall be reduced by:

(a) six-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member attaining the age of sixty years but after the member attains the age of fifty-five years; and

(b) one and eight-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member attaining the age of fifty-five years;

(2) the benefit formula provided in this subsection shall not apply to any member who was retired in any of the four consecutive quarters ending on June 30, 1991 without having accumulated at least one year of earned service credit beginning on or after July 1, 1991; and

(3) a member shall be subject to the provisions of Paragraph (1) of this subsection as they existed at the beginning of the member's last cumulated four quarters of earned service credit, regardless of later amendment.

H. Retirement benefits for a member who retires pursuant to Section 22-11-23.1 NMSA 1978 shall be paid monthly and shall be one-twelfth of a sum equal to two and thirty-five hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that:

(1) the benefit for a member who retires pursuant to Paragraph (3) of Subsection A of Section 22-11-23.1 NMSA 1978 shall be reduced by:

(a) six-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member attaining the age of sixty-five years but after the member attains the age of sixty years; and

(b) one and eight-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member attaining the age of sixty years; and

(2) a member shall be subject to the provisions of Paragraph (1) of this subsection as they existed at the beginning of the member's last cumulated four quarters of earned service credit, regardless of later amendment.

I. Retirement benefits for a member who retires pursuant to Section 22-11-23.2 NMSA 1978 shall be paid monthly and shall be one-twelfth of a sum equal to two and thirty-five hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that:

(1) the benefit for a member retiring pursuant to Paragraph (3) of Subsection A of Section 22-11-23.2 NMSA 1978 shall be reduced by:

(a) six-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member attaining the age of sixty-five years but after the member attains the age of sixty years; and

(b) one and eight-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member attaining the age of sixty years; and

(2) a member shall be subject to the provisions of Paragraph (1) of this subsection as they existed at the beginning of the member's last cumulated four quarters of earned service credit, regardless of later amendment.

J. Retirement benefits for a member who retires in accordance with Section 22-11-23.3 NMSA 1978 shall be paid monthly and:

(1) in an amount equal to one-twelfth of the sum of the following:

(a) for the first ten years of the member's service credit, one and thirty-five hundredths percent of the member's average annual salary multiplied by the member's years of service credit between one-fourth of a year and ten years;

(b) for that portion of the member's service credit earned after ten years of service credit and through twenty years of service credit, two and thirty-five hundredths percent of the



member's average annual salary multiplied by the member's years of service credit between ten and twenty years;

(c) for that portion of the member's service credit earned after twenty years of service credit and through thirty years of service credit, three and thirty-five hundredths percent of the member's average annual salary multiplied by the member's years of service credit between twenty and thirty years; and

(d) for that portion of the member's service credit earned after thirty years of service credit, two and four-tenths percent of the member's average annual salary multiplied by the member's years of service credit over thirty years; or

(2) if the member retires in accordance with:

(a) Subsection A of Section 22-11-23.3 NMSA 1978 and is under fifty-eight years of age, in an amount equal to the result determined under Paragraph (1) of this subsection, but reduced to the actuarial equivalent, based on what is at the time of the member's retirement the most current set of actuarial factors determined by the board, of the benefit the member would receive if the member had retired at fifty-eight years of age;

(b) Subsection C of Section 22-11-23.3 NMSA 1978 and is sixty years of age or older and under sixty-five, in an amount equal to the result determined under Paragraph (1) of this subsection, but reduced by six-tenths percent for each one-fourth, or portion thereof, year before the member reaches age sixty-five; or

(c) Subsection C of Section 22-11-23.3 NMSA 1978 and is younger than sixty years of age, in an amount equal to one and eight-tenths percent for each one-fourth, or portion thereof, year before the member reaches sixty years of age.

K. In determining a member's average annual salary for purposes of this section:

(1) the data set shall consist of the annual salary of each of the last five years, or any consecutive five years, for which contribution was made by the member, whichever produces a higher result; and

(2) lump-sum payments made after July 1, 2010 of accrued sick leave or annual leave shall be excluded from the calculation.

L. On and after July 1, 2019, if the member's average annual salary is greater than sixty thousand dollars (\$60,000):

(1) the salary in a first twelve-month interval that occurs beginning July 1, 2019 or thereafter of the five-year period used to determine the average annual salary shall be adjusted to exclude any increase in salary in excess of thirty percent of the salary in the twelve consecutive months of service credit preceding the five-year period; and

(2) the salary in each of the four succeeding twelve-month intervals that occur beginning July 1, 2019 or thereafter of the five-year period, as adjusted to exclude any increase in salary in the twelve months preceding each such succeeding twelve-month interval that is in excess of the thirty-percent limitation provided in this subsection, shall be used to determine if the salary in that succeeding twelve-month interval exceeds the thirty-percent limitation and to adjust the salary to exclude any increase in excess of that limitation in determining the average annual salary.

M. On July 1, 2020 and on each July 1 thereafter, the salary threshold for applying the thirty-percent limitation provided for in Subsection L of this section shall be adjusted by applying an adjustment factor equal to the change in the consumer price index between the next preceding calendar year and the preceding calendar year if there is an increase in the consumer price index between the next preceding calendar year and the preceding calendar year.

N. Unless otherwise required by the Internal Revenue Code of 1986, a member shall begin receiving retirement benefits by age seventy years and six months, or upon termination of employment, whichever occurs later.

**History:** 1953 Comp., § 77-9-29, enacted by Laws 1967, ch. 16, § 153; 1971, ch. 12, § 4; 1974, ch. 5, § 4; 1985, ch. 170, § 1; 1987, ch. 86, § 2; 1991, ch. 140, § 2; 1993, ch. 69, § 9; 2003, ch. 39, § 8; 2009, ch. 286, § 3; 2009, ch. 288, § 17; 2013, ch. 61, § 6; 2019, ch. 258, § 5.

**Cross references.** — For the Internal Revenue Code of 1986, see 26 U.S.C.

**The 2019 amendment,** effective July 1, 2019, added retirement eligibility provisions for employees who begin employment on or after July 1, 2019; added new Subsection J and redesignated former Subsection J as Subsection



K; in Subsection K, added new paragraph designations "(1)" and "(2)", in Paragraph K(1), after "shall", deleted "be computed on the basis" and added "consist of the annual salary of each", and in Paragraph K(2); after "calculation", deleted "of salary"; and added new Subsections L and M and redesignated former Subsection K as Subsection N.

**The 2013 amendment**, effective July 1, 2013, provided for the reduction of retirement benefits; in the title of the section, added "reductions"; in Subsection G, in the introductory sentence, after "benefits for a member", deleted "age sixty or over, retired" and added "who retires"; added Paragraphs (1) and (3) of Subsection G; in Paragraph (2) of Subsection G, at the beginning of the sentence, added "the benefit formula provided in"; in Subparagraph (a) of Paragraph (1) of Subsection H, after the word "six-tenths", deleted "of one", after "retirement occurs prior to the", deleted "member's sixty-fifth birthday" and added "member attaining the age of sixty-five years", and after "but after the", deleted "sixtieth birthday" and added "member attains the age of sixty years"; in Subparagraph (b) of Paragraph (1) of Subsection H, after "retirement occurs prior to the", deleted "member's sixtieth birthday" and added "member attaining the age of sixty years; and"; added Paragraph (2) of Subsection H; and added Subsection I.

**The 2009 amendment**, effective July 1, 2011, in Subsection D, replaced each occurrence of "his" with "the member's"; in Subsection G, after "retired pursuant to", deleted "the Educational Retirement Act" and added "Section 22-11-23 NMSA 1978"; added Subsection H; and in Subsection I, after "whichever is higher", added the remainder of the sentence.

**The 2003 amendment**, effective June 20, 2003, inserted "credit" following "years earned service" near the end of Subsection F; and inserted "Unless otherwise required by the provisions of the Internal Revenue Code of 1986," at the beginning of the second sentence of Subsection H.

**The 1993 amendment**, effective June 18, 1993, added the second sentence of Subsection H.

**The 1991 amendment**, effective June 14, 1991, inserted "but not later than June 30, 1991" near the beginning of Subsection F; added Subsection G; redesignated

former Subsection G as Subsection H; and made a minor stylistic change in Subsection D.

## ANNOTATIONS

**Exemption from income tax permitted.** — The legislature may grant a special income tax exemption to one kind of public employee, teachers, yet deny the same exemption to other public employees. *Vaughn v. State Taxation & Revenue Dep't*, 1982-NMCA-112, 98 N.M. 362, 648 P.2d 820, superseded by statute, *Pierce v. State*, 1996-NMSC-001, 121 N.M. 212, 910 P.2d 288.

**Repeal of tax exemption.** — Because no private contractual rights were granted by the retirement plan, there was no impairment or breach of contract resulting from the 1990 repeal of the tax exemption provision and, although the plan conferred property rights that vested upon accumulating minimum earned service credits, those rights did not include the right to receive pension benefits exempt from tax. *Pierce v. State*, 1996-NMSC-001, 121 N.M. 212, 910 P.2d 288.

Because the retirement plan provided no contractual or vested right to receive an irrevocable tax exemption, there was no constitutionally protected private interest in the tax exemption and there was no due process violation when the exemption was repealed. *Pierce v. State*, 1996-NMSC-001, 121 N.M. 212, 910 P.2d 288.

**"Trading" tax exemptions for health care.** — Repeal of the state income tax exemptions for teacher pensions and public employee pensions does not remedy constitutional defects of the proposed retiree health care act under a theory that those exemptions would be "traded" for retiree health care. Those exemptions are not property rights, irrepealable contractual entitlements, or pension benefits. Hence, elimination of the favorable tax treatment for current retirees is not consideration for a multi-million dollar health care plan that the state proposes to provide them. 1990 Op. Att'y Gen. No. 90-03.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — What constitutes "salary," "wages," "pay," or the like, within pension law basing benefits thereon, 14 A.L.R.2d 634.

## 22-11-30.1. Educational retirement; qualified excess benefit.

The educational retirement board, by rule, may establish and maintain a qualified excess benefit arrangement under Section 415(m) of the United States Internal Revenue Code of 1986 for employees hired before July 1, 1999. The amount of annual benefit that would be payable but for the limitation imposed by Section 415 of the United States Internal Revenue Code of 1986 to an employee hired before July 1, 1999 shall be paid from a qualified excess benefit arrangement established and maintained pursuant to this section.

**History:** Laws 1999, ch. 274, § 1.

**Cross references.** — For Section 415 of the Internal Revenue Code, see 26 U.S.C. § 415.

## 22-11-31. Cost-of-living adjustment; eligibility; based on funded ratio; additional contributions.

A. For the purposes of this section:

(1) "adjustment factor" means a multiplicative factor computed to provide an annuity adjustment pursuant to the provisions of Subsection B of this section;

(2) "annuity" means any benefit payable under the Educational Retirement Act or the Public Employees Retirement Reciprocity Act [Chapter 10, Article 13A NMSA 1978] as a retirement benefit, disability benefit or survivor benefit;

(3) "calendar year" means the full twelve months beginning January 1 and ending December 31;



(4) "consumer price index" means the average of the monthly consumer price indexes for a calendar year for the entire United States for all items as published by the United States department of labor;

(5) "funded ratio" means the ratio of the actuarial value of the assets of the fund to the actuarial accrued liability of the educational retirement system;

(6) "median adjusted annuity" means the median value of all annuities and retirement benefits paid pursuant to Section 22-11-29 or 22-11-30 NMSA 1978, as calculated each fiscal year; provided, however, that the benefits paid to a member pursuant to Section 22-11-38 NMSA 1978 shall not be included in the median adjusted annuity calculation;

(7) "next preceding calendar year" means the full calendar year immediately prior to the preceding calendar year; and

(8) "preceding calendar year" means the full calendar year preceding the July 1 on which a benefit is to be adjusted.

**B. On or after July 1, 1984:**

(1) the annuity of a member who retires pursuant to Subsection A of Section 22-11-23 NMSA 1978 or Subsection A of Section 22-11-23.1 NMSA 1978 shall be adjusted annually and cumulatively commencing on July 1 of the year in which a member attains the age of sixty-five years or on July 1 following the year a member retires, whichever is later; and

(2) the annuity of a member who retires pursuant to Subsection A of Section 22-11-23.2 NMSA 1978 shall be adjusted annually and cumulatively commencing on July 1 of the year in which the member attains the age of sixty-seven years or on July 1 following the year the member retires, whichever is later.

**C. Beginning on July 1, 2013 and on each July 1 thereafter:**

(1) if the funded ratio of the fund as reported by the board's actuary in the actuarial valuation report for the next preceding fiscal year is one hundred percent or greater, the annuity adjustments provided for under Subsection B of this section shall be adjusted by applying an adjustment factor based on the percentage increase of the consumer price index between the next preceding calendar year and the preceding calendar year. The adjustment factor shall be applied as follows:

(a) if the percentage increase of the consumer price index is less than two percent in absolute value, the adjustment factor shall be the same amount as the percentage increase of the consumer price index; and

(b) if the percentage increase of the consumer price index is two percent or greater in absolute value, the adjustment factor shall be one-half of the percentage increase; except that the adjustment shall not exceed four percent in absolute value nor be less than two percent in absolute value;

(2) if the funded ratio of the fund as reported by the board's actuary in the actuarial report for the next preceding fiscal year is greater than ninety percent but less than one hundred percent, except for a member who is on disability status in accordance with Section 22-11-35 NMSA 1978 and whose benefit is adjusted as provided in Subsection G of this section or a member who is retired pursuant to Section 22-11-38 NMSA 1978, the adjustment factor provided for in Subsection B of this section shall be applied as follows:

(a) if the percentage increase in the consumer price index is less than two percent in absolute value, for a member who has twenty-five or more years of service credit at retirement and whose annuity is less than or equal to the median adjusted annuity for the fiscal year next preceding the adjustment date, the adjustment factor shall be ninety-five percent of the adjustment factor determined pursuant to Subparagraph (a) of Paragraph (1) of this subsection;

(b) if the percentage increase in the consumer price index is less than two percent in absolute value, for a member who has less than twenty-five years of service credit at retirement and whose annuity is less than or equal to the median adjusted annuity for the fiscal year next preceding the adjustment date, and for a member whose annuity is greater than the median adjusted annuity for the fiscal year next preceding the adjustment date, the adjustment factor shall be ninety percent of the adjustment factor determined pursuant to Subparagraph (a) of Paragraph (1) of this subsection;

(c) if the percentage increase in the consumer price index is greater than or equal to two percent in absolute value for a member who has twenty-five or more years of service credit at

retirement and whose annuity is less than or equal to the median adjusted annuity for the fiscal year next preceding the adjustment date, the adjustment factor shall be ninety-five percent of the adjustment factor determined under Subparagraph (b) of Paragraph (1) of this subsection; and

(d) if the percentage increase in the consumer price index is greater than or equal to two percent in absolute value, for a member who has less than twenty-five years of service credit at retirement and whose annuity is less than or equal to the median adjusted annuity for the fiscal year next preceding the adjustment date, and for a member whose annuity is greater than the median adjusted annuity for the fiscal year next preceding the adjustment date, the adjustment factor shall be ninety percent of the adjustment factor determined under Subparagraph (b) of Paragraph (1) of this subsection;

(3) if the funded ratio of the fund as reported by the board's actuary in the actuarial valuation report for the next preceding fiscal year is ninety percent or less, except for a member who is on disability status in accordance with Section 22-11-35 NMSA 1978 and whose benefit is adjusted as provided in Subsection G of this section or a member who is retired pursuant to Section 22-11-38 NMSA 1978, the adjustment factor provided for in Subsection B of this section shall be applied as follows:

(a) if the percentage increase in the consumer price index is less than two percent in absolute value, for a member who has twenty-five or more years of service credit at retirement and whose annuity is less than or equal to the median adjusted annuity for the fiscal year next preceding the adjustment date, the adjustment factor shall be ninety percent of the adjustment factor determined pursuant to Subparagraph (a) of Paragraph (1) of this subsection;

(b) if the percentage increase in the consumer price index is less than two percent in absolute value, for a member who has less than twenty-five years of service credit at retirement and whose annuity is less than or equal to the median adjusted annuity for the fiscal year next preceding the adjustment date, and for a member whose annuity is greater than the median adjusted annuity for the fiscal year next preceding the adjustment date, the adjustment factor shall be eighty percent of the adjustment factor determined pursuant to Subparagraph (a) of Paragraph (1) of this subsection;

(c) if the percentage increase in the consumer price index is greater than or equal to two percent in absolute value for a member who has twenty-five or more years of service credit at retirement and whose annuity is less than or equal to the median adjusted annuity for the fiscal year next preceding the adjustment date, the adjustment factor shall be ninety percent of the adjustment factor determined under Subparagraph (b) of Paragraph (1) of this subsection; and

(d) if the percentage increase in the consumer price index is greater than or equal to two percent in absolute value, for a member who has less than twenty-five years of service credit at retirement and whose annuity is less than or equal to the median adjusted annuity for the fiscal year next preceding the adjustment date, and for a member whose annuity is greater than the median adjusted annuity for the fiscal year next preceding the adjustment date, the adjustment factor shall be eighty percent of the adjustment factor determined under Subparagraph (b) of Paragraph (1) of this subsection; and

(4) an annuity shall not be decreased if there is a decrease in the consumer price index between the next preceding calendar year and the preceding calendar year.

D. A retired member whose benefit is subject to adjustment under the provisions of the Educational Retirement Act in effect prior to July 1, 1984 shall have the member's annuity readjusted annually and cumulatively under the provisions of that act in effect prior to July 1, 1984 until July 1 of the year in which the member attains the age of sixty-five years, when the member shall have the annuity readjusted annually and cumulatively under the provisions of this section.

E. A member who:

(1) retires pursuant to Subsection A of Section 22-11-23 NMSA 1978 or Subsection A of Section 22-11-23.1 NMSA 1978 after attaining the age of sixty-five years shall have the member's annuity adjusted as provided in Subsections B and C of this section commencing on July 1 of the year following the member's retirement; or

(2) retires pursuant to Subsection A of Section 22-11-23.2 NMSA 1978 after attaining the age of sixty-seven years shall have the member's annuity adjusted as provided in Subsections B and C of this section commencing on July 1 of the year following the member's retirement.



F. A retired member who returns to work and suspends retirement shall be subject to the provisions of this section as they exist at the time of the member's latest retirement.

G. Benefits of a member who is on a disability status in accordance with Section 22-11-35 NMSA 1978 or a member who is certified by the board as disabled at regular retirement shall be adjusted in accordance with Subsections B and C of this section, except that the benefits shall be adjusted annually and cumulatively commencing on July 1 of the third full year following the year in which the member was approved by the board for disability or retirement.

**History:** 1953 Comp., § 77-9-30, enacted by Laws 1967, ch. 16, § 154; 1971, ch. 12, § 5; 1974, ch. 5, § 5; reenacted by Laws 1979, ch. 333, § 2; 1981, ch. 293, § 3; 1984, ch. 19, § 6; 1987, ch. 86, § 3; 1991, ch. 140, § 3; 1999, ch. 9, § 1; 2010, ch. 81, § 1; 2013, ch. 61, § 7; 2017, ch. 21, § 12.

The 2017 amendment, effective June 16, 2017, removed outdated provisions and made technical changes to the section; in Subsection D, after "the age of sixty-five", added "years"; in Subsection F, after "returns to work", added "and suspends retirement", and after "time of the member's", deleted "final" and added "latest"; and deleted Subsection H, which related to 1999 adjustments to benefits.

The 2013 amendment, effective July 1, 2013, delays cost of living adjustments; in the title of the section, added "eligibility; based on funded ratio"; added Paragraphs (5) and (6) of Subsection A; in Subsection B, in the introductory sentence, after "1984", deleted "each annuity shall"; in Paragraph (1) of Subsection B, at the beginning of the sentence, added "the annuity of a member who retires pursuant to Subsection A of Section 22-11-23 NMSA 1978 or Subsection A of Section 22-11-23.1 NMSA 1978 shall"; added Paragraph (2) of Subsection B; in Subsection C, added "Beginning on July 1, 2013 and on each July 1 thereafter"; in Paragraph (1) of Subsection C, at the beginning of the sentence, added "if the funded ratio of the fund as reported by the board's actuary in the actuarial valuation report for the next preceding fiscal year is one hundred percent or greater, the", after "greater, the annuity", added "adjustments provided for under Subsection B of this section", after "adjustment factor", deleted former language which provided for an adjustment factor of between two and four percent based on the increase in the consumer price index, and added "based on the percentage increase of the consumer price index between the next preceding calendar year and the preceding calendar year. The adjustment factor shall be applied as follows"; added Subparagraphs (a) and (b) of Paragraph (1) of Subsection C; added Paragraphs (2), (3) and (4) of Subsection C; in Subsection E, in the introductory sentence, after "who", deleted "retires", in Paragraph (1) of Subsection E, at the beginning of the sentence, added "retires pursuant to Subsection A of Section 22-11-23 NMSA 1978 or Subsection A of Section 22-11-23.1 NMSA 1978" and after "member's annuity adjusted", deleted "annually and cumulatively" and added "as provided in Subsections B and C of this section"; added Paragraph (2) of Subsection E; and in Subsection G, after "a member who", added "is certified by", and after "certified by the board", deleted "certifies was".

The 2010 amendment, effective July 1, 2010, in Subsection B, in the second sentence, after "adjustment factor

that results in", deleted "either", and after "one-half of the percentage increase", deleted "or decrease"; in the third sentence, after "that the percentage increase", deleted "or decrease" and after "same as the percentage increase", deleted "or decrease"; deleted the former fourth sentence, which provided that no negative adjustment in the retirement benefit shall reduce the member's benefit below that which the member received on the date of retirement; and added the last sentence.

The 1999 amendment, effective June 18, 1999, inserted "Public Employees" in Paragraph A(2), substituted "who" for "whom" in Subsection E, and in Subsection F substituted "1999" for "1991" and inserted "the last".

The 1991 amendment, effective June 14, 1991, designated formerly undesignated provisions as Subsections C and D; deleted former Subsection C, relating to adjustment of benefits of persons receiving an annuity as of June 30, 1987; added Subsections E and F; and made a minor stylistic change in Subsection B.

#### ANNOTATIONS

##### Property right in cost-of-living adjustments.

— Any future cost-of-living adjustment to a retirement benefit is merely a year-to-year expectation that, until paid, does not, under the New Mexico constitution, create a vested property right in an annual cost-of-living adjustment calculated according to the statutory formula in effect on the date of the retiree's eligibility for retirement. Once paid, the cost-of-living adjustment becomes a part of the retirement benefit and a property right subject to constitutional protections. *Bartlett v. Cameron*, 2014-NMSC-002.

Where the legislature amended Section 22-11-31 NMSA 1978 in 2013 to reduce future amounts educational retirees might receive as a cost-of-living adjustment; and retirees sought to compel the education retirement board to pay them an annual cost-of-living adjustment, for the entirety of their retirement, calculated according to the cost-of-living adjustment formula in effect on the date of their retirement on the grounds that under Article XX, Section 22 of the New Mexico constitution, the retirees had a vested property interest in future cost-of-living adjustments based on the formula in effect on the date of their retirement, a cost-of-living adjustment to a retirement benefit is provided independently from the obligation and payment of a retirement benefit and retirees do not have a vested property interest in an annual cost-of-living adjustment calculated in accordance with the formula in effect at the time they were eligible for retirement. *Bartlett v. Cameron*, 2014-NMSC-002.

## 22-11-32. Adjustment of benefits.

A. If retirement or disability benefits cause a decrease in the amount of monetary payments due to a member or beneficiary from any public agency, the retirement or disability benefits shall be reduced to result in the maximum total benefits to the member or beneficiary.

B. If there is a change in the effect of retirement or disability benefits on any monetary payments due to a member or beneficiary from any public agency, the retirement or disability benefits

shall be adjusted to result in the maximum total benefits to the member or beneficiary. In no event shall the retirement or disability benefits be increased in an amount greater than that authorized by the Educational Retirement Act.

C. The provisions of this section are mandatory and are not subject to option or election by any member or beneficiary. Each member or beneficiary shall inform the director of all facts necessary for the director to carry out the provisions of this section.

D. If the director, in good faith, seeks to ascertain all facts necessary to comply with provisions of this section, but payment of retirement or disability benefits is made without making an adjustment as provided by this section, neither the board, the director or any public officer or employee shall be liable because of the payment.

E. As used in this section:

(1) "retirement or disability benefits" means retirement or disability benefits payable to a member or beneficiary pursuant to the Educational Retirement Act ;

(2) "public agency" includes the federal government, any department or agency of the federal government, any state and any department, agency and political subdivision of a state; and

(3) "total benefits" means retirement or disability benefits plus any other monetary payments due to the member or beneficiary from any public agency.

**History:** 1953 Comp., § 77-9-31, enacted by Laws 1967, ch. 16, § 155.

**Cross references.** — For effect of article upon benefits being paid under laws repealed by article or under laws

establishing public employees retirement association, *see* 22-11-44 NMSA 1978.

## 22-11-33. Earned service credit.

A. Upon a member filing an application for retirement or disability benefits, earned service credit for the time of contributory employment shall be certified by the director and subject to the review of the board.

B. A member shall be certified to have earned service credit for that period of time when the member was engaged in prior employment. Earned service credit shall not be certified for that period of employment for which the contributions have been withdrawn from the fund by the member.

C. Earned service credit shall be certified for periods of employment interrupted for some cause other than retirement or disability. This shall be done if a member withdrawing contributions from the fund for this period returns to the fund, for each year of earned service credit desired, a sum equal to the member's contribution to the fund during this period and an additional sum as interest compounded annually from the date the contributions were withdrawn to the date of payment of the amount of returned contributions at the rate of interest set by the board.

**History:** 1953 Comp., § 77-9-33, enacted by Laws 1967, ch. 16, § 156; 2003, ch. 39, § 9; 2017, ch. 21, § 13.

**Cross references.** — For reciprocal service credits under Public Employees Retirement Reciprocity Act, *see* 10-13A-4 NMSA 1978.

**The 2017 amendment**, effective June 16, 2017, removed the provision that allowed the educational retirement board to accept installment payments for allowed service credit; in Subsection B, after "period of time when", deleted "he" and added "the member"; and in Subsection C, deleted the last sentence of the section which

provided "These payments may be made in installments, and, if the payments made to the fund are insufficient for the restoration of any full year of earned service credit, the member shall be certified to have acquired earned service credit for that period of time which is proportionate to the payments made."

**The 2003 amendment**, effective June 20, 2003, substituted "set by the board" for "earned by the fund during the five-year period immediately preceding the application for the earned service-credit" following "rate of interest" near the middle of Subsection C.

## 22-11-34. Allowed service credit.

A. A member shall be certified to have acquired allowed service credit pursuant to the Internal Revenue Code of 1986 for those periods of time when the member was:

(1) employed prior to July 1, 1967 in a federal educational program within New Mexico, including United States Indian schools and civilian conservation corps camps. This service credit shall be allowed without contribution;



(2) engaged in military service that interrupted the member's employment in New Mexico if the member returned to employment within eighteen months following honorable discharge. This service credit shall be allowed without contribution;

(3) engaged in United States military service or the commissioned corps of the public health service from which the member was honorably discharged; provided that:

(a) the member shall have five years or more of contributory employment to be eligible to purchase allowed service credit pursuant to this paragraph;

(b) the member shall contribute to the fund, for each year of service credit the member elects to purchase, a sum equal to the member's average annual actual salary for the five years preceding the date of the contribution multiplied by the sum of the member contribution rate and the employer contribution rate in effect at the time of the member's written election to purchase, subject to the federal Uniformed Services Employment and Reemployment Rights Act of 1994;

(c) full payment shall be made in a single lump sum within sixty days of the date that the member is informed of the amount of the payment; and

(d) the portion of the purchase cost derived from the employer's contribution rate shall be credited to the fund and, in the event that a member requests a refund of contributions pursuant to Section 22-11-15 NMSA 1978, the member shall not be entitled to a refund of that portion of the purchase cost derived from the employer contribution rate; or

(4) employed:

(a) in a public school or public institution of higher learning in another state, territory or possession of the United States;

(b) in a United States military dependents' school operated by a branch of the armed forces of the United States;

(c) as provided in Paragraph (1) of this subsection after July 1, 1967; or

(d) in a private school or institution of higher learning in New Mexico whose education program is accredited or approved by the department at the time of employment.

B. Effective July 1, 2001, the member or employer under Paragraph (4) of Subsection A of this section shall contribute to the fund for each year of allowed service credit desired an amount equal to the actuarial value of the service purchased as defined by the board. No allowed service credit shall be purchased pursuant to Paragraph (4) of Subsection A of this section unless the member is currently employed by a local administrative unit.

C. No member shall be certified to have acquired allowed service credit:

(1) under any single paragraph or the combination of only Paragraphs (1) and (4) or only Paragraphs (2) and (3) of Subsection A of this section in excess of five years; or

(2) in excess of ten years for any other combination of Paragraphs (1) through (4) of Subsection A of this section.

D. A member receiving service credit under Paragraph (3) or (4) of Subsection A of this section who enrolls in the retiree health care authority shall make contributions pursuant to Subsection C of Section 10-7C-15 NMSA 1978.

**History:** 1953 Comp., § 77-9-34, enacted by Laws 1967, ch. 16, § 157; 1975, ch. 321, § 1; 1977, ch. 331, § 2; 1981, ch. 291, § 1; 1986, ch. 48, § 1; 1989, ch. 30, § 2; 1993, ch. 69, § 10; 1997, ch. 103, § 1; 1998, ch. 38, § 3; 2003, ch. 39, § 10; 2009, ch. 288, § 18; 2017, ch. 21, § 14.

**Cross references.** — For reciprocal service credits under Public Employees Retirement Reciprocity Act, see 10-13A-4 NMSA 1978.

For the federal Uniformed Services Employment and Reemployment Rights Act, see 38 U.S.C.S. § 4301 et seq.

For the Internal Revenue Code of 1986, see 26 U.S.C.

**The 2017 amendment,** effective June 16, 2017, removed the provision that allowed the educational retirement board to accept installment payments for allowed service credit; in Subsection B, after the first sentence, deleted the next two sentences which related to the purchase of allowed service credit by installments; and

deleted Subsection E, which related to the applicability dates of the provisions of this section.

**The 2009 amendment,** effective July 1, 2009, in Paragraph (3) of Subsection A, deleted the former language of the paragraph which provided for credit if the member contributed a sum equal to ten and one half percent of average annual salary for the time the member acquired earned service credit; added Subparagraphs (a) through (d) of Paragraph (3) of Subsection A; and added Subsection D.

**The 2003 amendment,** effective June 20, 2003, substituted "July 1, 1967" for "the effective date of the Educational Retirement Act" following "employed prior to" near the beginning of Paragraph A(1); substituted "July 1, 1967" for "the effective date of the Educational Retirement Act" near the end of Subparagraph A(4)(c); in Subsection B deleted "The member or employer under Paragraph (4) of Subsection A of this section shall contribute to the fund for each



year of allowed service credit desired an amount equal to twelve percent of the member's annual salary at the time payment is made if the member is employed or twelve percent times the member's annual salary during the member's last year of employment if the member is not employed at the time of payment. Contributions paid for the member who is not employed shall bear interest at the average rate earned by the fund during the five-fiscal-year period immediately preceding the date of payment. Such interest shall run from the date the member last terminated employment to the date of payment." at the beginning, and substituted "by that act. No allowed service credit shall be purchased pursuant to Paragraph (4) of Subsection A of this section unless the member is currently employed by a local administrative unit." for "thereby" at the end.

**The 1998 amendment**, effective May 20, 1998, inserted "pursuant to the Internal Revenue Code of 1986" near the middle of Subsection A; substituted "a" for "any" throughout the section; in Paragraph A(3), substituted "pursuant to" for "under" and inserted "and subject to the federal Uniformed Services Employment and Reemployment Rights Act of 1994" near the end of the first sentence, and substituted "on" for "upon" in the second sentence; and in Subsection B, deleted "of" following "over a period" and substituted "that" for "which" in the fifth sentence.

**The 1997 amendment**, effective June 20, 1997, in the last sentence of Paragraph A(3), deleted "prior to July 1 1992 or" preceding "three years" and deleted "whichever is later" following "service", and added the fourth sentence in Subsection B.

**The 1993 amendment**, effective June 18, 1993, rewrote Subparagraph (4)(d) of Subsection A which read "in any private school in New Mexico accredited by the state board of education"; inserted "or employer" in the first sentence and substituted "paid for the member" for "paid by the member" in the second sentence of Subsection B; substituted "Paragraphs (1) through (4) of Subsection A of this section" for "those Paragraphs" in Paragraph

(2) of Subsection C; and made a minor stylistic change in Subsection A.

**The 1989 amendment**, effective July 1, 1989, in Subsection A(1) substituted "employed" for "serving as a teacher or administrator" in the first sentence; in Subsection A(3) inserted "or the commissioned corps of the public health service" in the first sentence, substituted "1992" for "1987" in the last sentence, and deleted "military" preceding "service" throughout the subsection; in Subsection A(4) deleted "a teacher or administrator" at the beginning of Subparagraphs (a) through (c) and deleted "a certified teacher or certified administrator" at the beginning of Subparagraph (d); and in Subsection B substituted all of the present language of the first sentence following "equal to" for "the prevailing combined percentage of contributions of members and local administrative units in effect at the time of application for allowed service-credit times the member's annual salary if the member is employed, or time the member's annual salary during the member's last year of employment if the member is not employed at the time of the application" and inserted "at the discretion of the board" in the fourth sentence.

#### ANNOTATIONS

**Public health service officers.** — Active duty as a uniformed commissioned officer in the United States public health service qualifies as "military service" pursuant to Subsection (A)(3) in the following situations: (1) When the service was performed while the commissioned corps was declared to be a military service pursuant to 42 U.S.C. § 217, or (2) when the officer was detailed to a branch of the armed services, as 10 U.S.C. § 101(4) defines that term. 1987 Op. Att'y Gen. No. 87-73.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Services included in computing period of service for purpose of teachers' seniority, 2 A.L.R.2d 1033.

### 22-11-34.1. Sick leave service credit.

A. Beginning on July 1, 2020, a member who has acquired the minimum number of years of contributory employment to be eligible for retirement benefits under the Educational Retirement Act may pay to have unused sick leave, earned from the member's contributory employment and for which the member has otherwise not received payment, converted to earned service credit, up to a maximum of:

- (1) six days of unused sick leave per year of contributory employment; and
- (2) four calendar quarters of earned service credit.

B. The following standards apply to the conversion of unused sick leave to earned service credit under this section:

- (1) eight hours of sick leave equals one day of sick leave;
- (2) thirty-eight to eighty-two days of sick leave equals one quarter of earned service credit;
- (3) eighty-three to one hundred twenty-seven days of sick leave equals two quarters of earned service credit;
- (4) one hundred twenty-eight to one hundred seventy-two days of sick leave equals three quarters of earned service credit; and
- (5) one hundred seventy-three or more days of sick leave equals four quarters of service credit.

C. A member who elects to convert unused sick leave to earned service credit under this section shall, in accordance with rules that the board shall establish, submit to the board verification from local administrative units of the member's unused sick leave.

D. The cost to a member of converting unused sick leave to earned service credit is the actuarial present value, as determined by the board, of the benefit attributable to the conversion. The



board shall establish rules pertaining to payments for converting unused sick leave to earned service credit.

**History:** Laws 2019, ch. 31, § 1.

**Effective dates:** — Laws 2019, ch. 31, § 2 makes Laws 2019, ch. 31, § 1 effective July 1, 2020.

## 22-11-35. Disability benefit; eligibility; medical examination.

A. A member shall be eligible for disability benefits if the member has acquired ten years or more of earned service credit and if the board certifies the member to be totally disabled to continue the member's employment and unable to obtain and retain other gainful employment commensurate with the member's background, education and experience.

B. Prior to any certification of disability by the board, the board shall require each applicant for disability benefits to submit medical records as required by the board in support of the applicant's disability claim.

**History:** 1953 Comp., § 77-9-35, enacted by Laws 1967, ch. 16, § 158; 2017, ch. 21, § 15.

The 2017 amendment, effective June 16, 2017, removed the provision that required applicants for disability benefits to submit to a medical examination by a doctor approved by the educational retirement board, and required applicants for disability benefits to submit his or her medical records in support of the applicant's disability claim; in Subsection A, substituted "the member" for "he" or "his" throughout the subsection, and after "earned", changed "service-credit" to "service credit"; and in Subsection B, after "submit", deleted "himself to a medical examination by the medical authority" and added "medical records as required by the board in support of the applicant's disability claim".

### ANNOTATIONS

**Scope of board's authority.** — The legislature, through this section has granted the board the authority to award disability benefits if certain requirements are met. If the board certifies the eligible member to be totally disabled, the board must award benefits. Once the determination of total disability is made, it is the duty of the board to certify the member as disabled. There is nothing in this grant of authority which authorizes the board to refuse to accept an application for disability if the applicant continues to hold a property interest in a bus contract. *Gonzales v. N.M. Educ. Retirement Bd.*, 1990-NMSC-024, 109 N.M. 592, 788 P.2d 348, cert. denied, 498 U.S. 818, 111 S. Ct. 61, 112 L. Ed. 2d 36 (1990).

## 22-11-36. Disability benefit; continued eligibility; re-examinations.

A. Unless designated by the board as being permanently disabled, to continue to receive disability benefits, a member shall, on the anniversary date in each year of the member's being placed on a disability status, present current medical records to the medical authority in support of the applicant's continuing disability claim. The medical authority shall recommend to the board that the member either be placed on continuing annual disability or permanent disability or removed from disability status due to a substantial betterment of the member's condition. In the event a substantial betterment of the disability is reported, the board shall determine whether the member is totally disabled for employment and unable to obtain and retain other gainful employment commensurate with the member's background, education and experience. If the board determines that the member is no longer disabled, the payment of the disability benefits shall cease.

B. Payment of disability benefits to a member shall be suspended if the member fails to submit medical records to the medical authority within thirty days after the date upon which the member should have submitted the medical records and where the failure to submit the medical records was due to the unexcused failure or the refusal of the member to do so. Payment of disability benefits shall be resumed only after the member has submitted current medical records to the board and the board has determined that the member is totally disabled. A member shall have no right or claim for benefits withheld during a period of suspension.

C. The board may, in its discretion, require that the member obtain an independent medical examination; provided that the examination is performed at the board's expense.

D. Upon a determination by the board, a member's status may be changed from permanently disabled to temporarily disabled or no longer disabled.

**History:** 1953 Comp., § 77-9-36, enacted by Laws 1967, ch. 16, § 159; 2003, ch. 39, § 11; 2017, ch. 21, § 16.

**Cross references.** — For reports of improved health by members receiving disability benefits, see 22-11-39 NMSA 1978.

For suspension of payments for failure to make reports, see 22-11-40 NMSA 1978.

**The 2017 amendment**, effective June 16, 2017, required members who are receiving disability benefits to annually submit current medical records in support of the member's continuing disability claim, required the medical authority to make recommendations regarding the member's continuing disability claim, and provided for the suspension of disability benefits if the member fails to submit medical records; in Subsection A, after "designated by the", deleted "medical authority" and added "board", after "in each year of", deleted "his" and added "the member's", after "present", deleted "himself" and added "current medical records", after "the medical authority", deleted "for a medical re-examination" and added "in support of the applicant's continuing disability claim", and after "The medical authority shall", deleted "certify to the director after each medical examination whether there is a substantial betterment of the member's disability" and added "recommend to the board that the member either be placed on continuing annual disability or permanent disability or removed from disability status due to a substantial betterment of the member's condition", and after "commensurate with", deleted "his" and added "the member's"; in Subsection B, after "shall be suspended if", deleted "a certificate of medical re-examination by the medical authority is not filed with the director" and

added "the member fails to submit medical records to the medical authority", after "member should have", deleted "been re-examined" and added "submitted the medical records and", after "failure to", deleted "file the certificate" and added "submit the medical records"; after "refusal of the member to", deleted "report for the medical re-examination" and added "do so", and after "only after the member has", deleted "complied with the requirements of the Educational Retirement Act" and added "submitted current medical records to the board and the board has determined that the member is totally disabled"; in Subsection C, after "require", deleted "further or more frequent medical examinations of members having a disability status" and added "that the member obtain an independent medical examination; provided that the examination is performed at the board's expense"; and deleted former Subsection D, which related to a member's inability to report for a medical examination, and redesignated former Subsection E as new Subsection D.

**The 2003 amendment**, effective June 20, 2003, in Subsection A added "Unless designated by the medical authority as being permanently disabled," at the beginning and deleted "or is not" following "whether there is" near the middle; inserted "who is" following "disability benefits" near the beginning of Subsection D; and added Subsection E.

## 22-11-37. Disability benefit.

A. The annual disability benefit shall be equal to two percent of the member's average annual salary multiplied by the number of years of the member's total service-credit if the result is greater than one-third of the member's average annual salary. If the result of that formula is less than one-third of the member's average annual salary, the annual disability benefit shall be equal to the lesser of the following amounts:

(1) two percent of the member's average annual salary multiplied by the sum of the member's total service-credit plus the number of years, calculated to the nearest completed quarter, from the effective date of the member's disability to the member's sixtieth birthday; or

(2) one-third of the member's average annual salary.

B. A member's average annual salary for the purpose of computing disability benefits shall be the average salary for the last five years of employment or for any other consecutive five-year period for which contribution was made by the member, whichever is higher.

C. The annual disability benefit shall be paid in equal monthly installments.

**History:** 1953 Comp., § 77-9-37, enacted by Laws 1967, ch. 16, § 160; 1973, ch. 350, § 1; 1991, ch. 140, § 4.

**The 1991 amendment**, effective June 14, 1991, in Subsection A, substituted "two percent" for "one and one-half

percent" in the first sentence and in Paragraph (1); inserted "annual" preceding "salary" in Subsection B; and made minor stylistic changes in Subsections A and B.

## 22-11-38. Disability retirement.

A member receiving disability benefits upon attaining the age of sixty years shall be considered as retiring pursuant to the Educational Retirement Act at the rate of benefits received for the disability.

**History:** 1953 Comp., § 77-9-38, enacted by Laws 1967, ch. 16, § 161.

## 22-11-39. Report of improved health; penalty.

A. A member receiving disability benefits shall report to the director in writing any substantial improvement in the member's disability within thirty days after the member has or reasonably should have knowledge of the improvement.



B. A member failing to report to the director as required by this section is guilty of a petty misdemeanor.

**History:** 1953 Comp., § 77-9-39, enacted by Laws 1967, ch. 16, § 162; 2017, ch. 21, § 17.

**Cross references.** — For requirement of reports and examinations of members receiving disability benefits generally, see 22-11-36 NMSA 1978.

**The 2017 amendment**, effective June 16, 2017, in Subsection A, after "improvement in", deleted "his" and added "the member's", after "thirty days after", deleted "he" and added "the member"; and in Subsection B, after "petty", changed "misdemeanor" to "misdemeanor".

## 22-11-40. Restoration to fund.

If a member is obligated to restore any sum of money to the fund and fails or refuses to do so for a period of three months after written demand is made by the director, the member shall forfeit membership and receive no further benefits pursuant to the Educational Retirement Act. The director shall determine whether the former member's contributions to the fund exceed the total amount of disability or retirement benefits the member has received and shall withdraw from any such balance of contributions the amount of money the member is obligated to restore to the fund. Any balance of the contribution remaining in the fund shall be paid to the former member or the former member's beneficiary. In the event the money the former member is obligated to restore to the fund is not restored to the fund, the former member shall be subject to civil action by the board for its recovery.

**History:** 1953 Comp., § 77-9-40, enacted by Laws 1967, ch. 16, § 163; 2017, ch. 21, § 18.

**Cross references.** — For suspension of benefits upon failure to file certificate of reexamination, see 22-11-36 NMSA 1978.

**The 2017 amendment**, effective June 16, 2017, removed the provision related to the suspension of disability benefits for the failure of a member to make a required report; in the catchline, deleted "Reports"; deleted

Subsection A, which related to the suspension of disability benefits for the failure of a member to make a required report, and deleted the subsection designation "B."; in the undesignated paragraph, after "director", deleted "he" and added "the member", after "forfeit", deleted "his", after "disability or retirement benefits", deleted "he" and added "the member", and after "former member or", deleted "his" and added "the former member's".

## 22-11-41. Repealed.

**Repeals.** — Laws 1993, ch. 69, § 11 repealed 22-11-41 NMSA 1978, as enacted by Laws 1967, ch. 16, § 164, relating to prohibitions on insurance and continued

eligibility after retirement, effective June 18, 1993. For provisions of former section, see the 1992 NMSA 1978 on [NMSource.com](http://NMSource.com).

## 22-11-42. Nonassignability; division of funds as community property; child support obligations.

A. Except as specifically provided in the Educational Retirement Act and the provisions of Subsections B and C of this section, contributions or benefits mentioned in the Educational Retirement Act shall not be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment, guarantee fund or similar assessment or any other legal process.

B. A court of competent jurisdiction, solely for the purposes of effecting a division of community property, may provide by appropriate order for a determination and division of a community interest in the pensions or other benefits provided for in the Educational Retirement Act. In so doing, the court shall fix the manner in which the warrants shall be issued, may order direct payments by the board to a person with a community interest in the pensions or benefits and may restrain the refund of member or participant contributions. The court shall not alter the manner in which the amount of pensions or other benefits is calculated by the board or a carrier or contractor for the alternative retirement plan, nor shall the court cause any increase in the actuarial present value of the pensions or other benefits to be paid by the board or a carrier or contractor for the alternative retirement plan. A payment, ordered by a court pursuant to this subsection, shall only be made when the member or participant terminates employment and requests a refund or when the member or participant retires or is otherwise entitled to receive benefits pursuant to the

Educational Retirement Act. In no case shall a court order pursuant to this subsection result in more money being paid from the fund or from an alternative retirement plan, whether in a lump sum or in monthly benefits, than would otherwise be payable.

C. A court of competent jurisdiction, solely for the purposes of enforcing current or delinquent child support obligations, may provide by appropriate order for withholding amounts due in satisfaction of current or delinquent child support obligations from the pensions or other benefits provided for in the Educational Retirement Act and for payment of such amounts to third parties. The court shall not alter the manner in which the amount of pensions or other benefits is calculated by the board or a carrier or contractor for the alternative retirement plan. The court shall not cause any increase in the actuarial present value of the pensions or other benefits to be paid by the board or a carrier or contractor for the alternative retirement plan. Payments made pursuant to such orders shall only be made when the member or participant terminates employment and requests a refund of contributions or when the member or participant retires; in no case shall more money be paid out, either in a lump sum or in monthly benefits, of the fund or alternative retirement plan in enforcement of current or delinquent child support obligations than would otherwise be payable. In no case shall a court order pursuant to this subsection result in more money being paid from the fund or from an alternative retirement plan, whether in a lump sum or in monthly benefits, than would otherwise be payable.

**History:** 1953 Comp., § 77-9-42, enacted by Laws 1967, ch. 16, § 165; 1987, ch. 242, § 1; 1989, ch. 125, § 3; 1990, ch. 49, § 17; 1991, ch. 118, § 4; 2003, ch. 39, § 12.

**Cross references.** — For rules governing garnishment and writs of execution in the district, magistrate, and metropolitan courts, *see* Rules 1-065.1, 2-801, and 3-801 NMRA, respectively.

For form for claim of exemptions on executions, *see* Rule 4-803 NMRA.

For form for order on claim of exemption and order to pay in execution proceedings, *see* Rule 4-804 NMRA.

For form for application for writ of garnishment and affidavit, *see* Rule 4-805 NMRA.

For form for notice of right to claim exemptions from execution, *see* Rule 4-808A NMRA.

For form for claim of exemption from garnishment, *see* Rule 4-809 NMRA.

**The 2003 amendment**, effective June 20, 2003, added "A payment, ordered by a court pursuant to this subsection, shall only be made when the member or participant terminates employment and requests a refund or when the member or participant retires or is otherwise entitled to receive benefits pursuant to the Educational Retirement Act. In no case shall a court order pursuant to this subsection result in more money being paid from the fund or from an alternative retirement plan, whether in a lump sum or in monthly benefits, than would otherwise

be payable." at the end of Subsection B; and added "In no case shall a court order pursuant to this subsection result in more money being paid from the fund or from an alternative retirement plan, whether in a lump sum or in monthly benefits, than would otherwise be payable." at the end of Subsection C.

**The 1991 amendment**, effective July 1, 1991, in Subsection A, inserted "guarantee fund or similar assessment"; in Subsection B, in the second sentence, inserted "or participant" and in two locations in the third sentence inserted "or a carrier or contractor for the alternative retirement plan"; in Subsection C, in the second and third sentences, inserted "or a carrier or contractor for the alternative retirement plan" and, in the fourth sentence, inserted "or participant" twice and "or alternative retirement plan".

**The 1990 amendment**, effective May 16, 1990, deleted "Tax exemption" in the catchline, deleted "and shall also be exempt from any state income tax" at the end of Subsection A and substituted "board" for "association" at the end of the second sentence of Subsection C.

**The 1989 amendment**, effective June 16, 1989, added "child support obligations", to the catchline; substituted "Subsections B and C" for "Subsection B" in Subsection A; substituted "Educational" for "Education" in the first sentence of Subsection B; and added Subsection C.

## 22-11-43. Insurance or banking laws inapplicable.

In the absence of specific provisions to the contrary, no law of this state regulating insurance policies, insurance companies or banking institutions shall apply to the administration of the Educational Retirement Act.

**History:** 1953 Comp., § 77-9-43, enacted by Laws 1967, ch. 16, § 166.

## 22-11-44. Saving clause; retirement benefits; disability benefits.

A. Any person retired pursuant to the provisions of any laws repealed by the Educational Retirement Act shall be considered to have retired pursuant to the Educational Retirement Act



and shall continue to receive retirement benefits in the same amount as received prior to the enactment of the Educational Retirement Act.

B. Any person receiving disability benefits pursuant to any laws repealed by the Educational Retirement Act shall continue to receive disability benefits in the same amount as received prior to the enactment of the Educational Retirement Act and shall be considered to have been granted disability benefits pursuant to and be subject to the provisions of the Educational Retirement Act.

C. Nothing in the Educational Retirement Act shall be construed to adversely affect any benefits being paid pursuant to any laws repealed by the Educational Retirement Act or any laws establishing the public employees retirement association.

D. No person who was covered under the provisions of any statute repealed by the Educational Retirement Act shall be retired at a monthly benefit that is less than the person would have received had the person's employment continued to be performed under such repealed provisions.

**History:** 1953 Comp., § 77-9-44, enacted by Laws 1967, ch. 16, § 167; 2017, ch. 21, § 19.

The 2017 amendment, effective June 16, 2017, made technical changes; in Subsection C, after "public employees retirement association", deleted "of New Mexico"; and

in Subsection D, after "No person who was", deleted "heretofore", after "monthly benefit", deleted "which" and added "that", after "less than", deleted "he" and added "the person", and after "received had", deleted "his" and added "the person's".

## 22-11-44.1. Repealed.

**Repeals.** — Laws 1993, ch. 69, § 11 repealed 22-11-44.1 NMSA 1978, as enacted by Laws 1982, ch. 37, § 2, relating to the transfer of assets of the New Mexico activities

association, effective June 18, 1993. For provisions of former section, see the 1992 NMSA 1978 on *NMOneSource.com*.

## 22-11-45. Repealed.

**Repeals.** — Laws 2017, ch. 21, § 20 repealed 22-11-45 NMSA 1978, as enacted by Laws 1967, ch. 16, § 168, relating to elections of the public employees retirement

association, payment of contributions, effective June 16, 2017. For provisions of former section, see the 2016 NMSA 1978 on *NMOneSource.com*.

## 22-11-46. Reserved.

## 22-11-47. Alternative retirement plan; election of coverage.

A. Beginning October 1, 1991, any employee of the university of New Mexico, New Mexico state university, New Mexico institute of mining and technology, New Mexico highlands university, eastern New Mexico university or western New Mexico university who is eligible to become a participant may make within ninety days of that date an election to participate in the alternative retirement plan. Beginning October 1, 1999, an employee of central New Mexico community college, Clovis community college, Luna community college, Mesalands community college, New Mexico junior college, northern New Mexico college, San Juan college or Santa Fe community college who is eligible to become a participant may make an election to participate in the alternative retirement plan within ninety days of the initial date. Thereafter, any employee who is eligible to become a participant may make within the first ninety days of employment with a qualifying state educational institution an election to participate in the alternative retirement plan. Any employee who makes the election shall become a participant the first day of the first pay period following the election. Any employee who fails to make the election within ninety days of October 1, 1991 or October 1, 1999, whichever is applicable, or within the first ninety days of employment with a qualifying state educational institution shall become or remain a regular member if that employee is eligible to be a regular member and shall not later be eligible to elect to be a participant, regardless of whether the employee subsequently is employed in another position that is eligible for participation in the alternative retirement plan. Except as provided in Subsection D of this section, an election to become a participant is irrevocable.

B. Until the time an employee who is eligible to become a participant elects to participate in the alternative retirement plan, that employee shall be a regular member.

C. When an employee elects to become a participant, any employer and employee contributions made as a regular member shall be withdrawn from the fund and applied instead toward the alternative retirement plan as if the participant had been participating in the alternative retirement plan from the commencement of employment with the qualifying state educational institution.

D. On July 1, 2009, any participant who has made contributions to the alternative retirement plan for a cumulative total of seven years or more shall have a one-time option of electing to become a regular member. Thereafter, once a participant has made contributions to the alternative retirement plan for a cumulative total of seven years, a participant shall have a one-time option of electing to become a regular member. Participants electing to become regular members shall exercise that option within one hundred twenty days of the date of becoming eligible to elect to become a regular member. Any amounts on deposit in an employee's alternative retirement plan account when a participant becomes a regular member shall remain on deposit with the contractor or carrier subject to that plan's provisions, unless otherwise provided by law. An employee who elects to become a regular member under this subsection shall use the date on which the employee was first employed with a qualifying state educational institution for purposes of determining any retirement eligibility requirement, provided that the employee:

(1) may not purchase service credit for periods of employment during which the employee participated in the alternative retirement plan; and

(2) shall acquire not less than five years of contributory employment as a regular member as provided for in Section 22-11-24 NMSA 1978 to be eligible for retirement benefits pursuant to the Educational Retirement Act.

E. The board shall approve the positions at each qualifying state educational institution that are eligible for participation in the alternative retirement plan.

**History:** 1978 Comp., § 22-11-47, enacted by Laws 1991, ch. 118, § 5; 1999, ch. 261, § 2; 1999, ch. 274, § 3; 2008, ch. 68, § 2; 2009, ch. 9, § 1.

**Cross references.** — For Section 401 of the Internal Revenue Code, see 26 U.S.C.S. § 401.

**The 2009 amendment,** effective March 18, 2009, in Subsection A, provided that an employee who fails to make the election shall not later be eligible to be a participant even if the employee is subsequently employed in a

position that is eligible for participation and provided that except as provided in Subsection D, an election to become a participant is irrevocable; and added Subsections D and E.

**The 2008 amendment,** effective July 1, 2008, deleted former Subsection D that provided for participation of clinical faculty members of the university of New Mexico health sciences center in the alternative retirement plan.

**The 1999 amendment,** effective June 18, 1999, added Subsection D.

## 22-11-48. Alternative retirement plan; contributory employment.

A. Contributions made by a qualifying state educational institution on behalf of a participant together with any interest accrued on those contributions shall be credited to the benefit of the participant and shall be distributed or treated as agreed upon between the contractor or carrier providing the alternative retirement plan benefits and the board.

B. Contributions of a participant who terminates employment together with any applicable interest accrued on those contributions shall remain the property of the participant and the contributions, interest and any benefits based on them shall be treated as agreed upon between the contractor or carrier providing the alternative retirement plan benefits and the board.

**History:** 1978 Comp., § 22-11-48, enacted by Laws 1991, ch. 118, § 6.

## 22-11-49. Alternative retirement plan; contributions.

A. A participant shall contribute an amount equal to the percentage of the participant's salary that the participant would be required to contribute if the participant were, instead, a regular member. The contribution shall be made as provided by the board.



B. A qualifying state educational institution shall contribute on behalf of each participant an amount of the participant's salary equal to the contribution that would be required of the employer if the participant were, instead, a regular member. Of that contribution, a sum equal to the following percentage of the annual salary of each participant shall be paid to the fund, and the remainder of the contribution shall be paid to the alternative retirement plan as provided by the board:

- (1) from July 1, 2021 through June 30, 2022, four and one-fourth percent;
- (2) from July 1, 2022 through June 30, 2023, six and one-fourth percent; and
- (3) on and after July 1, 2023, seven and one-fourth percent; or
- (4) if, on July 1 following any report by the actuary to the board that concludes that less

than that percentage is required to satisfy the unfunded actuarial liability attributable to the participation of the participants in the alternative retirement plan, then the percentage the actuary determines is the minimum required to satisfy that liability.

C. Contributions required by this section may be made by a reduction in salary or by a public employer pick-up as provided in the Internal Revenue Code of 1986, as amended.

**History:** 1978 Comp., § 22-11-49, enacted by Laws 1991, ch. 118, § 7; 1999, ch. 261, § 3; 2019, ch. 258, § 6; 2021, ch. 44, § 3; 2022, ch. 29, § 2.

**Cross references.** — For the Internal Revenue Code of 1986, see 26 U.S.C.

**The 2022 amendment,** effective May 18, 2022, increased employer contributions to the educational retirement fund; and in Subsection B, added a new Paragraph B(2) and redesignated former Paragraphs B(2) and B(3) as Paragraphs B(3) and B(4), respectively, and in Paragraph B(3), after "July 1", deleted "2022, five" and added "2023, seven".

**The 2021 amendment,** effective July 1, 2021, increased certain contributions, and revised the schedule for contributions, to the educational retirement fund; and in Subsection B, after "sum equal to", deleted "three and one-fourth percent" and added "the following percentage", and added new Paragraphs B(1) and B(2), and in Paragraph B(3), after "concludes that less than", deleted "three and one-fourth percent" and added "that percentage".

**Temporary provisions.** — Laws 2021, ch. 44, § 4 provided that before July 1, 2022, the educational retirement board shall report to the department of finance and

administration, any other affected agency, the legislative finance committee, legislative education study committee and any other appropriate interim legislative committees on fund status and options to improve pension plan solvency without additional contributions from public employers.

**The 2019 amendment,** effective July 1, 2019, increased employer contribution rates; in Subsection B, after "Of that contribution", deleted "made by a qualifying state educational institution on behalf of a participant beginning October 1, 1991, or October 1, 1999, whichever is applicable", after "sum equal to", deleted "three percent" and added "three and one-fourth percent", after "concludes that less than", deleted "three percent of the contributions made by a qualifying state educational institution on behalf of its participants" and added "three and one-fourth percent", after "retirement plan," deleted "the three percent shall be reduced" and added "then", and after "actuary", added "determines is the minimum required to satisfy that liability".

**The 1999 amendment,** effective June 18, 1999, inserted "or October 1, 1999, whichever is applicable" in the second sentence of Subsection B.

## 22-11-50. Alternative retirement plan; tax treatment.

The board shall have the authority to determine whether the alternative retirement plan shall be qualified under Section 401(a) or 403(a) of the Internal Revenue Code of 1986, as amended, and shall make that determination based upon which choice is most advantageous to the participants as a whole.

**History:** 1978 Comp., § 22-11-50, enacted by Laws 1991, ch. 118, § 8.

**Cross references.** — For Sections 401(a) and 403(a) of the Internal Revenue Code, see 26 U.S.C. §§ 401(a) and 403(a), respectively.

## 22-11-51. Alternative retirement plans; benefits; transfer upon unemployment.

A. No retirement, death or other benefit shall be paid by the board from the fund for services credited under the alternative retirement plan. Such benefits are payable to participants or their beneficiaries only by the appropriate alternative retirement plan contractor or carrier in accordance with the terms of the applicable contracts or certificates; provided, however, that retirement benefits shall, at the option of the participant, be paid in the form of a lifetime income, if held in an annuity contract; payments for a term of years; or a single-sum cash payment.

B. Upon termination of employment with a qualifying state educational institution, a participant may transfer or roll over the account balance to another eligible retirement plan or may withdraw the balance as permitted for a plan qualified under Section 401(a) of the Internal Revenue Code of 1986.

**History:** 1978 Comp., § 22-11-51, enacted by Laws 1991, ch. 118, § 9; 1999, ch. 261, § 4; 2009, ch. 9, § 2.

**Cross references.** — For Section 401(a)(17) of the federal Internal Revenue Code, see 26 U.S.C. § 401(a).

**The 2009 amendment,** effective March 18, 2009, in Subsection A, gives a participant the option to have

benefits paid in the form of a lifetime income if the benefit is held in an annuity contract, payments for a term of years, or a single-sum cash payment; and added Subsection B.

**The 1999 amendment,** effective June 18, 1999, purported to amend this section but made no change.

## 22-11-52. Alternative retirement plan; selection of contractor or carrier; administration.

A. The board shall solicit and review proposals for providing retirement, death and any other benefits deemed desirable by the board for participants in the alternative retirement plan. The board shall solicit proposals for providing the benefits through contracts or investments held in trust or a custodial account that meets the requirements of Section 401(a) or 403(a) of the Internal Revenue Code of 1986, including, without limitation, annuity contracts or certificates that are fixed or variable in nature or some combination thereof.

B. The board, after consultation with the qualifying state educational institutions, shall select no less than two nor more than five contractors or carriers to provide the contracts or certificates. In making its selection, the board shall consider, among other things, the following criteria:

(1) the portability of the benefits offered, based upon the number of states and institutions of higher education in which the offeror provides similar benefits;

(2) the nature and extent of the rights and benefits that would be provided to the participants, including the right to maintain their accounts or to transfer the balance to another eligible retirement plan upon termination of employment with the qualifying educational institution, to the extent permitted for a plan qualified under Section 401(a) of the Internal Revenue Code of 1986;

(3) the relation of the rights and benefits to the contributions that would be made by the participants and the qualifying state educational institutions;

(4) the ability of the offeror to provide the rights and benefits;

(5) the suitability of the rights and benefits for recruitment and retention of employees by the qualifying state educational institutions; and

(6) compliance with the requirements of the Educational Retirement Act and Section 401(a) or 403(a) of the Internal Revenue Code of 1986.

C. The board shall provide for the administration and maintenance of the alternative retirement plan and may adopt rules and regulations for that purpose.

**History:** 1978 Comp., § 22-11-52, enacted by Laws 1991, ch. 118, § 10; 2009, ch. 9, § 3.

**Cross references.** — For Sections 401(a)(17) and 403(a) of the federal Internal Revenue Code, see 26 U.S.C. §§ 401(a)(17) and 403(a), respectively.

**The 2009 amendment,** effective March 18, 2009, in Subsection A, required the board to solicit proposals for providing benefits through contracts or investments held in trust or a custodial account that meets the

requirements of Section 401(a) or 403(a) of the Internal Revenue Code; in Paragraph (2) of Subsection B, provided that the rights of participants include the right to maintain an account or to transfer the balance of an account to another eligible retirement plan upon termination of employment to the extent permitted under Section 401(a) of the Internal Revenue Code; and in Paragraph (6) of Subsection B, added compliance with Section 401(a) or 403(a) of the Internal Revenue Code as a criteria.

## 22-11-53. Correction of errors and omissions; estoppel.

A. If an error or omission in an application for retirement or its supporting documents results in an overpayment to a member or the beneficiary of a member, the board shall correct the error or omission and adjust all future payments accordingly. The board shall recover all overpayments that are made.

B. A member or the beneficiary of a member who is paid more than the amount he is owed because he provided fraudulent information on his application for retirement shall be liable for the



repayment of that amount to the fund, interest on that amount at the rate set by the board and costs of collection, including attorney fees. Recovery of overpayments shall extend back to the date of the first payment that was made based on fraudulent information.

C. The board shall not be estopped from acting in accordance with applicable statutes because of statements of fact or law made by the board or its employees.

**History:** Laws 1998, ch. 38, § 2.

## **22-11-54. Disclosure of third-party marketers; penalty.**

A. The board shall not make any investment, other than investments in publicly traded equities or publicly traded fixed-income securities, unless the recipient of the investment discloses the identity of any third-party marketer who rendered services on behalf of the recipient in obtaining the investment and also discloses the amount of any fee, commission or retainer paid to the third-party marketer for the services rendered.

B. Information disclosed pursuant to Subsection A of this section shall be included in the quarterly performance reports of the board.

C. Any person who knowingly withholds information required by Subsection A of this section is guilty of a fourth degree felony and shall be punished by a fine of not more than twenty thousand dollars (\$20,000) or by imprisonment for a definite term not to exceed eighteen months or both.

D. As used in this section, "third-party marketer" means a person who, on behalf of an investment fund manager or other person seeking an investment from the fund and under a written or implied agreement, receives a fee, commission or retainer for such services from the person seeking an investment from the fund.

**History:** Laws 2009, ch. 152, § 3.

**Effective dates.** — Laws 2009, ch. 152 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## **22-11-55. Disclosure of member or retired member information; penalty.**

A. Other than names of members and local administrative units by which a member was employed; dates of employment, retirement and reported death; service credit; reported salary; retirement and disability benefits; and amounts of contributions made by members and local administrative units, neither the board nor its employees or contractors shall allow public inspection or disclosure of any information regarding a member or retired member to anyone except:

(1) the member, retired member or the spouse or authorized representative of the member or retired member;

(2) other persons specifically identified in a prior release and consent, in the form prescribed by the board, executed by the member, retired member, spouse or authorized representative; or

(3) the attorney general, appropriate law enforcement agencies, the state auditor or the public education department or higher education department, if the information provided relates to contributions, payments or management of money received by, or the financial controls or procedures of, a local administrative unit.

B. No person receiving information disclosed by a violation of Subsection A of this section shall disclose that information to any other person unless authorized by an applicable confidentiality agreement, board rule or state law.

C. Whoever knowingly violates a provision of Subsection A or B of this section is guilty of a petty misdemeanor and shall be sentenced in accordance with Section 31-19-1 NMSA 1978.

**History:** Laws 2009, ch. 240, § 1; 2009, ch. 248, § 1; 2010, ch. 60, § 1.

**The 2010 amendment**, effective May 19, 2010, in Subsection A, after "reported salary", added "retirement and disability benefits".

## ARTICLE 12

### Compulsory School Attendance

Sec.

22-12-1. Repealed.

22-12-2. Repealed.

22-12-2.1. Repealed.

22-12-3. Repealed.

22-12-3.1. Repealed.

22-12-4. Repealed.

22-12-5. Repealed.

Sec.

22-12-6. Repealed.

22-12-7. Repealed.

22-12-8. Repealed.

22-12-9. Repealed.

22-12-10. Repealed.

#### 22-12-1. Repealed.

**Repeals.** — Laws 2019, ch. 223, § 17 repealed 22-12-1 NMSA 1978, as enacted by Laws 1967, ch. 16, § 169, relating to short title, effective June 14, 2019. For

provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

#### 22-12-2. Repealed.

**Repeals.** — Laws 2019, ch. 223, § 17 repealed 22-12-2 NMSA 1978, as enacted by Laws 1967, ch. 16, § 170, relating to compulsory school attendance, responsibility,

effective June 14, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

#### 22-12-2.1. Repealed.

**Repeals.** — Laws 2019, ch. 223, § 17 repealed 22-12-2.1 NMSA 1978, as enacted by Laws 1986, ch. 33, § 27, relating to interscholastic extracurricular activities,

student participation, effective June 14, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

#### 22-12-3. Repealed.

**Repeals.** — Laws 2019, ch. 223, § 17 repealed 22-12-3 NMSA 1978, as enacted by Laws 1971, ch. 238, § 1, relating to religious instruction excusal, effective June 14,

2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

#### 22-12-3.1. Repealed.

**Repeals.** — Laws 2019, ch. 223, § 17 repealed 22-12-3.1 NMSA 1978, as enacted by Laws 2013, ch. 198, § 1, relating to excused absences for pregnant and parenting

students, effective June 14, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

#### 22-12-4. Repealed.

**Repeals.** — Laws 2019, ch. 223, § 17 repealed 22-12-4 NMSA 1978, as enacted by Laws 1967, ch. 16, § 171, relating to right to education, effective June 14, 2019. For

provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

#### 22-12-5. Repealed.

**Repeals.** — Laws 2019, ch. 223, § 17 repealed 22-12-5 NMSA 1978, as enacted by Laws 1967, ch. 16, § 172, relating to school attendance, effective June 14, 2019. For

provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

#### 22-12-6. Repealed.

**Repeals.** — Laws 2007, ch. 307, § 11 and Laws 2007, ch. 308, § 11 repealed 22-12-6 NMSA 1978, as enacted by Laws 1967, ch. 16, § 174, relating to certificates of

employment, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com*.



## 22-12-7. Repealed.

**Repeals.** — Laws 2019, ch. 223, § 17 repealed 22-12-7 NMSA 1978, as enacted by Laws 1967, ch. 16, § 175, relating to enforcement of attendance law, habitual truants,

penalty, effective June 14, 2019. For provisions of former section, see the 2018 NMSA 1978 on *NMOneSource.com*.

## 22-12-8. Repealed.

**Repeals.** — Laws 2019, ch. 223, § 17 repealed 22-12-8 NMSA 1978, as enacted by Laws 1985, ch. 104, § 1, relating to early identification, unexcused absences and

truancy, effective June 14, 2019. For provisions of former section, see the 2018 NMSA 1978 on *NMOneSource.com*.

## 22-12-9. Repealed.

**Repeals.** — Laws 2019, ch. 223, § 17 repealed 22-12-9 NMSA 1978, as enacted by Laws 2004, ch. 28, § 1, relating to unexcused absences and truancy, attendance policies,

effective June 14, 2019. For provisions of former section, see the 2018 NMSA 1978 on *NMOneSource.com*.

## 22-12-10. Repealed.

**Repeals.** — Laws 2019, ch. 223, § 17 repealed 22-12-10 NMSA 1978, as enacted by Laws 2017, ch. 53, § 1 and Laws 2017, ch. 85, § 1, relating to timely graduation and support for students who experience disruption in the student's education, effective June 14, 2019. For provisions of former section, see the 2018 NMSA 1978 on *NMOneSource.com*.

Section 22-12-10 NMSA 1978 was also amended by Laws 2019, ch. 218, § 1, effective June 14, 2019. Pursuant to 12-1-8 NMSA 1978, Laws 2019, ch. 223, § 17, as the last act signed by the governor, was compiled. The provisions of Laws 2019, ch. 218, § 1, did not take effect.

# ARTICLE 12A

## Attendance for Success

Sec.

22-12A-1. Short title.

22-12A-2. Definitions.

22-12A-3. Right to education.

22-12A-4. School attendance; responsibility; private school attendance policies.

22-12A-5. Public school attendance.

22-12A-6. Public school attendance policies; reporting.

22-12A-7. Enforcement of Attendance for Success Act; district responsibilities; differentiation; district plan; additional support.

22-12A-8. Enforcement of Attendance for Success Act; attendance improvement plan; procedures.

Sec.

22-12A-9. Medical appointments; illness; special situations; make-up work.

22-12A-10. Interscholastic extracurricular activities; student participation.

22-12A-11. Progressive interventions for absent, chronically absent and excessively absent students.

22-12A-12. Excessive absenteeism; enforcement.

22-12A-13. Reporting requirements.

22-12A-14. Timely graduation and support for students who experience disruption in the student's education.

## 22-12A-1. Short title.

Sections 1 through 14 [22-12A-1 through 22-12A-14] of this act may be cited as the "Attendance for Success Act".

**History:** Laws 2019, ch. 223, § 1.

**Effective dates.** — Laws 2019, ch. 223 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## 22-12A-2. Definitions.

As used in the Attendance for Success Act:

A. "absent" means not in attendance for a class or school day for any reason, whether excused or not; provided that "absent" does not apply to participation in interscholastic extracurricular activities;

B. "attendance improvement plan" means a tiered data-informed system for public schools and school districts to identify students who are chronically or excessively absent and to aid public schools in developing whole-school prevention strategies and targeted interventions. Each of the tiers is defined as follows:

(1) "whole school prevention" means universal, whole-school prevention strategies for all students, including students who have missed less than five percent of classes or school days for any reason;

(2) "individualized prevention" means targeted prevention strategies for individual students who are missing five percent or more but less than ten percent of classes or school days for any reason;

(3) "early intervention" means interventions for students who are missing ten percent or more but less than twenty percent of classes or school days for any reason; and

(4) "intensive support" means interventions for students who are missing twenty percent or more of classes or school days for any reason;

C. "attendance team" means a group of school-based administrators, teachers, staff, other school personnel and community members who collaborate to implement an attendance improvement plan;

D. "chronic absence rate" means the percentage of students, in the aggregate and disaggregated by the subgroups required for reporting pursuant to the federal Every Student Succeeds Act, in a public school and a school district who have been enrolled for at least ten days and who have missed ten percent or more of school days since the beginning of the school year;

E. "chronically absent" or "chronic absenteeism" means that a student has been absent for ten percent or more of classes or school days for any reason, whether excused or not, when enrolled for more than ten days;

F. "excessively absent" or "excessive absenteeism" means a student who is identified as needing intensive support and has not responded to intervention efforts implemented by the public school;

G. "excused absence" means absence from a class or school day for a death in the family, medical absence, religious instruction or tribal obligations or any other allowable excuse pursuant to the policies of the local school board;

H. "interscholastic extracurricular activities" means those activities sponsored by a public school or an organization whose principal purpose is the regulation, direction, administration and supervision of interscholastic extracurricular activities in public schools;

I. "local school board" includes the governing body of a charter school;

J. "medical absence" or "medically absent" means that a student is not in attendance for a class or a school day for a parent- or doctor-authorized medical reason or the student is a pregnant or parenting student;

K. "school day" means a portion of the school day that is at least one-half of a student's approved program;

L. "school district" includes a charter school;

M. "school principal" includes the head administrator of a charter school; and

N. "unexcused absence" means an absence from a class or school day for which the student does not have an allowable excuse pursuant to the Attendance for Success Act or policies of the local school board.

**History:** Laws 2019, ch. 223, § 2.

**Effective dates.** — Laws 2019, ch. 223 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

### 22-12A-3. Right to education.

A school-age person in the state shall have a right to a free public education as follows:

A. except for a school-age person who is detained in a state or local detention center or enrolled or residing in a state institution, other than a school-age person provided for in Subsection C of this section, a school-age person has a right to attend public school within the school district in which the school-age person resides;



B. except as provided in Subsection C of this section, a state or local detention center or state institution in which a school-age person is detained, enrolled or residing shall be responsible for providing educational services for the school-age person; and

C. a school-age person who is a client as defined in Section 43-1-3 NMSA 1978 in a state institution under the authority of the secretary of human services shall have a right to attend public school in the school district in which the institution in which the school-age person is a client is located if the school-age person has been recommended for placement in a public school:

(1) by the educational appraisal and review committee of the school district in which the institution is located; or

(2) as a result of the appeal process as provided in the special education rules of the department.

**History:** Laws 2019, ch. 223, § 3. **Effective dates.** — Laws 2019, ch. 223 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

#### **22-12A-4. School attendance; responsibility; private school attendance policies.**

A. Except as otherwise provided in the Public School Code, a school-age person shall attend public school, private school, home school or a state institution until the school-age person is at least eighteen years of age unless that school-age person has graduated from high school, received a high school equivalency credential or withdrawn from school on a hardship waiver. A parent may give written, signed permission for the school-age person to leave school between the ages of sixteen and eighteen in case of hardship approved by the local superintendent or private school.

B. A school-age person subject to the provisions of the Attendance for Success Act shall attend school for at least the length of time of the school year that is established in that school-age person's school district, charter school or private school. The school district or private school shall not excuse a school-age person from attending school except as provided in that act.

C. The parent of a school-age person subject to the provisions of the Attendance for Success Act is responsible for the school attendance of that school-age person.

D. Local school boards and private schools shall enforce the provisions of the Attendance for Success Act for students enrolled in their respective schools.

E. A private school in this state shall have an attendance policy that as closely as practicable follows the law for public schools. A school-age person attending a private school and the school-age person's parent shall be given a copy of the private school's attendance policy each year.

**History:** Laws 2019, ch. 223, § 4. **Effective dates.** — Laws 2019, ch. 223 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

#### **22-12A-5. Public school attendance.**

A. Local school boards may admit as students school-age persons who do not live within the school district to the public schools within the school district when there are sufficient school accommodations to provide for them.

B. Local school boards may allow students to transfer to a public school outside the student's attendance zone but within the school district when there are sufficient school accommodations to provide for them.

C. Local school boards shall charge a tuition fee for the right to attend public school within the school district to those school-age persons who do not live within the state. The tuition fee shall not exceed the amount generated by the public school fund for a student similarly situated within the school district for the current school year.

D. When the parent of a student not living in the state pays an ad valorem property tax for school purposes within a school district, the amount of the tuition payable for the school year shall

be reduced by the district average ad valorem tax per student as determined by the ad valorem tax credit used in calculating the state equalization guarantee distribution.

**History:** Laws 2019, ch. 223, § 5.

**Effective dates.** — Laws 2019, ch. 223 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## **22-12A-6. Public school attendance policies; reporting.**

A. A public school shall maintain an attendance policy that:

- (1) establishes an early warning system that includes evidence-based metrics to identify students at risk of chronic absenteeism or excessive absenteeism;
- (2) provides for early identification of chronically absent and excessively absent students;
- (3) employs an attendance improvement plan that focuses on:
  - (a) keeping students in an educational setting;
  - (b) prohibiting out-of-school suspension or expulsion as the punishment for absences;
  - (c) assisting a student's family to remove barriers to the student's regular school attendance or attendance in another educational setting; and
  - (d) providing additional educational opportunities to students who are struggling with attendance;
- (4) limits the ability of a student to withdraw to only after all intervention efforts by the public school or the children, youth and families department to keep the student in an educational setting have been exhausted;
- (5) requires that accurate class attendance be taken for every instructional class and school day in a public school or school program;
- (6) provides that a public school shall differentiate between different types of absences;
- (7) requires a public school to document the following for each chronically or excessively absent student:
  - (a) attempts by the public school to notify a parent that the student was absent from class or the school day;
  - (b) attempts to improve attendance by talking to a student or parent to identify barriers to school attendance, identify solutions to improve the student's attendance behavior and discuss necessary interventions for the student or the student's family; and
  - (c) intervention strategies implemented to support keeping the student in an educational setting, including additional educational opportunities offered to the student;
- (8) requires a student or the parent of a student who intends to claim excused absence because of medical condition, pregnancy or parenting to communicate the student's status to the appropriate school personnel and to provide required documentation; and
- (9) encourages and supports compliant data sharing, pursuant to the federal Family Educational Rights and Privacy Act of 1974, between a public school and community-based organizations that provide services to students for the purpose of providing more personalized interventions and specialized supports as part of the public school's attendance improvement plan.

B. Local school boards shall review and approve their public school attendance policies.

C. School districts shall report absences, chronic absences and excessive absences data to the department at each reporting date and the end of the school year and shall document intervention efforts made to keep students in an educational setting. The department shall compile school district reports as provided in Section 13 [22-12A-13 NMSA 1978] of the Attendance for Success Act and require school districts to certify that the information is being reported consistently and correctly. The department shall share information from state-chartered charter schools with the commission.

D. A public school shall provide a copy of the public school's attendance policy to all parents of students in that school and publish the policy on the public school's website. The attendance policy shall include:

- (1) the rights and obligations of parents and students pursuant to the Attendance for Success Act;



(2) the prevention strategies that will be implemented to ensure that students attend classes; and

(3) details about consequences of failing to adhere to the attendance policy.

E. A public school shall provide a parent, within five days of the parent's written request, with access to the attendance data of that parent's child, including information about any intervention strategies that have been employed to help the student improve the student's attendance.

F. Upon request, school districts shall provide the chronic absence rate from the most current reporting date or end-of-year report, in the aggregate and disaggregated by subgroups, for all its public schools.

**History:** Laws 2019, ch. 223, § 6.

**Effective dates.** — Laws 2019, ch. 223 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

**Cross references.** — For the federal Family Educational Rights and Privacy Act of 1974, see 20 U.S.C. § 1232g.

## **22-12A-7. Enforcement of Attendance for Success Act; district responsibilities; differentiation; district plan; additional support.**

A. School districts shall differentiate public schools based on their chronic absence rates into no fewer than four categories.

B. School districts shall differentiate student subgroups based on their chronic absence rates into no fewer than four categories.

C. Using the differentiation scheme pursuant to Subsections A and B of this section, a school district shall develop attendance improvement plans that include the following elements:

(1) specific school district supports and resources available to public schools at each level to further the implementation of their attendance improvement plans;

(2) attendance improvement targets for public schools or subpopulations with chronic absence rates of ten percent or greater, developed in collaboration with each public school; and

(3) an attendance improvement target for school districts with chronic absence rates of ten percent or greater.

D. Each school district shall report its attendance improvement plan to the department no later than forty-five days after the beginning of the school year. The department may allow a school district to report its attendance improvement plan as part of the educational plan for student success.

E. At the end of each school year, each school district shall report to the local school board and to the public on the school district's website, the progress made on its attendance improvement plan, to include:

(1) a description of the supports and resources provided to public schools at each tier of the attendance improvement plan;

(2) the extent to which public schools with chronic absence rates greater than ten percent achieved their attendance improvement targets;

(3) the extent to which the school district achieved its attendance improvement targets;

(4) barriers and challenges to reducing chronic absence rates, as reported by the public school and school district personnel;

(5) effective school-based practices, as evidenced by decreased chronic absence rates; and

(6) recommendations for improvement during the next school year at both the public school and school district level.

F. Attendance teams may be formed in whole or in part from preexisting groups or teams within a public school or may be formed for the explicit purpose of improving school attendance. School districts shall reserve time for school personnel to collaborate as an attendance team.

G. School districts shall provide support and guidance to attendance teams on transportation and school scheduling options when these are identified as barriers to school attendance.

**History:** Laws 2019, ch. 223, § 7. **Effective dates.** — Laws 2019, ch. 223 contained no adjournment of the legislature. effective date provision, but, pursuant to N.M. Const., art.

## **22-12A-8. Enforcement of Attendance for Success Act; attendance improvement plan; procedures.**

A. A public school shall initiate the enforcement of the provisions of the Attendance for Success Act for its enrolled students. The enforcement policies of a public school shall focus on prevention and intervention.

B. Beginning in the 2020-2021 school year, a public school with five percent or greater of students with a chronic absence rate during the prior school year, or with five percent or greater of one or more subgroups of students with a chronic absence rate during the prior school year, shall develop an attendance improvement plan to be submitted to the department as part of the public school's educational plan for student success.

C. A public school, regardless of its chronic absence rate, shall develop and implement a whole-school absence prevention strategy to be reported to the department as part of the public school's educational plan for student success.

D. An attendance improvement plan shall include:

(1) attendance data for each of the preceding two school years and the current school year, including:

- (a) the public school's overall absence rate;
- (b) chronic absence rates disaggregated by student subpopulation;
- (c) chronic absence rates disaggregated by grade level; and
- (d) student attendance for every day of the school year;

(2) school-wide identification of potential root causes of chronic and excessive absenteeism through one or more of the following:

- (a) national or local research;
  - (b) analysis of supportive factors and barriers;
  - (c) student surveys or focus groups;
  - (d) youth participatory research; or
  - (e) other appropriate school-based research methods;
- (3) identification of strategies for each tier of the attendance improvement plan;
- (4) identification of performance measures for each strategy; and
- (5) a data-collection plan for performance measures.

E. A public school shall provide interventions to students who are absent or chronically absent, which may include:

- (1) assessing student and family needs and matching those needs with appropriate public or private providers, including civic and corporate sponsors;
- (2) making referrals to health care and social service providers;
- (3) collaborating and coordinating with health and social service agencies and organizations through school-based and off-site delivery systems;
- (4) recruiting service providers and business, community and civic organizations to provide needed services and goods that are not otherwise available to a student or the student's family;
- (5) establishing partnerships between the public school and community organizations, such as civic, business and professional groups and organizations and recreational, social and out-of-school programs;
- (6) identifying and coordinating age-appropriate resources for students in need of:
  - (a) counseling, training and placement for employment;
  - (b) drug and alcohol abuse counseling;
  - (c) family crisis counseling; and
  - (d) mental health counseling;



(7) promoting family support and parent education programs; and

(8) seeking out other services or goods that a student or the student's family needs to assist the student to stay in school and succeed.

F. Beginning on the first day of school, a classroom teacher or that teacher's adult designee shall be responsible for taking accurate attendance for every class and reporting absences to the attendance team.

**History:** Laws 2019, ch. 223, § 8.

**Effective dates.** — Laws 2019, ch. 223 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## **22-12A-9. Medical appointments; illness; special situations; make-up work.**

A. A student may be excused for parent- or doctor-authorized medical reasons. A public school shall provide time for the student to make up the school work missed during the absence.

B. A school district shall maintain an attendance policy that:

(1) provides at least ten days of medical absences during the school year for a student who provides documentation of the birth of the student's child, and the public school shall provide time for the student to make up the school work missed during the absence; and

(2) provides four days of excused absences for a student who provides appropriate documentation of pregnancy or that the student is the parent of a child under the age of thirteen needing care, and the public school shall provide time for the student to make up the school work missed during the absence.

C. A school district that has an alternative public school for, among others, pregnant and parenting students and that allows for off-site attendance through online education shall not count students as absent as long as the students are online with the public school or other appropriate virtual course and complete their class assignments.

D. A student may, subject to the approval of the school principal, be absent from school to participate in religious instruction for not more than one class period per school day with the written consent of the student's parent at a time that is not in conflict with the academic program of the school. The public school shall provide time for the student to make up the school work missed during the absence. The school district or the public school shall not assume responsibility for the religious instruction of any student or permit religious instruction to be conducted on school property.

E. A public school student, with the written consent of the student's parent and subject to the approval of the school principal, may be absent from school to participate in tribal obligations. The public school shall provide time for the student to make up the school work missed during the absence.

**History:** Laws 2019, ch. 223, § 9.

**Effective dates.** — Laws 2019, ch. 223 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## **22-12A-10. Interscholastic extracurricular activities; student participation.**

A. A public school student shall have at least a 2.0 grade point average on a 4.0 scale, or its equivalent, either cumulatively or for the grading period immediately preceding participation, to be eligible to participate in any interscholastic extracurricular activity. For purposes of this section, "grading period" is a period of time not less than six weeks. The provisions of this subsection shall not apply to students receiving C or D level special education services.

B. A student shall not be absent from school for interscholastic extracurricular activities in excess of fifteen days per semester, and no class shall be missed in excess of fifteen times per semester for interscholastic extracurricular activities.

C. The secretary may issue a waiver relating to the number of absences for participation in any state or national competition that is not an interscholastic extracurricular activity. The secretary shall develop a procedure for petitioning cumulative provision eligibility cases, similar to other eligibility situations.

D. Student standards for participation in interscholastic extracurricular activities shall be applied beginning with a student's academic record in ninth grade.

**History:** Laws 2019, ch. 223, § 10.  
**Effective dates.** — Laws 2019, ch. 223 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## **22-12A-11. Progressive interventions for absent, chronically absent and excessively absent students.**

A. A public school shall provide interventions for students who are missing school, depending on the number of absences. The process for notification and interventions is:

(1) for a student who has been identified as in need of individualized prevention, the attendance team shall:

(a) for an elementary student, talk to the parent and inform the parent of the student's attendance history, the impact of student absences on student academic outcomes, the interventions or services available to the student or family and the consequences of further absences, which may include referral to the children, youth and families department for excessive absenteeism; and

(b) for a middle or high school student, talk to the parent and the student about the student's attendance history and the impact of student absences on student academic outcomes, interventions or services available to the student or family and the consequences of further absences, which may include referral to the children, youth and families department for excessive absenteeism;

(2) for a student who has been identified as in need of early intervention, the attendance team shall notify the parent in writing by mail or personal service on the parent of the student's absenteeism. The notice shall include a date, time and place for the parent to meet with the public school to develop intervention strategies that focus on keeping the student in an educational setting. The attendance team shall be convened to establish a specific intervention plan for the student that includes establishing weekly progress monitoring and a contract for attendance; and

(3) for a student who has been identified as in need of intensive support, the attendance team shall:

(a) give written notice to the parent, including a date, time and place for the parent to meet with the school principal and the attendance team;

(b) establish nonpunitive consequences at the school level;

(c) identify appropriate specialized supports that may be needed to help the student address the underlying causes of excessive absenteeism; and

(d) apprise the student and the parent of the consequences of further absences.

B. The school principal shall consult with a student's teacher and initiate meetings with the teacher, the student and the parent if the alleged cause of absence from class is teacher-student incompatibility.

**History:** Laws 2019, ch. 223, § 11.  
**Effective dates.** — Laws 2019, ch. 223 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## **22-12A-12. Excessive absenteeism; enforcement.**

A. Each local school board and each governing body of a charter school or private school shall initiate the enforcement of the provisions of the Attendance for Success Act for excessively absent students.



B. If unexcused absences continue after written notice of excessive absenteeism as provided in Section 11 [22-12A-11 NMSA 1978] of the Attendance for Success Act, the local school board or governing body of a charter school or private school, after consultation with the local superintendent or head administrator of a charter school or private school, shall report the excessively absent student to the probation services office of the judicial district in which the student resides for an investigation as to whether the student should be considered to be a neglected child or a child in a family in need of family services because of excessive absenteeism and, thus, subject to the provisions of the Children's Code. The record of the public school's interventions and the student's and parent's responses to the interventions shall be provided to the juvenile probation services office. The local superintendent or head administrator of a charter school or private school shall provide the documentation to the juvenile probation services office within ten business days of the student being identified as excessively absent.

C. If the juvenile probation services office determines that the student is a child in a family in need of family services, a caseworker from the child or family in need of family services program shall meet with the family at the public school in which the student is enrolled to determine if there are other intervention services that may be provided. The meeting shall involve the school principal or other school personnel and, unless the parent objects in writing, appropriate community partners that provide services to children and families. The children, youth and families department shall determine if additional interventions, including monitoring, will positively affect the student's behavior.

**History:** Laws 2019, ch. 223, § 12.

**Effective dates.** — Laws 2019, ch. 223 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

### **22-12A-13. Reporting requirements.**

A. For each reporting date and at the end of the year, each school district shall report:

- (1) the total number of days missed for excused and unexcused absences for each student in each public school, the total number of days each student was enrolled and in which tier each student with absences fell during the reporting period, along with the student's demographics; and
- (2) the number of students at each public school who were referred to the children, youth and families department because of excessive absences, in the aggregate and disaggregated by subgroups.

B. The department shall compile a report by public school and school district that includes:

- (1) the total number and percent of students who were in each tier of chronic absenteeism or were excessively absent at each public school and school district in the aggregate for each public school and school district and disaggregated by subgroups;
- (2) the average number of excused and unexcused absences per student for all students and subgroups, not including interscholastic extracurricular activities; and
- (3) a calculated chronic absenteeism rate for the school district for all students and for each subgroup.

**History:** Laws 2019, ch. 223, § 13.

**Effective dates.** — Laws 2019, ch. 223 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

### **22-12A-14. Timely graduation and support for students who experience disruption in the student's education.**

A. For purposes of this section, "a student who has experienced a disruption in the student's education" means a student who experiences one or more changes in public school or school district enrollment during a single school year as the result of:

- (1) homelessness as defined in the federal McKinney-Vento Homeless Assistance Act and as determined by the public school or school district;

## (2) adjudication:

(a) as an abused or neglected child as determined by the children, youth and families department pursuant to the Abuse and Neglect Act [Chapter 32A, Article 4 NMSA 1978];

(b) as part of a family in need of court-ordered services voluntary placement pursuant to the Family Services Act [Chapter 32A, Article 3A NMSA 1978]; or

(c) as a delinquent if the parent wishes to disclose the adjudication of delinquency; or

(3) placement in a mental health treatment facility or habilitation program for developmental disabilities pursuant to the Children's Mental Health and Developmental Disabilities Act [32A-6A-1 to 32A-6A-30 NMSA 1978] or placement in treatment foster care.

B. When a student who has experienced a disruption in the student's education transfers to a new public school or school district, the receiving public school or school district shall communicate with the sending public school or school district within two days of the student's enrollment. The sending public school or school district shall provide the receiving public school or school district with any requested records within two days of having received the receiving public school's or school district's communication.

C. A student who has experienced a disruption in the student's education because of transferring to a new public school as the result of circumstances set forth in this section shall have:

(1) priority placement in classes that meet state graduation requirements; and

(2) timely placement in elective classes that are comparable to those in which the student was enrolled at the student's previous public school or schools as soon as the public school or school district receives verification from the student's records.

D. For a student who has experienced a disruption in the student's education at any time during the student's high school enrollment, a school district and public schools shall ensure:

(1) acceptance of the student's state graduation requirements for a diploma of excellence pursuant to the Public School Code;

(2) equal access to participation in sports and other extracurricular activities, career and technical programs or other special programs for which the student qualifies;

(3) timely assistance and advice from counselors to improve the student's college or career readiness; and

(4) that the student receives all special education services to which the student is entitled.

E. A student who has experienced a disruption in the student's education and has transferred between public schools in different school districts or between public schools within the same school district shall receive credit for any work completed prior to the transfer, regardless of whether the transfer occurred at the end of a grading period. The department shall promulgate and adopt a rule to determine how credit shall be awarded for courses that are partially completed, and school districts shall follow the department rule.

**History:** Laws 2019, ch. 223, § 14; 2020, ch. 50, § 1.

**The 2020 amendment**, effective May 20, 2020, provided credit to students who have experienced a disruption in the student's education for work completed prior

to transferring schools, and required the public education department to promulgate and adopt a rule to determine how credit shall be awarded for partially completed courses; and added Subsection E.

## ARTICLE 13

### Courses of Instruction and School Programs

Sec.

22-13-1. Subject areas; minimum instructional areas required; accreditation.

22-13-1.1. Graduation requirements.

22-13-1.2. High school curricula and end-of-course tests; alignment.

22-13-1.3. Reading initiative; design.

22-13-1.4. Honors or similar classes in mathematics and language arts; dual credit courses; languages other than English.

22-13-1.5. Core curriculum framework; purpose; curriculum.

Sec.

22-13-1.6. Uniform grade and subject curricula; professional department [development].

22-13-1.7. Elementary physical education.

22-13-2. Repealed.

22-13-3. Early childhood education programs required.

Sec.

22-13-3.1. Even start family literacy program; created; guidelines; benchmarks; performance standards and evaluations.

22-13-3.2. Full-day kindergarten programs.

22-13-3.3. Short title.



Sec.	Sec.
22-13-3.4. Purpose.	22-13-21. Repealed.
22-13-3.5. Definitions.	22-13-22. Repealed.
22-13-3.6. Literacy for children at risk fund created; administration of fund.	22-13-23. Repealed.
22-13-3.7. Disbursement of funds; approved projects.	22-13-24. Repealed.
22-13-4. Repealed.	22-13-25. Academic competitions.
22-13-5. Special education.	22-13-26. Youth programs established.
22-13-6. Special education; definitions.	22-13-27. Recompiled.
22-13-6.1. Gifted children; determination.	22-13-28. Repealed.
22-13-7. Special education; responsibility.	22-13-28.1. Repealed.
22-13-8. Special education; private educational training centers and residential treatment centers.	22-13-28.2. Repealed.
22-13-9. Repealed.	22-13-29. Middle and high school literacy initiative.
22-13-10. Repealed.	22-13-30. Vision screening.
22-13-11. Repealed.	22-13-31. Brain injury; protocols to be used by coaches for brain injuries received by students in school athletic activities; training of coaches and student athletes; information to be provided to coaches, student athletes and student athletes' parents or guardians; requiring acknowledgment of training and information; nonscholastic youth athletic activity on school district property; brain injury protocol compliance; certification.
22-13-12. Approved driver-education courses.	22-13-31.1. Brain injury; protocols; training of coaches; brain injury education.
22-13-13. School lunch program.	22-13-32. Intervention for students displaying characteristics of dyslexia.
22-13-13.1. Temporary provision; food and beverages sold outside of school meal programs.	22-13-33. Appointing a point of contact person for certain students.
22-13-13.2. Breakfast program required; waiver; distribution of funds.	22-13-34. Purple star public schools program.
22-13-14. Emergency drills; requirement.	
22-13-15. Public school instruction; prohibition; penalty.	
22-13-16. Private school programs; solicitations; permit; penalty.	
22-13-17. Repealed.	
22-13-18. Repealed.	
22-13-19. Repealed.	
22-13-20. Repealed.	

## 22-13-1. Subject areas; minimum instructional areas required; accreditation.

A. The department shall require public schools to address department-approved academic content and performance standards when instructing in specific department-required subject areas as provided in this section. A public school or school district failing to meet these minimum requirements shall not be accredited by the department.

B. All kindergarten through third grade classes shall provide daily instruction in reading and language arts skills, including phonemic awareness, phonics and comprehension, and in mathematics. Students in kindergarten and first grades shall be screened and monitored for progress in reading and language arts skills, and students in second grade shall take diagnostic tests on reading and language arts skills.

C. All first, second and third grade classes shall provide instruction in art, music and a language other than English, and instruction that meets content and performance standards shall be provided in science, social studies, physical education and health education.

D. In fourth through eighth grades, instruction that meets academic content and performance standards shall be provided in the following subject areas:

- (1) reading and language arts skills, with an emphasis on writing and editing for at least one year and an emphasis on grammar and writing for at least one year;
- (2) mathematics;
- (3) language other than English;
- (4) communication skills;
- (5) science;
- (6) art;
- (7) music;
- (8) social studies;
- (9) New Mexico history;
- (10) United States history;
- (11) geography;
- (12) physical education; and
- (13) health education.

E. Beginning with the 2008-2009 school year, in eighth grade, algebra 1 shall be offered in regular classroom settings or through online courses or agreements with high schools.

F. In fourth through eighth grades, school districts shall offer electives that contribute to academic growth and skill development and provide career and technical education. In sixth through eighth grades, media literacy may be offered as an elective.

G. In ninth through twelfth grades, instruction that meets academic content and performance standards shall be provided in health education.

H. All health education courses shall include:

(1) age-appropriate sexual abuse and assault awareness and prevention training that meets department standards developed in consultation with the federal centers for disease control and prevention that are based on evidence-based methods that have proven to be effective; and

(2) lifesaving skills training that follows nationally recognized guidelines for hands-on psychomotor skills cardiopulmonary resuscitation training. Students shall be trained to recognize the signs of a heart attack, use an automated external defibrillator and perform the Heimlich maneuver for choking victims. The secretary shall promulgate rules to provide for the:

(a) use of the following instructors for the training provided pursuant to this paragraph: 1) school nurses, health teachers and athletic department personnel as instructors; and 2) any qualified persons volunteering to provide training at no cost to the school district that the school district determines to be eligible to offer instruction pursuant to this paragraph; and

(b) approval of training and instructional materials related to the training established pursuant to this paragraph in both English and Spanish.

**History:** 1978 Comp., § 22-13-1, enacted by Laws 2003, ch. 153, § 57; 2005, ch. 315, § 9; 2007, ch. 307, § 7; 2007, ch. 308, § 7; 2009, ch. 267, § 1; 2014, ch. 9, § 2; 2016, ch. 17, § 1; 2016, ch. 18, § 1.

**Repeals and reenactments.** — Laws 2003, ch. 153, § 57 repeals former 22-13-1 NMSA 1978, as enacted by Laws 1967, ch. 16, § 180, and enacted a new section, effective April 4, 2003.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 13 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 13 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 13 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 13, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

**The 2016 amendment,** effective May 18, 2016, required the public education department to add lifesaving skills training to health education courses and directed the secretary of the public education department to promulgate rules to implement the training; in Subsection H, after "shall include", added the paragraph designation "(1)", and added new Paragraph (2).

Laws 2016, ch. 17, § 1 and Laws 2016, ch. 18, § 1, both effective May 18, 2016, enacted identical amendments to this section. The section was set out as amended by Laws 2016, ch. 18, § 1. See 12-1-8 NMSA 1978.

**Applicability.** — Laws 2016, ch. 17, § 4 and Laws 2016, ch. 18, § 4 provided that lifesaving skills training pursuant to Paragraph (2) of Subsection H of Section 22-13-1 NMSA 1978 and Paragraph (2) of Subsection K of Section 22-13-1.1 NMSA 1978 shall not be required for students in grades nine through twelve who are enrolled in a virtual charter school.

**Temporary provisions.** — Laws 2016, ch. 17, § 3 and Laws 2016, ch. 18, § 3 provided that by December 31, 2016, the secretary of public education shall adopt and promulgate rules to implement the provisions of Laws 2016, ch. 17, §§ 1 and 2, and Laws 2016, ch. 18, §§ 1 and 2.

**The 2014 amendment,** effective May 21, 2014, required all health education courses to include age-appropriate sexual abuse and assault awareness and prevention training that meets federal standards; and added Subsection H.

**Applicability.** — Laws 2014, ch. 9, § 4 provided that the provisions of Laws 2014, ch. 9, §§ 1 through 3 apply to the 2014-2015 school year and subsequent school years.

**The 2009 amendment,** effective June 19, 2009, in Subsection F, added the last sentence.

**The 2007 amendment,** effective July 1, 2007, amended Subsection C to require that first, second and third grade classes provide instruction that meets content and performance standards in science and social studies; and added Subsection E.

Laws 2007, ch. 307, § 7 and Laws 2007, ch. 308, § 7 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 308, § 7. See 12-1-8 NMSA 1978.

**The 2005 amendment,** effective April 7, 2005, added kindergarten in Subsection B and provided in Subsection B that students shall be screened and monitored for progress in reading and language arts skills and students in second grade shall take diagnostic tests on reading and language arts skills; provided in Subsection C that classes shall provide instruction that meets content and performance standards shall be provided in physical education and health education; added health education in Subsection D(13); and added Subsection F to provide that in ninth through twelfth grades, instruction that meets academic content and performance standards shall be provided in health education.

## 22-13-1.1. Graduation requirements.

A. At the end of grades eight through eleven, each student shall prepare an interim next-step plan that sets forth the coursework for the grades remaining until high school graduation. Each year's plan shall explain any differences from previous interim next-step plans, shall be filed with



the principal of the student's high school and shall be signed by the student, the student's parent and the student's guidance counselor or other school official charged with coursework planning for the student.

B. Each student must complete a final next-step plan during the senior year and prior to graduation. The plan shall be filed with the principal of the student's high school and shall be signed by the student, the student's parent and the student's guidance counselor or other school official charged with coursework planning for the student.

C. An individualized education program that meets the requirements of Subsections A and B of this section and that meets all applicable transition and procedural requirements of the federal Individuals with Disabilities Education Act for a student with a disability shall satisfy the next-step plan requirements of this section for that student.

D. A local school board shall ensure that each high school student has the opportunity to develop a next-step plan based on reports of college and workplace readiness assessments, as available, and other factors and is reasonably informed about:

- (1) curricular and course options, including honors or advanced placement courses, dual-credit courses, distance learning courses, career clusters and career pathways, pre-apprenticeship programs or remediation programs that the college and workplace readiness assessments indicate to be appropriate;
- (2) opportunities available that lead to different post-high-school options; and
- (3) alternative opportunities available if the student does not finish a planned curriculum.

E. The secretary shall:

- (1) establish specific accountability standards for administrators, counselors, teachers and school district staff to ensure that every student has the opportunity to develop a next-step plan;
- (2) promulgate rules for accredited private schools in order to ensure substantial compliance with the provisions of this section;
- (3) monitor compliance with the requirements of this section; and
- (4) compile such information as is necessary to evaluate the success of next-step plans and report annually, by December 15, to the legislative education study committee and the governor.

F. Once a student has entered ninth grade, the graduation requirements shall not be changed for that student from the requirements specified in the law at the time the student entered ninth grade.

G. Successful completion of a minimum of twenty-three units aligned to the state academic content and performance standards shall be required for graduation. These units shall be as follows:

- (1) four units in English, with major emphasis on grammar and literature;
- (2) three units in mathematics, at least one of which is equivalent to the algebra 1 level or higher;
- (3) two units in science, one of which shall have a laboratory component; provided, however, that with students entering the ninth grade beginning in the 2005-2006 school year, three units in science shall be required, one of which shall have a laboratory component;
- (4) three units in social science, which shall include United States history and geography, world history and geography and government and economics;
- (5) one unit in physical education;
- (6) one unit in communication skills or business education, with a major emphasis on writing and speaking and that may include a language other than English;
- (7) one-half unit in New Mexico history for students entering the ninth grade beginning in the 2005-2006 school year; and
- (8) nine elective units and seven and one-half elective units for students entering the ninth grade in the 2005-2006 school year that meet department content and performance standards. Student service learning shall be offered as an elective. Financial literacy shall be offered as an elective. Pre-apprenticeship programs may be offered as electives. Media literacy may be offered as an elective.

H. For students entering the ninth grade beginning in the 2009-2010 school year, at least one of the units required for graduation shall be earned as an advanced placement or honors course,

a dual-credit course offered in cooperation with an institution of higher education or a distance learning course.

I. The department shall establish a procedure for students to be awarded credit through completion of specified career technical education courses for certain graduation requirements, and districts may choose to allow students who successfully complete an industry-recognized credential, certificate or degree to receive additional weight in the calculation of the student's grade point average.

J. Successful completion of the requirements of the New Mexico diploma of excellence shall be required for graduation for students entering the ninth grade beginning in the 2009-2010 school year. Successful completion of a minimum of twenty-four units aligned to the state academic content and performance standards shall be required to earn a New Mexico diploma of excellence. These units shall be as follows:

(1) four units in English, with major emphasis on grammar, nonfiction writing and literature; provided that department-approved work-based training or career and technical education courses that meet state English academic content performance standards shall qualify as one of the four required English units;

(2) four units in mathematics, of which one shall be the equivalent to or higher than the level of algebra 2, unless the parent submitted written, signed permission for the student to complete a lesser mathematics unit; and provided that a financial literacy course or department-approved work-based training or career and technical education course that meets state mathematics academic content and performance standards shall qualify as one of the four required mathematics units;

(3) three units in science, two of which shall have a laboratory component; provided that department-approved work-based training or career and technical education courses that meet state science academic content and performance standards shall qualify as one of the three required science units;

(4) three and one-half units in social science, which shall include United States history and geography, world history and geography, government and economics and one-half unit of New Mexico history;

(5) one unit in physical education, as determined by each school district, which may include a physical education program that meets state content and performance standards or participation in marching band, junior reserve officers' training corps or interscholastic sports sanctioned by the New Mexico activities association or any other co-curricular physical activity;

(6) one unit in one of the following: a career cluster course, workplace readiness or a language other than English; and

(7) seven and one-half elective units that meet department content and performance standards. Career and technical education courses shall be offered as an elective. Student service learning shall be offered as an elective. Financial literacy shall be offered as an elective. Pre-apprenticeship programs may be offered as electives. Media literacy may be offered as an elective.

K. For students entering the eighth grade in the 2012-2013 school year, a course in health education is required prior to graduation. Health education may be required in either middle school or high school, as determined by the school district. Each school district shall submit to the department by the beginning of the 2011-2012 school year a health education implementation plan for the 2012-2013 and subsequent school years, including in which grade health education will be required and how the course aligns with department content and performance standards. Health education courses shall include:

(1) age-appropriate sexual abuse and assault awareness and prevention training that meets department standards developed in consultation with the federal centers for disease control and prevention that are based on evidence-based methods that have proven to be effective; and

(2) lifesaving skills training that follows nationally recognized guidelines for hands-on psychomotor skills cardiopulmonary resuscitation training. Students shall be trained to recognize the signs of a heart attack, use an automated external defibrillator and perform the Heimlich maneuver for choking victims. The secretary shall promulgate rules to provide for the:

(a) use of the following instructors for the training provided pursuant to this paragraph: 1) school nurses, health teachers and athletic department personnel as instructors; and



2) any qualified persons volunteering to provide training at no cost to the school district that the school district determines to be eligible to offer instruction pursuant to this paragraph; and

(b) approval of training and instructional materials related to the training established pursuant to this paragraph in both English and Spanish.

L. For students entering the ninth grade in the 2017-2018 school year and subsequent school years:

(1) one of the units in mathematics required by Paragraph (2) of Subsection J of this section may comprise a computer science course if taken after the student demonstrates competence in mathematics and if the course is not used to satisfy any part of the requirement set forth in Paragraph (3) of that subsection; and

(2) one of the units in science required by Paragraph (3) of Subsection J of this section may comprise a computer science course if taken after the student demonstrates competence in science and if the course is not used to satisfy any part of the requirement set forth in Paragraph (2) of that subsection.

M. Final examinations shall be administered to all students in all classes offered for credit.

N. Until July 1, 2010, a student who has not passed a state graduation examination in the subject areas of reading, English, mathematics, writing, science and social science shall not receive a high school diploma. The state graduation examination on social science shall include a section on the constitution of the United States and the constitution of New Mexico. If a student exits from the school system at the end of grade twelve without having passed a state graduation examination, the student shall receive an appropriate state certificate indicating the number of credits earned and the grade completed. If within five years after a student exits from the school system the student takes and passes the state graduation examination, the student may receive a high school diploma. Any student passing the state graduation examination and completing all other requirements within five years of entering ninth grade, including a final summer session if completed by August 1, may be counted by the school system in which the student is enrolled as a high school graduate for the year in which completion and examination occur.

O. Beginning with the 2010-2011 school year, a student shall not receive a New Mexico diploma of excellence if the student has not demonstrated competence in the subject areas of mathematics, reading and language arts, writing, social studies and science, including a section on the constitution of the United States and the constitution of New Mexico, based on a standards-based assessment or assessments or a portfolio of standards-based indicators established by the department by rule. The standards-based assessments required in Section 22-2C-4 NMSA 1978 may also serve as the assessment required for high school graduation. If a student exits from the school system at the end of grade twelve without having satisfied the requirements of this subsection, the student shall receive an appropriate state certificate indicating the number of credits earned and the grade completed. If within five years after a student exits from the school system the student satisfies the requirements of this subsection, the student may receive a New Mexico diploma of excellence. Any student satisfying the requirements of this subsection and completing all other requirements within five years of entering ninth grade, including a final summer session if completed by August 1, may be counted by the school system in which the student is enrolled as a high school graduate for the year in which all requirements are satisfied.

P. As used in this section:

(1) "career and technical education", sometimes referred to as "vocational education", means organized programs offering a sequence of courses, including technical education and applied technology education, that are directly related to the preparation of individuals for paid or unpaid employment in current or emerging occupations requiring an industry-recognized credential, certificate or degree;

(2) "career and technical education course" means a course with content that provides technical knowledge, skills and competency-based applied learning and that aligns with educational standards and expectations as defined in rule;

(3) "career cluster" means a grouping of occupations in industry sectors based on recognized commonalities that provide an organizing tool for developing instruction within the educational system;



(4) "career pathways" means a sub-grouping used as an organizing tool for curriculum design and instruction of occupations and career specialties that share a set of common knowledge and skills for career success;

(5) "final next-step plan" means a next-step plan that shows that the student has committed or intends to commit in the near future to a four-year college or university, a two-year college, a trade or vocational program, an internship or apprenticeship, military service or a job;

(6) "interim next-step plan" means an annual next-step plan in which the student specifies post-high-school goals and sets forth the coursework that will allow the student to achieve those goals; and

(7) "next-step plan" means an annual personal written plan of studies developed by a student in a public school or other state-supported school or institution in consultation with the student's parent and school counselor or other school official charged with coursework planning for the student that includes one or more of the following:

- (a) advanced placement or honors courses;
- (b) dual-credit courses offered in cooperation with an institution of higher education;
- (c) distance learning courses;
- (d) career-technical courses; and
- (e) pre-apprenticeship programs.

**Q.** The secretary may establish a policy to provide for administrative interpretations to clarify curricular and testing provisions of the Public School Code.

**History:** 1978 Comp., § 22-2-8.4, enacted by Laws 1986, ch. 33, § 5; 1987, ch. 320, § 2; 1988, ch. 105, § 2; 1989, ch. 220, § 1; 1990 (1st S.S.), ch. 3, § 3; 1993, ch. 68, § 3; 1993, ch. 92, § 1; 1993, ch. 226, § 7; 1993, ch. 230, § 1; 1995, ch. 174, § 1; 1995, ch. 180, § 1; 1997, ch. 234, § 2; 2001, ch. 257, § 1; 2001, ch. 276, § 1; recompiled and amended as § 22-13-1.1 by Laws 2003, ch. 153, § 58; 2004, ch. 28, § 1; 2005, ch. 314, § 1; 2005, ch. 315, § 10; 2007, ch. 305, § 1; 2007, ch. 307, § 8; 2007, ch. 308, § 8; 2008, ch. 21, § 2; 2009, ch. 256, § 1; 2009, ch. 267, § 2; 2009, ch. 288, § 1; 2010, ch. 25, § 1; 2010, ch. 110, § 1; 2014, ch. 9, § 3; 2014, ch. 70, § 1; 2014, ch. 71, § 1; 2015, ch. 60, § 1; 2016, ch. 17, § 2; 2016, ch. 18, § 2; 2017, ch. 144, § 1; 2019, ch. 148, § 1.

**Cross references.** — For student achievement, see 22-2C-1 NMSA 1978 et seq.

For the federal Individuals with Disabilities Education Act, see 20 U.S.C.

**Compiler's notes.** — Senate Bill 134, enacted by the Fifty-Third Legislature, First Session, 2017, was vetoed by the governor on March 14, 2017. Pursuant to the First Judicial District Court's decision in *State ex rel. New Mexico Legislative Council v. Honorable Susana Martinez, Governor of the State of New Mexico et al.*, D-101-CV-2017-01550, and affirmed by S.Ct. Order No. S-1-SC-36731, on April 25, 2018, which held that Article IV, Section 22 of the New Mexico Constitution requires that objections must accompany a returned bill, Senate Bill 134 was chaptered into law by the Secretary of State.

**The 2019 amendment**, effective June 14, 2019, allowed certain career and technical education courses to count as English, mathematics and science credits; in Subsection J, in Paragraph J(1), after "literature," added "provided that department-approved work-based training or career and technical education courses that meet state English academic content performance standards shall qualify as one of the four required English units," in Paragraph J(2), after "literacy course", added "or department-approved work-based training or career and technical education course", and in Paragraph J(3), after "laboratory component," added "provided that department-approved work-based training or career and technical education courses that meet state science academic content and performance standards shall qualify as one of the three required science units,".

**The 2017 amendment**, effective June 16, 2017, provided that mathematics or science units required for high school graduation may include a computer science unit; and added a new Subsection L and redesignated the succeeding subsections accordingly.

**The 2016 amendment**, effective May 18, 2016, included lifesaving skills training to health education courses as a requirement for graduation; in Subsection K, in the fourth sentence of the introductory paragraph, after "Health education", added "courses", after "shall include", added the new paragraph designation "(1)", in Paragraph (1), after the semicolon, added "and", and added new Paragraph (2); and in Subsection N, in the fourth sentence, after "student satisfies the", deleted "requirement" and added "requirements".

Laws 2016, ch. 17, § 2 and Laws 2016, ch. 18, § 2, both effective May 18, 2016, enacted identical amendments to this section. The section was set out as amended by Laws 2016, ch. 18, § 2. See 12-1-8 NMSA 1978.

**Applicability.** — Laws 2016, ch. 17, § 4 and Laws 2016, ch. 18, § 4 provided that lifesaving skills training pursuant to Paragraph (2) of Subsection H of Section 22-13-1 NMSA 1978 and Paragraph (2) of Subsection K of Section 22-13-1.1 NMSA 1978 shall not be required for students in grades nine through twelve who are enrolled in a virtual charter school.

**Temporary provisions.** — Laws 2016, ch. 17, § 3 and Laws 2016, ch. 18, § 3 provided that by December 31, 2016, the secretary of public education shall adopt and promulgate rules to implement the provisions of Laws 2016, ch. 17, §§ 1 and 2, and Laws 2016, ch. 18, §§ 1 and 2.

**The 2015 amendment**, effective July 1, 2015, amended the Public School Code to require inclusion of certain career technical education courses as electives and to allow inclusion of certain certificates or degrees to be weighed in calculating a student's grade point average; in Subsection D, Paragraph (1), after "career clusters", added "and career pathways"; in Subsection I, after "certain graduation requirements", added "and districts may choose to allow students who successfully complete an industry-recognized credential, certificate or degree to receive additional weight in the calculation of the student's grade point average"; in Subsection J, Paragraph (7), after "content and performance standards," added "Career and technical education courses shall be offered as elective,"; and



in Subsection O, added Paragraphs (1), (2), (3) and (4), and renumbered the succeeding paragraphs accordingly.

**The 2014 amendment**, effective March 12, 2014, authorized school districts to determine ways for students to meet the physical education unit requirements for graduation; limited changes to graduation requirements after students enter ninth grade; required health education to include age-appropriate sexual abuse and assault awareness and prevention training that meets federal standards; added Subsection F; in Subsection J, Paragraph (5), after "physical education", added "as determined by each school district, which may include a physical education program that meets state content and performance standards or participation in marching band, junior reserve officers' training corps or interscholastic sports sanctioned by the New Mexico activities association or any other co-curricular physical activity"; and in Subsection K, added the fourth sentence.

**The 2010 amendment**, effective May 19, 2010, added Subsection J.

**The 2009 amendment**, effective April 8, 2009, in Subsections K and L, added the last sentences.

**The 2008 amendment**, effective May 14, 2008, added financial literacy as an elective in Paragraph (7) of Subsection I and in Subsection L, provided that the standards-based assessment required by 22-2C-4 NMSA 1978 may serve as the assessment required for high school graduation.

**The 2007 amendment**, effective July 1, 2007, required school boards to ensure that students have an opportunity to develop next-step plans based on reports of college and workplace readiness assessments and are informed about honors or advance placement courses, career cluster or remediation programs that college and workplace readiness assessments indicate to be appropriate; added Subsections G, I and L; and required that a "next-step plan" include advanced placement or honors courses, dual-credit courses and distance learning courses.

**The 2005 amendment**, effective April 7, 2005, deleted reference to "guardian" in Subsections A and B; and deleted "other physical activity" in Subsection F(5).

**The 2004 amendment**, effective July 1, 2004, deleted Subsection A, added new Subsections A through G, redesignated Subsections C and D as Subsections G

and H, added Subsection I, added Subsection J, redesignated former Subsection E as Subsection K and changed "state board" to "secretary of public education" in Subsection K.

**The 2003 amendment**, effective April 4, 2003, recompiled former 22-2-8.4 NMSA 1978 as present 22-13-1.1 NMSA 1978; deleted "of education" following "the department" throughout the section; substituted "scientifically based reading research that has been" for "research based reading programs" following "based upon quality," near the middle of Subsection A; substituted "licensed school employees" for "classroom certified instructional staff" following "staff development" near the beginning of Subsection A(2); substituted "teachers and other applicable licensed school employees" for "certified school instructors" following "provided to" near the beginning of Subsection A(4); and substituted "licensed" for "certified" following "especially" near the middle of Subsection C.

**The 2001 amendment**, effective June 15, 2001, in Subsection D, deleted "Beginning with students entering the ninth grade in the 1986-87 school year" from the beginning of the subsection; substituted "state graduation examination" for "state competency examination" throughout the subsection; and inserted "writing" preceding "science and social science".

**The 1997 amendment**, effective June 20, 1997, inserted "American sign language" following "health education" near the end of Paragraph B(7), and inserted the second sentence in Subsection D.

**The 1995 amendment**, effective June 16, 1995, added the last sentence in Subsection B, and deleted the first part of Subsection C, which read "Effective with the 1987-88 school year".

**The 1993 amendment**, effective June 18, 1993, added the final sentence of Subsection D.

**The 1990 (1st S.S.) amendment**, effective July 1, 1990, deleted "in grades nine through twelve" following "twenty-three units" near the beginning of Subsection B.

**The 1989 amendment**, effective June 16, 1989, added "which may include a language other than English" at the end of Subsection B(6).

**The 1988 amendment**, effective May 18, 1988, inserted "or during the ninth grade" in Subsection A and added Subsection E.

## 22-13-1.2. High school curricula and end-of-course tests; alignment.

High school curricula and end-of-course tests shall be aligned with the placement tests administered by two- and four-year public post-secondary educational [educational] institutions in New Mexico. The department shall collaborate with the commission on higher education in aligning high school curricula and end-of-course tests with the placement tests.

**History:** 1978 Comp., § 22-13-1.2, enacted by Laws 2003, ch. 153, § 59.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Emergency clauses.** — Laws 2003, ch. 153, § 74 made the act effective immediately. Approved April 4, 2003.

## 22-13-1.3. Reading initiative; design.

A. The department shall design and implement a statewide reading initiative to improve reading proficiency in the state. The design of the reading initiative shall be based upon quality, scientifically based reading research that has been shown to improve reading proficiency and shall include the following:

- (1) consistent assessment and evaluation of student reading levels;
- (2) appropriate professional staff development to assist licensed school employees in the instruction of reading;

- (3) extra time in the student's day or year for implementation of reading programs;
- (4) rewards provided to teachers and other applicable licensed school employees in public schools that improve student reading proficiency; and
- (5) criteria for public schools to establish an individualized reading plan for students who fail to meet grade level reading proficiency standards.

B. The department shall use national experts to work with the department to develop an immediate reading initiative and a long-term plan for sustained reading improvement.

C. The department shall involve school district personnel, especially licensed elementary reading specialists, parents and other interested persons in the design of the reading initiative.

**History:** Laws 2000 (2nd S.S.), ch. 14, § 1; 2001, ch. 289, § 1; 1978 Comp., § 22-2-6.11, recompiled and amended as § 22-13-1.3 by Laws 2003, ch. 153, § 60.

**Recompilations.** — Laws 2003, ch. 153, § 60 recompiled and amended former 22-2-6.11 NMSA 1978 as 22-13-1.3 NMSA 1978, effective April 4, 2003.

**Cross references.** — For the public education department, see 9-24-4 NMSA 1978.

**The 2003 amendment,** effective April 4, 2003, deleted "of education" following "the department" throughout the section; substituted "scientifically based reading research that has been" for "research based reading programs" following "based upon quality," near the middle of

Subsection A; substituted "licensed school employees" for "classroom certified instructional staff" following "staff development" near the beginning of Subsection A(2); substituted "teachers and other applicable licensed school employees" for "certified school instructors" following "provided to" near the beginning of Subsection A(4); and substituted "licensed" for "certified" following "especially" near the middle of Subsection C.

**The 2001 amendment,** effective June 15, 2001, substituted "The department of education" for "The state department of public education" in Subsections A, B and C; added Paragraph A(5); and deleted "local" preceding "school district personnel" in Subsection C.

#### **22-13-1.4. Honors or similar classes in mathematics and language arts; dual credit courses; languages other than English.**

A. Beginning with the 2006-2007 school year, each school district shall offer at least one honors or similar academically rigorous class each in mathematics and language arts in each high school.

B. Beginning in the 2008-2009 school year, each school district shall also offer a program of courses for dual-credit, in cooperation with an institution of higher education, and a program of distance learning courses.

C. Beginning with the 2009-2010 school year, each school district shall offer at least two years of a language other than English in each high school.

**History:** Laws 2005, ch. 78, § 1; 2007, ch. 307, § 9; 2007, ch. 308, § 9.

**The 2007 amendment,** effective July 1, 2007, added Subsections B and C. Laws 2007, ch. 307, § 9 enacted

identical amendments to this section. The section was set out as amended by Laws 2007, ch. 308, § 9. See 12-1-8 NMSA 1978.

#### **22-13-1.5. Core curriculum framework; purpose; curriculum.**

A. School districts and charter schools may create core curriculum frameworks to provide high quality curricula in kindergarten through grade six to prepare students for pre-advanced placement and advanced placement coursework in grades seven through twelve.

B. The framework shall include:

- (1) a curriculum that is aligned with state academic content and performance standards that is challenging, specific as to content and sequential from grade to grade, similar to a core curriculum sequence;
- (2) in-depth professional development for teachers that includes vertical teaming in content areas; and
- (3) content, materials and instructional strategies or methodologies that current research demonstrates are likely to lead to improved student achievement in pre-advanced placement and advanced placement coursework in grades seven through twelve.

C. The framework may be selected from previously developed curricula or may be developed by the school district or charter school.



D. A school district or charter school that meets department eligibility requirements may apply to the department for support of its core curriculum framework. Applications shall be in the form prescribed by the department and shall include the following information:

- (1) a statement of need;
- (2) goals and expected outcomes of the framework;
- (3) a detailed description of the curriculum to be implemented;
- (4) a detailed work plan and budget for the framework;
- (5) documentation of the research upon which the anticipated success of the framework is based;
- (6) a description of any partnership proposed to implement the framework, supported by letters of commitment from the partner;
- (7) an evaluation plan; and
- (8) any other information that the department requires.

E. The department shall award grants within ninety days of the deadline for receipt of grant applications.

F. The department shall adopt and promulgate rules to implement the provisions of this section.

**History:** Laws 2005, ch. 300, § 1.

**Effective dates.** — Laws 2005, ch. 300 contained no effective date provision, but, pursuant to N.M. Const.,

art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

### **22-13-1.6. Uniform grade and subject curricula; professional department [development].**

A. Each school district shall align its curricula to meet the state standards for each grade level and subject area so that students who transfer between public schools within the school district receive the same educational opportunity within the same grade or subject area.

B. Each school district's aligned grade level and subject area curricula shall be in place as follows:

- (1) for mathematics, by the 2008-2009 school year; and
- (2) for language arts and science, by the 2009-2010 school year.

C. Professional development relating to curricula for classroom teachers and educational assistants shall be aligned with state standards by each school district.

**History:** Laws 2007, ch. 178, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Effective dates.** — Laws 2007, ch. contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

### **22-13-1.7. Elementary physical education.**

A. As used in this section:

- (1) "eligible students" means students in kindergarten through grade six in a public school classified by the department as an elementary school; and
- (2) "physical education" includes programs of education through which students participate in activities related to fitness education and assessment; active games and sports; and development of physical capabilities such as motor skills, strength and coordination.

B. Elementary physical education programs that serve eligible students are eligible for funding if those programs meet academic content and performance standards for elementary physical education programs.

C. In granting approval for funding of elementary physical education programs, the department shall provide that programs are first implemented in public schools that have the highest proportion of students most in need based on the percentage of students eligible for free or reduced-fee lunch or grade-level schools that serve an entire school district and in public schools with available space. If the department determines that an elementary physical education program is not meeting the academic content and performance standards for elementary physical

education programs, the department shall notify the school district that the public school's failure to meet the academic content and performance standards will result in the cessation of funding for the following school year. The department shall compile the program results submitted by the school districts each year and make an annual report to the legislative education study committee and the legislature.

D. An elementary physical education program that receives state financial support shall:

(1) provide for the physical education needs of students defined in this section; and

(2) use teachers with a license endorsement for physical education. The department shall annually determine the programs and the consequent number of students in elementary physical education that will receive state financial support in accordance with funding available in each school year.

**History:** Laws 2007, ch. 348, § 3; 2017, ch. 65, § 2.

**The 2017 amendment**, effective June 16, 2017, removed the requirement that public schools submit an elementary physical education program plan to the public education department; in Subsection D, deleted "As they become eligible for elementary physical education program funding, public schools shall submit to the department their elementary physical education program plans that meet academic

content and performance standards and other guidelines of the department. At a minimum, the plan shall include the elementary physical education program being taught and an evaluation component. To be eligible for state financial support, an elementary physical education program" and added "An elementary physical education program that receives state financial support"; and added the language from former Subsection E to Subsection D.

## 22-13-2. Repealed.

**Repeals.** — Laws 1979, ch. 54, § 1, repealed 22-13-2 NMSA 1978, relating to required course of instruction in drug abuse education in the public schools.

## 22-13-3. Early childhood education programs required.

A. In accordance with state board [department] regulations, every local school board shall establish and conduct early childhood education programs.

B. The state board [department] shall adopt and promulgate regulations providing for:

- (1) minimum standards for the conduct of early childhood education programs; and
- (2) qualifications of any person teaching in those programs.

C. The cost of operating early childhood education programs shall be included in the budget prepared for the school district.

D. As used in this section, "early childhood education programs" means kindergarten programs for every child who has attained his fifth birthday prior to September 1 of the school year, except for those children who are eligible for and participating in federal headstart programs in any class B county with a population in excess of ninety-five thousand, established by a local school board for the development or enrichment of persons within the school district.

E. The provisions of this section shall be effective with the 1988-89 school year, and waivers may be granted upon the request of the parent or legal guardian pursuant to Section 22-12-2 NMSA 1978.

**History:** 1953 Comp., § 77-11-2, enacted by Laws 1967, ch. 16, § 181; reenacted by 1973, ch. 357, § 1; 1974, ch. 8, § 20; 1977, ch. 2, § 2; 1986, ch. 33, § 29; 1987, ch. 320, § 6; 1988, ch. 35, § 1; 1993, ch. 226, § 29.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**The 1993 amendment**, effective July 1, 1993, deleted "and may provide transportation for students attending those programs" at the end of Subsection A.

**The 1988 amendment**, effective May 18, 1988, inserted "except for those children who are eligible for and participating in federal headstart programs in any class B county with a population in excess of ninety-five thousand" in Subsection D.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 79 C.J.S. Schools and School Districts § 484.



### 22-13-3.1. Even start family literacy program; created; guidelines; benchmarks, performance standards and evaluations.

A. The "even start family literacy program" is created in the department to provide funding for preschool reading readiness and parenting education. The purpose of the program is to support the educational and developmental needs of students in preschool; address cultural diversity; and provide family support that leads to improved literacy, improved ability for students to succeed in school and economic self-sufficiency. Priority for funding shall be provided to those public schools that have the highest proportion of limited English proficient students, students living in poverty and Native American students.

B. The department shall develop even start family literacy program benchmarks and performance standards, guidelines for program approval and funding approval criteria. The department shall disseminate the program information in all public schools and shall provide technical assistance to public schools in developing proposals.

C. The department shall distribute money to public schools with approved even start family literacy programs that meet the specified criteria based upon actual program costs to ensure the implementation of performance based budgeting measures.

**History:** Laws 2001, ch. 168, § 1; 2017, ch. 65, § 3.

**Cross references.** — For the legislative education study committee, see 2-10-1 NMSA 1978.

**The 2017 amendment,** effective June 16, 2017, removed the requirement that public schools that receive even start family literacy program funds report to the

public education department the results of the program, and removed certain duties of the public education department related to the even start family literacy program; after each occurrence of "department", deleted "of education"; and deleted Subsections D through F.

### 22-13-3.2. Full-day kindergarten programs.

A. The state board [department] shall adopt rules for the development and implementation of child-centered and developmentally appropriate full-day kindergarten programs. Establishment of full-day kindergarten programs shall be voluntary on the part of school districts and student participation shall be voluntary on the part of parents.

B. The department of education [public education department] shall require schools with full-day kindergarten programs to conduct age-appropriate assessments to determine the placement of students at instructional level and the effectiveness of child-centered, developmentally appropriate kindergarten.

C. The department of education [public education department] shall monitor full-day kindergarten programs and ensure that they serve the children most in need based upon indicators in the at-risk index. If the department of education [public education department] determines that a program is not meeting the benchmarks necessary to ensure the progress of students in the program, the department of education [public education department] shall notify the school district that failure to meet the benchmarks shall result in the cessation of funding for the following school year. The department of education [public education department] shall compile the program results submitted by the school districts and make an annual report to the legislative education study committee and the legislature.

D. Full-day kindergarten programs shall be phased in over a five-year period as follows with priority given to those school districts that serve children in schools with the highest proportion of students most in need based upon indicators in the at-risk index or that serve children by means of grade-level schools that serve an entire school district:

(1) effective with the 2000-2001 school year, one-fifth of New Mexico's kindergarten classes may be full day;

(2) effective with the 2001-2002 school year, two-fifths of New Mexico's kindergarten classes may be full day;

(3) effective with the 2002-2003 school year, three-fifths of New Mexico's kindergarten classes may be full day;

(4) effective with the 2003-2004 school year, four-fifths of New Mexico's kindergarten classes may be full day; and

(5) effective with the 2004-2005 school year, all of New Mexico's kindergarten classes may be full day.

E. School districts shall apply to the department of education [public education department] to receive funding for full-day kindergarten programs. In granting approval for funding of full-day kindergarten programs, the department of education [public education department] shall ensure that full-day kindergarten programs are first implemented in schools that have the highest proportion of students most in need based upon the at-risk index and in schools with available classroom space.

**History:** Laws 2000, ch. 107, § 3; 2001, ch. 296, § 1; 1978 Comp., § 22-2-19, recompiled as § 22-13-3.2 by Laws 2003, ch. 153, § 72.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**Cross references.** — For length of school day, see 22-8-1 NMSA 1978.

For the legislative education study committee, see 2-10-1 NMSA 1978.

**The 2001 amendment,** effective June 15, 2001, in Subsection C and D, substituted "at-risk index" for "at-risk factor"; in Subsection D, inserted "school" prior to "districts" and added the language beginning "or that serve" to the end of the subsection; in Subsection E, substituted "and in schools with available classroom space" for "and to schools with available classroom space".

### 22-13-3.3. Short title.

Sections 1 through 5 [22-13-3.3 through 22-13-3.7 NMSA 1978] of this act may be cited as the "Literacy For Children At Risk Act".

**History:** Laws 1989, ch. 113, § 1; 1978 Comp., § 22A-1-1, recompiled as § 22-13-3.3 by Laws 2003, ch. 153, § 72.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22A-1-1 NMSA 1978 as 22-13-3.3 NMSA 1978, effective April 4, 2003.

### 22-13-3.4. Purpose.

The purpose of the Literacy For Children At Risk Act [22-13-3.3 through 22-13-3.7 NMSA 1978] is to promote greater literacy among children.

**History:** Laws 1989, ch. 113, § 2; 1978 Comp., § 22A-1-2, recompiled as § 22-13-3.4 by Laws 2003, ch. 153, § 72.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22A-1-2 NMSA 1978 as 22-13-3.4 NMSA 1978, effective April 4, 2003.

### 22-13-3.5. Definitions.

As used in the Literacy For Children At Risk Act [22-13-3.3 through 22-13-3.7 NMSA 1978]:

A. "child at risk" means a child who attends public school in New Mexico and whose reading, writing or math literacy level, as determined by his school district, falls in the forty-ninth percentile or lower; and

B. "department" means the state department of public education.

**History:** Laws 1989, ch. 113, § 3; 1978 Comp., § 22A-1-3, recompiled as § 22-13-3.5 by Laws 2003, ch. 153, § 72.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22A-1-3 NMSA 1978 as 22-13-3.5 NMSA 1978, effective April 4, 2003.

### 22-13-3.6. Literacy for children at risk fund created; administration of fund.

A. There is created in the state treasury a fund that shall be designated as the "literacy for children at risk fund" that shall be used to set up learning laboratories for the purpose of improving the reading, writing or math literacy level of any child at risk.



B. The literacy for children at risk fund shall be eligible to receive funds from sources that include, but are not limited to, the following:

- (1) appropriations;
- (2) grants, public and private; and
- (3) gifts, public and private.

All funds received by the department for the literacy for children at risk fund shall be used only to carry out the purposes of the Literacy For Children At Risk Act [22-13-3.3 to 22-13-3.7 NMSA 1978].

**History:** Laws 1989, ch. 113, § 4; 1978 Comp. § 22A-1-4, recompiled as § 22-13-3.6 by Laws 2003, ch. 153, § 72.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22A-1-4 NMSA 1978 as 22-13-3.6 NMSA 1978.

### **22-13-3.7. Disbursement of funds; approved projects.**

A. Any school district or state-chartered charter school may apply for a grant from the literacy for children at risk fund for the purpose of acquiring, equipping and staffing a learning laboratory.

B. The department shall adopt rules setting forth the criteria that a school district or state-chartered charter school shall meet in order to qualify for a grant from the literacy for children at risk fund. The criteria to qualify for a grant shall include, but are not limited to, the following:

- (1) the learning laboratory shall improve the reading, writing or math literacy levels of children at risk by at least one grade level per year, as demonstrated to the department's satisfaction;
- (2) the learning laboratory shall encompass the teaching of children in kindergarten through grade twelve who are reading below grade level;
- (3) the learning laboratory shall have reading diagnostic capabilities; and
- (4) the learning laboratory shall have the capability to self-monitor the performance of both the learning laboratory and the children at risk using the laboratory.

C. The amount of any grant awarded under Subsections A and B of this section shall be equal to eighty percent of the total cost of acquiring, equipping and staffing a learning laboratory. Any grant awarded is contingent upon the qualifying school district or state-chartered charter school demonstrating to the department's satisfaction that it can pay for twenty percent of the total cost of the learning laboratory.

D. Any school district or state-chartered charter school that establishes a learning laboratory under this section may use the laboratory for any other reading, writing or math literacy program when it is not in use for the purposes of the Literacy For Children At Risk Act [22-13-3.3 to 22-13-3.7 NMSA 1978].

E. The department, after approving the application of a school district or state-chartered charter school to receive a grant under the Literacy For Children At Risk Act, shall authorize a disbursement of funds, in an amount equal to the grant, from the literacy for children at risk fund directly to the approved school district or charter school.

**History:** Laws 1989, ch. 113, § 5; 1978 Comp. § 22A-1-4, recompiled as § 22-13-3.7 by Laws 2003, ch. 153, § 72; 2006, ch. 94, § 46.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22A-1-4 NMSA 1978 as 22-13-3.7 NMSA 1978, effective April 4, 2003.

**The 2006 amendment,** effective July 1, 2007, added state-chartered charter schools in Subsections A through E.

### **22-13-4. Repealed.**

**Repeals.** — Laws 1979, ch. 54, § 1, repeals 22-13-4 NMSA 1978, relating to evaluation of early childhood education programs.

### **22-13-5. Special education.**

School districts shall provide special education and related services appropriate to meet the needs of students requiring special education and related services. Rules and standards shall be



developed and established by the department for the provision of special education in the schools and classes of the public school system in the state and in all institutions wholly or partly supported by the state. The department shall monitor and enforce the rules and standards. School districts shall also provide services for three-year-old and four-year-old preschool children with disabilities, unless the parent or guardian chooses not to enroll the child. Services for students age three through twenty-one may include, but are not limited to, evaluating particular needs, providing learning experiences that develop cognitive and social skills, arranging for or providing related services as defined by the department and providing parent education. The services may be provided by licensed school employees or contracted for with other community agencies and shall be provided in age-appropriate, integrated settings, including home, daycare centers, head start programs, schools or community-based settings.

**History:** 1953 Comp., § 77-11-3, enacted by Laws 1967, ch. 16, § 182; 1969, ch. 256, § 1; reenacted by 1972, ch. 95, § 1; 1978, ch. 211, § 11; 1985, ch. 7, § 1; 1985, ch. 93, § 2; 1989, ch. 135, § 1; 1995, ch. 69, § 2; 2011, ch. 166, § 1.

**Cross references.** — For references to the former state board, see 9-24-15 NMSA 1978.

For the department of health's family, infant and toddler program, see 28-16A-13 and 28-18-1 NMSA 1978.

**The 2011 amendment,** effective July 1, 2012, eliminated the option of having a child who is enrolled in the family, infant, toddler program remain in the program during the child's third year and the option of having a child with a disability who is enrolled in a preschool program receive special education services during the child's third year.

**The 1995 amendment,** effective June 16, 1995, deleted "for exceptional children" at the end in the section heading; in the first sentence, inserted "and related services" and substituted "children requiring special education and related services" for "exceptional children, unless otherwise provided by law"; substituted "provision" for "conduct" in the second sentence; in the fourth sentence, substituted "preschool" for "developmentally disabled" and inserted "with disabilities"; added the fifth and sixth sentences; in the seventh sentence, inserted "for students age three through twenty-one", inserted "but are not limited to", deleted "and diagnosing" following "evaluating", and substituted "related services as defined by the state board" for "speech, physical or occupational therapy"; and in the eighth sentence, inserted "certified", substituted "shall" for "may" and substituted the language beginning "provided in age-appropriate" for "either home based or center based".

**The 1989 amendment,** effective June 16, 1989, substituted "appropriate" for "sufficient" in the first sentence; rewrote the third sentence, which formerly read: "Beginning on July, 1986, school districts shall also provide services for four-year old developmentally disabled children whose parents or guardians request such services"; and rewrote the fourth sentence, which formerly read: "Beginning on July 1, 1987, school districts shall also provide services for three-year-old developmentally disabled children whose parents or guardians request such services".

#### ANNOTATIONS

**State forbidden from discriminating against handicapped in providing education.** — The state is obligated by both federal and state law to provide all its pre-college age children with appropriate educations. Under federal law relating to state programs receiving federal financial assistance, the state is forbidden from discriminating against the handicapped in meeting this obligation. *N.M. Ass'n for Retarded Citizens v. State*, 678 F.2d 847 (10th Cir. 1982).

**Discretionary nature of Public Law 94-142,** appearing as 20 U.S.C. § 1400 et seq., frees the state to participate or not in the acquisition of federal funds under the federal Elementary and Secondary Education Act as it chooses. Its choice not to participate is, without more, a governmental decision that is within the state's power and not subject to judicial inquiry. *N.M. Ass'n for Retarded Citizens v. State*, 495 F. Supp. 391 (D.N.M. 1980), *rev'd on other grounds*, 678 F.2d 847 (10th Cir. 1982).

**State has no obligation to seek federal funds.** — The theory that the state has a continuing obligation to seek federal funds to implement educational goals for handicapped children must fail in light of the congressional amendment rendering the federal Elementary and Secondary Education Act discretionary. *N.M. Ass'n for Retarded Citizens v. State*, 495 F. Supp. 391 (D.N.M. 1980), *rev'd on other grounds*, 678 F.2d 847 (10th Cir. 1982).

**State's status as monitor over spending of federal funds.** — The state may not technically be required to monitor compliance with § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. Its failure to insure compliance by the local school districts, however, implicates it under § 504 insofar as the state's status as the recipient of federal financial assistance obligates it not to permit, directly or indirectly, programs benefiting from federal financial assistance received by the state, to discriminate against handicapped persons within the context of the regulations promulgated under § 504. *N.M. Ass'n for Retarded Citizens v. State*, 495 F. Supp. 391 (D.N.M. 1980), *rev'd on other grounds*, 678 F.2d 847 (10th Cir. 1982).

**Students in psychiatric care and substance abuse treatment centers.** — Public schools have no constitutional or statutory obligation to provide educational services to students within private, for-profit adolescent psychiatric care and substance abuse treatment centers, but if the student is handicapped, federal law may require such education. 1988 Op. Att'y Gen. No. 88-10.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Tort liability of public school or government agency for misclassification or wrongful placement of student in special education program, 33 A.L.R.4th 1166.

AIDS infection as affecting right to attend public school, 60 A.L.R.4th 15.

Construction of "stay-put" provision of Education of the Handicapped Act (20 U.S.C. § 1415(e)(3)), that handicapped child shall remain in current educational placement pending proceedings conducted under section, 103 A.L.R. Fed. 120.

Obligation of public educational agencies, under Individuals with Disabilities Education Act (20 USCA §§ 1400 et seq.), to pay tuition costs for students unilaterally placed in private schools - post-Burlington cases, 152 A.L.R. Fed. 485.

Who is prevailing party for purposes of obtaining attorney's fees under § 615(i)(3)(B) of Individuals with Disabilities Education Act (20 USCA § 1415(i)(3)(B)) (IDEA), 153 A.L.R. Fed. 1.



What constitutes services that must be provided by federally assisted schools under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C.A. § 1400 et seq.), 161 A.L.R. Fed. 1.

What constitutes reasonable accommodation under federal statutes protecting rights of disabled individual, as regards educational program or school rules as applied to learning disabled student, 166 A.L.R. Fed. 503.

## 22-13-6. Special education; definitions.

As used in the Public School Code:

- A. "special education" means the provision of services additional to, supplementary to or different from those provided in the regular school program by a systematic modification and adaptation of instructional techniques, materials and equipment to meet the needs of exceptional children;
- B. "exceptional children" means school-age persons whose abilities render regular services of the public school to be inconsistent with their educational needs;
- C. "children with disabilities" means those children who are classified as developmentally disabled according to the Developmental Disabilities Act [28-16A-1 to 28-16A-18 NMSA 1978] and the federal Individuals with Disabilities Education Act;
- D. "gifted child" means a school-age person who is determined to be gifted pursuant to Section 22-13-6.1 NMSA 1978 and standards adopted by the department pursuant to that section. Nothing in this section shall preclude a school district or charter school from offering additional gifted programs for students who fail to meet the eligibility criteria; however, the state shall only provide state funds for department-approved gifted programs for those students who meet the established criteria;
- E. "dyslexia" means a specific learning disability that is neurobiological in origin and that is characterized by difficulty with accurate or fluent word recognition and by poor spelling and decoding abilities, which characteristics typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction and may result in problems in reading comprehension and reduced reading experience that may impede the growth of vocabulary and background knowledge;
- F. "response to intervention" means a multitiered intervention model that uses a set of increasingly intensive academic or behavioral supports, matched to student need, as a framework for making educational programming and eligibility decisions; and
- G. "student assistance team" means a school-based group whose purpose, based on procedures and guidelines established by the department, is to provide additional educational support to students who are experiencing difficulties that are preventing them from benefiting from general instruction.

**History:** 1953 Comp., § 77-11-3.1, enacted by Laws 1972, ch. 95, § 2; 1978, ch. 211, § 12; 1985, ch. 93, § 3; 1986, ch. 33, § 30; 1994, ch. 25, § 1; 1995, ch. 69, § 3; 2010, ch. 59, § 1; 2019, ch. 256, § 1.

**Repeals and reenactments.** — Laws 1972, ch. 95, § 2, repealed 77-11-3.1, 1953 Comp., as enacted by Laws 1967, ch. 290, § 1, relating to nonprofit training centers for educating or training handicapped students, and enacted a new 22-13-6 NMSA 1978.

**Cross references.** For the federal Individuals with Disabilities Education Act see Titles 20, 25, 29 and 42 U.S.C.

**The 2019 amendment,** effective June 14, 2019, revised the definitions of "children with disabilities" and "dyslexia" as used in the Public School Code; in Subsection C, after "Developmental Disabilities Act", added "and the federal Individuals with Disabilities Education Act"; and in Subsection E, after "means a", deleted "condition of neurological" and added "specific learning disability that is neurobiological in", and after "origin", added "and".

**Contingent effective dates.** — Laws 2019, ch. 256, § 3 provided that the provisions of Laws 2019, ch. 256 shall become effective upon Senate Bill 536, House Bill 548 or similar legislation of the first session of the fifty-fourth legislature becoming law that contains an appropriation for early screening and intervention for students

displaying characteristics of dyslexia. Laws 2019, ch. 278 (Senate Bill 536), effective June 14, 2019, was signed by the governor. Laws 2019, ch. 278, § 26(A)(2) provided, "(2) three hundred fifty-seven thousand dollars (\$357,000) for a short dyslexia screening for first grade students and for a dyslexia professional development plan that provides dyslexia training for teachers".

**The 2010 amendment,** effective May 19, 2010, in Subsection D, in the first sentence, after "standards adopted by the", deleted "state board" and added "department"; and in the second sentence, after "school district", added "or charter school", and after "only provide state funds for", deleted "department of education approved" and added "department-approved"; and added Subsections E, F and G.

**The 1995 amendment,** effective June 16, 1995, substituted "children with disabilities" for "developmentally disabled" in Subsection C, deleted combined former Subsections D and E to form Subsection D, and inserted "school" preceding "district" and deleted "state" preceding "department of education" in the last sentence in Subsection D.

**The 1994 amendment,** effective July 1, 1994, deleted "Community Services" preceding "Act" in Subsection C; and rewrote and restructured Subsection D, which formerly contained an introductory paragraph and Paragraphs (1) to (3).

### 22-13-6.1. Gifted children; determination.

A. The department shall adopt standards pertaining to the determination of who is a gifted child and shall publish those standards as part of the educational standards for New Mexico schools.

B. In adopting standards to determine who is a gifted child, the department shall provide for the evaluation of selected school-age children by multidisciplinary teams from each child's school district. That team shall be vested with the authority to designate a child as gifted. The team shall consider information regarding a child's cultural and linguistic background and socioeconomic background in the identification, referral and evaluation process. The team also shall consider any disabling condition in the identification, referral and evaluation process.

C. Each school district offering a gifted education program shall create one or more advisory committees of parents, community members, students and school staff members. The school district may create as many advisory committees as there are high schools in the district or may create a single districtwide advisory committee. The membership of each advisory committee shall reflect the cultural diversity of the enrollment of the school district or the schools the committee advises. The advisory committee shall regularly review the goals and priorities of the gifted program, including the operational plans for student identification, evaluation, placement and service delivery and shall demonstrate support for the gifted program.

D. In determining whether a child is gifted, the multidisciplinary team shall consider diagnostic or other evidence of the child's:

- (1) creativity or divergent-thinking ability;
- (2) critical-thinking or problem-solving ability;
- (3) intelligence; and
- (4) achievement.

**History:** 1978 Comp., § 22-13-6.1, enacted by Laws 1994, ch. 25, § 2; 2005, ch. 25, § 1.

The 2005 amendment, effective June 17, 2005, allowed each school district to create a single district-wide gifted education program advisory committees or as many

committees as there are high schools in the district and provided that each committee shall reflect the cultural diversity of the enrollment of the district of the schools the committee advises.

### 22-13-7. Special education; responsibility.

A. The state board [department] shall make, adopt and keep current a state plan for special education policy, programs and standards.

B. The department of education [public education department] with the approval of the state board [department] shall set standards for diagnosis and screening of and educational offerings for exceptional children in public schools, in private, nonsectarian, nonprofit training centers and in state institutions under the authority of the secretary of health.

C. The state board [department] shall establish and maintain a program of evaluation of the implementation and impact of all programs for exceptional children in the public schools. This program shall be operated with the cooperation of local school districts. Portions of the program may be subcontracted, and periodic reports regarding the efficacy of programs for exceptional children shall be made to the legislative education study committee.

D. The department of education [public education department] shall coordinate programming related to the transition of persons with disabilities from secondary and post-secondary education programs to employment or vocational placement.

**History:** 1953 Comp., § 77-11-3.2, enacted by Laws 1972, ch. 95, § 3; 1978, ch. 211, § 13; 1990, ch. 94, § 4; 1993, ch. 229, § 1.

**Repeals and reenactments.** — Laws 1972, ch. 95, § 3, repealed 77-11-3.2, 1953 Comp., as enacted by Laws 1971, ch. 109, § 1, relating to provision of special education services and facilities by localities, and enacted a new 22-13-7 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**Cross references.** — For the legislative education study committee, see 2-10-1 NMSA 1978.



The 1993 amendment, effective June 18, 1993, deleted "and environment" at the end of Subsection B and added Subsection D.

The 1990 amendment, effective May 16, 1990, substituted "state board" for "state board of education" in Subsections A and B, deleted "department" after "health and environment" at the end of Subsection B, added Subsection C, and made minor stylistic changes in Subsection B.

#### ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Requisite conditions and appropriate factors affecting educational placement of handicapped children, 23 A.L.R.4th 740.

### 22-13-8. Special education; private educational training centers and residential treatment centers.

A. Notwithstanding other provisions of the Public School Code [Chapter 22 NMSA 1978], as used in this section:

(1) "qualified student" means a public school student who:

- (a) has not graduated from high school;
- (b) is regularly enrolled in one-half or more of the minimum course requirements approved by the department for public school students; and
- (c) in terms of age: 1) is at least five years of age prior to 12:01 a.m. on September 1 of the school year or will be five years of age prior to 12:01 a.m. on September 1 of the school year if the student is enrolled in a public school extended-year kindergarten program that begins prior to the start of the regular school year; 2) is at least three years of age at any time during the school year and is receiving special education pursuant to rules of the department; or 3) has not reached the student's twenty-second birthday on the first day of the school year and is receiving special education in accordance with federal law; and

(2) "school-age person" means a person who is not a qualified student but who meets the federal requirements for special education and who:

- (a) will be at least three years old at any time during the school year;
- (b) is not more than twenty-one years of age; and
- (c) has not received a high school diploma or its equivalent.

B. The responsibility of school districts, state institutions and the state to provide a free appropriate public education for qualified students who need special education is not diminished by the availability of private schools and services. It is a state responsibility to ensure that all qualified students who need special education receive the education to which federal and state laws entitle them whether provided by public or private schools and services.

C. A school district in which a private, nonsectarian, nonprofit educational training center or residential treatment center is located shall not be considered the resident school district of a school-age person if residency is based solely on the school-age person's enrollment at the facility and the school-age person would not otherwise be considered a resident of the state.

D. For a qualified student in need of special education or school-age person who is placed in a private, nonsectarian, nonprofit educational training center or residential treatment center by a school district or by a due process decision, the school district in which the qualified student or school-age person lives, whether in-state or out-of-state, is responsible for the educational, non-medical care and room and board costs of that placement.

E. For a school-age person placed in a private, nonsectarian, nonprofit educational training center or residential treatment center not as a result of a due process decision but by a parent who assumes the responsibility for such placement, the department shall ensure that the school district in which the facility is located is allocating and distributing the school-age person's proportionate share of the federal Individuals with Disabilities Education Act Part B funds but the state is not required to distribute state funds for that school-age person.

F. For a qualified student or school-age person in need of special education placed in a private, nonsectarian, nonprofit educational training center or residential treatment center by a New Mexico public noneducational agency with custody or control of the qualified student or school-age person or by a New Mexico court of competent jurisdiction, the school district in which the facility is located shall be responsible for the planning and delivery of special education and related



services, unless the qualified student's or school-age person's resident school district has an agreement with the facility to provide such services.

G. Except as provided in Subsection D of this section, the department shall determine which school district is responsible for the cost of educating a qualified student in need of special education who has been placed in a private, nonsectarian, nonprofit educational training center or residential treatment center outside the qualified student's resident school district. The department shall determine the reasonable reimbursement owed to the receiving school district.

H. A local school board, in consultation with the department, may make an agreement with a private, nonsectarian, nonprofit educational training center or residential treatment center for educating qualified students in need of special education and for whom the school district is responsible for providing a free appropriate public education under the federal Individuals with Disabilities Education Act and for providing payment for that education. All financial agreements between local school boards and private, nonsectarian, nonprofit educational training centers and residential treatment centers must be negotiated in accordance with rules promulgated by the department.

I. All agreements between local school boards and private, nonsectarian, nonprofit educational training centers and residential treatment centers must be reviewed and approved by the secretary. The agreements shall ensure that all qualified students placed in a private, nonsectarian, nonprofit educational training center or residential treatment center receive the education to which they are entitled pursuant to federal and state laws. All agreements must provide for:

- (1) student evaluations and eligibility;
- (2) an educational program for each qualified student that meets state standards for such programs, except that teachers employed by private schools are not required to be highly qualified;
- (3) special education and related services in conformance with an individualized education program that meets the requirements of federal and state law; and
- (4) adequate classroom and other physical space provided at the private, nonsectarian, nonprofit educational training center or residential treatment center that allows the school district to provide an appropriate education.

J. The agreements must also acknowledge the authority and responsibility of the local school board and the department to conduct on-site evaluations of programs and student progress to ensure that the education provided to the qualified student is meeting state standards.

K. A qualified student for whom the state is required by federal law to provide a free appropriate public education and who is attending a private, nonsectarian, nonprofit educational training center or a residential treatment center is a public school student and shall be counted in the special education membership of the school district that is responsible for the costs of educating the student as provided in the individualized education program for the student.

L. The department shall adopt the format to report individual student data and costs for any qualified student or school-age person attending public or private educational training centers or residential treatment centers and shall include those reports in the student teacher accountability reporting system by using the same student identification number issued to a public school student pursuant to Section 22-2C-11 NMSA 1978 or by assigning a unique student identifier for school-age persons, including those who are not residents of this state but who are attending a private, nonsectarian, nonprofit educational training center or residential treatment center in this state. Every public and private educational training center and every public and private residential treatment center that serves school-age persons in this state shall comply with this provision.

M. The department shall promulgate rules to carry out the provisions of this section.

**History:** 1953 Comp., § 77-11-3.3, enacted by Laws 1972, ch. 95, § 4; 1974, ch. 8, § 21; 1977, ch. 81, § 1; 1978, ch. 211, § 14; 1978 Comp., § 22-13-8, repealed and reenacted by Laws 2009, ch. 162, § 1.

**Repeals and reenactments.** — Laws 2009, ch. 162, § 1 repealed and reenacted former 22-13-8 NMSA 1978, effective July 1, 2009.

**Effective dates.** — Laws 2009, ch. 162, § 3 made Laws 2009, ch. 162, § 1 effective July 1, 2009.

#### ANNOTATIONS

**Residency requirement is constitutional.** — The residency requirement of Subsection C Section 22-13-8 NMSA 1978 does not violate the equal protection clause of the United States and New Mexico Constitutions and does not create an irrebuttable presumption of nonresidence in violation of the procedural due process protections of the United States and New Mexico Constitutions. 2011 Op. Att'y Gen. No. 11-05.



**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity of, and sufficiency of compliance with, state standards for approval of private school to receive public placements

of students or reimbursement for their educational costs, 48 A.L.R.4th 1231.

## 22-13-9. Repealed.

**Repeals.** — Laws 2007, ch. 307, § 11 and Laws 2007, ch. 308, § 11 repealed 22-13-9 NMSA 1978, as enacted by Laws 1967, ch. 16, § 183, relating to part-time schools,

effective July 1, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMOneSource.com*.

## 22-13-10. Repealed.

**Repeals.** — Laws 2007, ch. 307, § 11 and Laws 2007, ch. 308, § 11 repealed 22-13-10 NMSA 1978, as enacted by Laws 1967, ch. 16, § 184, relating to restriction on

employment, effective July 1, 2007. For provisions of former section, see the 2006 NMSA 1978 on *NMOneSource.com*.

## 22-13-11. Repealed.

**Repeals.** — Laws 2003, ch. 394, § 7 repealed 22-13-11 NMSA 1978, as enacted by Laws 1967, ch. 16, § 185, relating to adult education classes, effective April 8, 2003. For

provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

## 22-13-12. Approved driver-education courses.

A. The state board [department] or its designated representative shall adopt and promulgate minimum standards for approved driver-education and motorcycle driver-education courses taught in any school in the state.

B. A driver-education or motorcycle driver-education course shall provide to students legally entitled to operate the type of motor vehicle involved, classroom instruction and behind-the-wheel or on-the-motorcycle training in the safe operation of the motor vehicle.

C. An approved driver-education or motorcycle driver-education course is a course of instruction certified by the state superintendent [secretary] as meeting the minimum standards for such a driver-education course adopted by the state board [department] or its designated representative.

**History:** 1953 Comp., § 77-11-7, enacted by Laws 1967, ch. 16, § 186; 1973, ch. 381, § 4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state

department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**Cross references.** — For designation of the public education department as the sole educational agency of state for administration or supervision of state plan established for funds received pursuant to federal statute relating to school lunch programs, see 22-9-2 NMSA 1978.

## 22-13-13. School lunch program.

A. The state board [department] shall prescribe standards and regulations for the establishment and operation of school lunch programs in the state. The department of education [public education department] shall provide technical advice and assistance to any school district in connection with the establishment or operation of a school lunch program.

B. A local school board may accept gifts or grants for use in connection with a school lunch program in the school district.

C. A "school lunch program" means a program under which lunches are served by a public school in the state on a nonprofit basis to students attending the school.

**History:** 1953 Comp., § 77-11-8, enacted by Laws 1967, ch. 16, § 187.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the public education department as the sole educational agency of state for administration or supervision of state plan established for funds received pursuant to federal statute relating to school lunch programs, see 22-9-2 NMSA 1978.

**Cross references.** — For designation of the public education department as the sole educational agency of state for administration or supervision of state plan established

for funds received pursuant to federal statute relating to school lunch programs, *see* 22-9-2 NMSA 1978.

### **22-13-13.1. Temporary provision; food and beverages sold outside of school meal programs.**

The public education department, in collaboration with the department of health and one representative each from the New Mexico action for healthy kids, parents, students, school food service directors, school boards, school administrators, agriculture, dairy producers and the food and beverage industry, shall adopt rules no later than December 31, 2005 governing foods and beverages sold in all public schools to students outside of federal department of agriculture school meal programs. The rules shall, at a minimum, address nutrition standards, portion sizes and times when students may access these items. Nothing in this section shall be construed to prohibit or limit the sale or distribution of any food or beverage item through fundraisers by students, teachers or groups when the items are intended for sale off the school campus.

**History:** Laws 2005, ch. 115, § 1.

**Effective dates.** — Laws 2005, ch. 115 contained no effective date provision, but, pursuant to N.M. Const.,

art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

### **22-13-13.2. Breakfast program required; waiver; distribution of funds.**

A. School districts and charter schools shall establish a "breakfast after the bell program" to provide free breakfast, after the instructional day has begun, to all students attending a public school in which eighty-five percent or more of the enrolled students were eligible for free or reduced-price lunch under the National School Lunch Act during the prior school year.

B. A school district or charter school that includes a public school in which fewer than eighty-five percent of the enrolled students were eligible for free or reduced-price lunch during the prior school year under the National School Lunch Act may establish a breakfast after the bell program to provide free breakfast, after the instructional day has begun, to all students attending that public school; provided that the program complies with all applicable department rules relating to the breakfast after the bell program authorized by this section.

C. Nothing in this section shall be interpreted to prohibit a school that establishes a breakfast after the bell program under the provisions of Subsection A or B of this section from beginning breakfast service before the start of the instructional day; provided that the school also serves breakfast after the beginning of the instructional day in the location of its choice, including the cafeteria, classroom, on the bus, or by providing a hand-carried breakfast.

D. The school district or charter school may apply to the department for a waiver of the breakfast after the bell program required under the provisions of Subsection A of this section if the school district or charter school can demonstrate that providing the program will result in undue financial hardship for the school district or charter school.

E. The department shall award funding to each school district or charter school that establishes a breakfast after the bell program under the provisions of this section for providing free breakfast to students on a per-meal basis at the federal maximum rate of reimbursement as set forth annually by the federal secretary of agriculture for educational grants awarded under the authority of the secretary. School districts and charter schools do not need to demonstrate their expenses to receive funding pursuant to this section.

F. Disbursements for the breakfast after the bell program shall be paid in sequential order, until the state breakfast after the bell funds are exhausted. School districts and charter schools whose public schools have the highest percentage of enrolled students eligible for free or reduced-price lunch under the National School Lunch Act shall be paid first. School districts and charter schools whose public schools have the lowest percentage of enrolled students eligible for free or reduced-price lunch under the National School Lunch Act shall be paid last.



G. By June 15 of each year, each school district and charter school seeking state breakfast after the bell funds shall submit to the department the following information:

(1) the number of breakfasts served at no charge by each of its public schools during the previous school year; and

(2) the federal reimbursement rate for each breakfast served.

H. When calculating the amount of breakfast after the bell program funding that is due a public school, the department shall assume that student participation will remain at the same level as the previous year. If a school district or charter school has not previously received state breakfast after the bell funding, the department shall assume that ninety percent of the student population of an eligible public school will participate in the breakfast after the bell program and shall fund the public school's program accordingly.

I. By August 1 of each year, the department shall inform eligible school districts and charter schools of the amount of breakfast after the bell funding they will receive during the upcoming school year.

J. The department shall promulgate rules necessary for implementation of this section, including:

(1) standards for breakfast after the bell programs that meet federal school breakfast program standards;

(2) procedures for waiver requests and the award of waivers as provided for in Subsection D of this section, including what constitutes financial hardship; and

(3) procedures for funding school districts and charter schools.

K. The provisions of this section apply to the 2014-2015 and succeeding school years; provided, however, that the breakfast after the bell program for middle and high school students shall begin the first school year after the legislature provides funding for that portion of the program.

**History:** Laws 2011, ch. 35, § 5; 2014, ch. 16, § 1; 2016, ch. 26, § 1.

**Cross references.** — For the National School Lunch Act, see 42 U.S. Code § 1751.

**The 2016 amendment**, effective May 18, 2016, clarified provisions of the "breakfast after the bell program"; added new Subsection C and redesignated the succeeding subsections accordingly; in Subsection J, in Paragraph (2), after "Subsection", deleted "C" and added "D"; and in Subsection K, after "breakfast after the bell", added "program".

**The 2014 amendment**, effective May 21, 2014, provided for breakfast after the bell programs for students in kindergarten through twelfth grade; in Subsection A, after "charter schools shall establish a", deleted "school", after "establish a 'breakfast'", added "after the bell", after "after the bell program", changed "providing" to "to provide", after "all students attending", deleted "an elementary" and added "a public", after "a public school", deleted "in that school district", and after "more of the enrolled students", deleted "at the elementary school"; in Subsection B, after "charter school that includes", deleted "an elementary" and added "a public", after "National School Lunch Act", deleted "of 1946", after "may establish a", deleted "school", after "may establish a breakfast", added "after the bell", after "after the bell program", deleted "providing" and added "to provide", after "students attending that", deleted "elementary" and added "public", after "rules relating to the", deleted "school", and after "relating to the breakfast", added "after the bell"; in Subsection C, after "waiver of the", deleted "school", and after "waiver of

the breakfast", added "after the bell"; in Subsection D, in the first sentence, after "The department shall", deleted "reimburse" and added "award funding to", after "charter school that establishes a", deleted "school", after "establishes a breakfast", added "after the bell", after "provisions of this section for", deleted "costs associated with", at the end of the first sentence, deleted "Reimbursement", and added the second sentence; in Subsection E, in the first sentence, added the subsection letter and "Disbursements", after "Disbursements for the", deleted "school", after "Disbursements for the breakfast", added "after the bell", after "until the state", deleted "school", and after "until the state breakfast", added "after the bell", in the second sentence, after "School districts", deleted "or" and added "and", after "charter schools whose", deleted "elementary" and added "public", and after "National School Lunch Act", deleted "of 1946", and in the third sentence, after "School districts", deleted "or" and added "and", after "charter schools whose", deleted "elementary" and added "public", and after "National School Lunch Act", deleted "of 1946"; added Subsections F, G and H; in Subsection I, in Paragraph (1), after "standards for", deleted "school" and after "standards for breakfast", added "after the bell"; in Subsection I, in Paragraph (3), after "procedures for", deleted "reimbursement" and added the remainder of the sentence; and in Subsection J, after "this section", deleted "shall not", after "this section apply", deleted "until the 2011-2012" and added "to the 2014-2015 and succeeding", and after "school", deleted "year" and added the remainder of the sentence.

## 22-13-14. Emergency drills; requirement.

A. An emergency drill shall be conducted in each public and private school of the state at least once each week during the first four weeks of the school year. During the first four weeks of the school year, each school shall conduct one shelter in place drill that includes preparation to respond to an active shooter, one evacuation drill and two fire drills. During the rest of the school year, each school shall conduct at least four more emergency drills, at least two of which shall be

fire drills. It shall be the responsibility of the person in charge of a school to carry out the provisions of this section.

B. In locations where a fire department is maintained, a member of the fire department shall be requested to be in attendance during the emergency drills for the purpose of giving instruction and constructive criticism.

C. The department shall determine penalties for any person failing to meet the provisions of this section.

**History:** 1953 Comp., § 77-11-9, enacted by Laws 1967, ch. 16, § 188; 1979, ch. 81, § 1; 2005, ch. 27, § 1; 2019, ch. 158, § 1.

**Cross references.** — For fire protection training programs, see 59A-52-6 NMSA 1978.

**The 2019 amendment**, effective June 14, 2019, established new requirements for school evacuation and active shooter drills; in Subsection A, after "school year", deleted "and at least once each month thereafter until the end of the school year. Two drills during the year shall be shelter-in-place drills and one shall be an evacuation drill, as directed by the department. The remainder of

the drills shall be fire drills." and added "During the first four weeks of the school year, each school shall conduct one shelter in place drill that includes preparation to respond to an active shooter, one evacuation drill and two fire drills. During the rest of the school year, each school shall conduct at least four more emergency drills, at least two of which shall be fire drills."

**The 2005 amendment**, effective July 1, 2005, required that two emergency drills during the year be shelter-in-place drill, one drill be an evacuation drill and the remainder of the drills be fire drills.

## 22-13-15. Public school instruction; prohibition; penalty.

A. No person shall teach sectarian doctrine in a public school.

B. Any person violating the provisions of this section by teaching sectarian doctrine in a public school shall be immediately discharged from further employment with a school district. The provisions of Sections 22-10-17 through 22-10-20 NMSA 1978 relating to the discharge of certified school personnel apply to this section.

**History:** 1953 Comp., § 77-11-10, enacted by Laws 1967, ch. 16, § 189.

**Compiler's notes.** — Sections 22-10-19 and 22-10-20 NMSA 1978, referred to in the second sentence in Subsection B, were repealed in 1986.

Laws 2003, ch. 153, § 72 recompiled former 22-10-17 NMSA 1978 as 22-10A-27 NMSA 1978, recompiled former 22-10-17.1 NMSA 1978 as 22-10A-28 NMSA 1978 and

recompiled former 22-10-18 NMSA 1978 as 22-10A-29 NMSA 1978, effective April 4, 2003.

**Cross references.** — For constitutional right to freedom of religion, see N.M. Const., art. II, § 11.

For prohibition against requiring religious tests and requiring attendance at or participation in religious services by teachers or students, see N.M. Const., art. XII, § 9.

## 22-13-16. Private school programs; solicitations; permit; penalty.

A. It is unlawful for any private school, or its agent, to canvass a prospective student in New Mexico for the purpose of selling to the student a scholarship or collecting tuition from the student in advance of the date for registration for the school without first obtaining a permit from the state board [department]. This shall not be construed to prevent canvassing by schools for prospective students where no scholarship is sold or where no fee for tuition is collected in advance of registration. This shall also not be construed to prevent a school from advertising.

B. To obtain a permit as required by this section, an application shall be filed with the state board [department], signed by an authorized representative of the school, accompanied by any reasonable fee required by the state board and containing the following:

- (1) the name and location of the school seeking the permit;
- (2) the number of instructors employed by the school;
- (3) the courses of instruction offered by the school; and
- (4) any additional information required by the state board [department].

C. The state board may revoke, at any time, any permit issued by it for satisfactory cause.

D. Any person violating any provisions of this section is guilty of a petty misdemeanor.

**History:** 1953 Comp., § 77-11-11, enacted by Laws 1967, ch. 16, § 190.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.



For designation of the public education department as the sole educational agency of state for administration or supervision of state plan established for funds received pursuant to federal statute relating to school lunch programs, see 22-9-2 NMSA 1978.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Liability of private school or educational institution for breach

of contract arising from provision of deficient educational instruction, 46 A.L.R.5th 581.

Liability of private school or educational institution for breach of contract arising from expulsion or suspension of student, 47 A.L.R.5th 1.

78 C.J.S. Schools and School Districts §§ 58, 811.

### 22-13-17. Repealed.

**Repeals.** — Laws 1979, ch. 54, § 1, repealed 22-13-17 NMSA 1978, enacted by Laws 1969, ch. 180, § 27, relating

to education enrichment program and diesel mechanics program.

### 22-13-18. Repealed.

**Repeals.** — Laws 1979, ch. 54, § 1, repealed 22-13-18 NMSA 1978, enacted by Laws 1969, ch. 180, § 28, relating

to education enrichment program and diesel mechanics program.

### 22-13-19. Repealed.

**Repeals.** — Laws 1979, ch. 54, § 1, repealed 22-13-19 NMSA 1978, enacted by Laws 1969, ch. 180, § 29, relating

to education enrichment program and diesel mechanics program.

### 22-13-20. Repealed.

**Repeals.** — Laws 1979, ch. 54, § 1, repealed 22-13-20 NMSA 1978, enacted by Laws 1969, ch. 180, § 30, relating

to education enrichment program and diesel mechanics program.

### 22-13-21. Repealed.

**Repeals.** — Laws 1979, ch. 54, § 1, repealed 22-13-21 NMSA 1978, enacted by Laws 1969, ch. 180, § 31, relating

to education enrichment program and diesel mechanics program.

### 22-13-22. Repealed.

**Repeals.** — Laws 1979, ch. 54, § 1, repealed 22-13-22 NMSA 1978, enacted by Laws 1969, ch. 180, § 32, relating

to education enrichment program and diesel mechanics program.

### 22-13-23. Repealed.

**Repeals.** — Laws 1979, ch. 54, § 1, repealed 22-13-23 NMSA 1978, enacted by Laws 1969, ch. 180, § 33, relating

to education enrichment program and diesel mechanics program.

### 22-13-24. Repealed.

**Repeals.** — Laws 1979, ch. 54, § 1, repealed 22-13-24 NMSA 1978, enacted by Laws 1972, ch. 29, § 1, relating

to education enrichment program and diesel mechanics program.

### 22-13-25. Academic competitions.

Each public school in each conference shall provide academic competitions similar to its athletic competitions. A student who participates in an academic competition shall qualify for an academic letter in the subject in which he competes. Academic competitions between schools shall be governed by the New Mexico activities association.

**History:** Laws 2001, ch. 70, § 1.

## 22-13-26. Youth programs established.

The children, youth and families department, the state department of public education [public education department], the department of health, the human services department and the labor department shall each contract for programs, subject to appropriations provided for that purpose, funded through a public-private partnership, for community-based after-school and other prevention programs and services for youth. Each department shall ensure, prior to contracting for services, that private matching funding is available and committed for the purpose of the contract.

**History:** Laws 2003, ch. 161, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed

references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

## 22-13-27. Recompiled.

**Recompilations.** — Laws 2007, ch. 292, § 11 and Laws 2007, ch. 293, § 11, recompiled former 22-13-27 NMSA 1978 as 22-30-7 NMSA 1978, effective June 15, 2007.

## 22-13-28. Repealed.

**Repeals.** — Laws 2019, ch. 206, § 27 and Laws 2019, ch. 207, § 27 repealed 22-13-28 NMSA 1978, as enacted by Laws 2007, ch. 12, § 1, relating to K-3 plus; eligibility,

application, reporting and evaluation, effective June 14, 2019. For provisions of former section, see the 2018 NMSA 1978 on *NMOneSource.com*.

### 22-13-28.1. Repealed.

**History:** Laws 2012, ch. 21, § 2; repealed by Laws 2019, ch. 206, § 28 and Laws 2019, ch. 207, § 28.

**Repeals.** — Laws 2019, ch. 206, § 28 and Laws 2019, ch. 207, § 28 repealed 22-13-28.1 NMSA 1978, as enacted by

Laws 2012, ch. 21, § 2, relating to K-3 plus fund, creation, administration, appropriation, effective July 1, 2020. For provisions of former section, see the 2019 NMSA 1978 on *NMOneSource.com*.

### 22-13-28.2. Repealed.

**Repeals.** — Laws 2019, ch. 206, § 27 and Laws 2019, ch. 207, § 27 repealed 22-13-28.2 NMSA 1978, as enacted by Laws 2016, ch. 62, § 1, relating to K-5 plus pilot project,

purpose, eligibility, application, reporting and evaluation, effective June 14, 2019. For provisions of former section, see the 2018 NMSA 1978 on *NMOneSource.com*.

## 22-13-29. Middle and high school literacy initiative.

A. School districts and charter schools may create comprehensive, coordinated middle and high school literacy initiatives to provide scientifically based literacy programs to improve the reading and writing proficiency of students in grades six through twelve.

B. The design of a middle and high school literacy initiative shall be based upon scientific research that shows that using the methods and materials proposed is effective in improving reading proficiency beyond the primary grades and shall include, at a minimum:

- (1) instruction in nonfiction writing;
- (2) ongoing teacher and school administrator professional development equal to that which was validated in the supporting research;
- (3) use of student assessment data to guide and individualize instruction; and
- (4) a rigorous and thorough evaluation component.

C. A middle and high school literacy initiative shall also incorporate some or all of the following elements:

- (1) direct, explicit comprehension instruction;



- (2) teacher teams, including language arts and content area instructors who implement mutually reinforcing practices;
- (3) strategies to encourage motivation and self-directed learning;
- (4) text-based collaborative learning by groups of students;
- (5) strategic tutoring;
- (6) diverse texts;
- (7) a technology component; and
- (8) extended time for literacy.

D. School districts and charter schools that meet department eligibility requirements may apply to the department for awards from the public school reading proficiency fund for support for their middle and high school literacy initiatives. Applications shall be in a form prescribed by the department.

**History:** Laws 2007, ch. 307, § 10 and Laws 2007, ch. 308, § 10.

**Compiler's notes.** — Laws 2007, ch. 307, § 10 and Laws 2007, ch. 308, § 10 enacted identical sections, effective July 1, 2007.

### **22-13-30. Vision screening.**

A school nurse or the nurse's designee, a primary care health provider or a lay eye screener shall administer a vision screening test for students enrolled in the school in pre-kindergarten, kindergarten, first grade and third grade and for transfer and new students in those grades, unless a parent affirmatively prohibits the visual screening.

**History:** Laws 2007, ch. 353, § 2 and Laws 2007, ch. 357, § 2.

**Compiler's notes.** — Laws 2007, ch. 353, § 2 and Laws 2007, ch. 357, § 2, enacted identical new sections, effective January 1, 2008.

### **22-13-31. Brain injury; protocols to be used by coaches for brain injuries received by students in school athletic activities; training of coaches and student athletes; information to be provided to coaches, student athletes and student athletes' parents or guardians; requiring acknowledgment of training and information; nonscholastic youth athletic activity on school district property; brain injury protocol compliance; certification.**

A. A coach shall not allow a student athlete to participate in a school athletic activity on the same day that the student athlete:

- (1) exhibits signs, symptoms or behaviors consistent with a brain injury after a coach, a school official or a student athlete reports, observes or suspects that a student athlete exhibiting these signs, symptoms or behaviors has sustained a brain injury; or
- (2) has been diagnosed with a brain injury.

B. A coach may allow a student athlete who has been prohibited from participating in a school athletic activity pursuant to Subsection A of this section to participate in a school athletic activity no sooner than two hundred forty hours from the hour in which the student athlete received a brain injury and only after the student athlete:

- (1) no longer exhibits any sign, symptom or behavior consistent with a brain injury; and
- (2) receives a written medical release from a licensed health care professional.

C. Each school district shall ensure that each coach participating in school athletic activities and each student athlete in the school district receives training provided pursuant to Paragraph (1) of Subsection D of this section.

D. The New Mexico activities association shall consult with the brain injury advisory council and school districts to promulgate rules to establish:

(1) protocols and content consistent with current medical knowledge for training each coach participating in school athletic activities and each student athlete to:

- (a) understand the nature and risk of brain injury associated with athletic activity;
- (b) recognize signs, symptoms or behaviors consistent with a brain injury when a coach or student athlete suspects or observes that a student athlete has received a brain injury;
- (c) understand the need to alert appropriate medical professionals for urgent diagnosis or treatment; and

- (d) understand the need to follow medical direction for proper medical protocols; and

(2) the nature and content of brain injury training and information forms and educational materials for, and the means of providing these forms and materials to, coaches, student athletes and student athletes' parents or guardians regarding the nature and risk of brain injury resulting from athletic activity, including the risk of continuing or returning to athletic activity after a brain injury.

E. At the beginning of each academic year or the first participation in school athletic activities by a student athlete during an academic year, a school district shall provide a brain injury training and information form created pursuant to Subsection D of this section to a student athlete and the student athlete's parent or guardian. The school district shall receive signatures on the brain injury training and information form from the student athlete and the student athlete's parent or guardian confirming that the student athlete has received the brain injury training required by this section and that the student athlete and parent or guardian understand the brain injury information before permitting the student athlete to begin or continue participating in school athletic activities for that academic year. The form required by this subsection may be contained on the student athlete sport physical form.

F. As a condition of permitting nonscholastic youth athletic activity to take place on school district property, the superintendent of a school district shall require the person offering the nonscholastic youth athletic activity to sign a certification that the nonscholastic youth athletic activity will follow the brain injury protocols established pursuant to Section 22-13-31.1 NMSA 1978.

G. As used in this section:

(1) "academic year" means any consecutive period of two semesters, three quarters or other comparable units commencing with the fall term each year;

(2) "brain injury" means a body-altering physical trauma to the brain, skull or neck caused by, but not limited to, blunt or penetrating force, concussion, diffuse axonal injury, hypoxia-anoxia or electrical charge;

(3) "licensed health care professional" means:

(a) a practicing physician or physician assistant licensed pursuant to the Medical Practice Act;

(b) a practicing osteopathic physician licensed pursuant to the Medical Practice Act [Chapter 61, Article 6 NMSA 1978];

(c) a practicing certified nurse practitioner licensed pursuant to the Nursing Practice Act [Chapter 61, Article 3 NMSA 1978];

(d) a practicing osteopathic physician assistant licensed pursuant to the Medical Practice Act;

(e) a practicing psychologist licensed pursuant to the provisions of the Professional Psychologist Act [Chapter 61, Article 9 NMSA 1978];

(f) a practicing athletic trainer licensed pursuant to the provisions of the Athletic Trainer Practice Act [Chapter 61, Article 14D NMSA 1978]; or

(g) a practicing physical therapist licensed pursuant to the Physical Therapy Act [61-12D-1 to 61-12D-19 NMSA 1978];

(4) "nonscholastic youth athletic activity" means an organized athletic activity in which the participants, a majority of whom are under nineteen years of age, are engaged in an athletic game or competition against another team, club or entity, or in practice or preparation for an organized athletic game or competition against another team, club or entity. "Nonscholastic youth athletic activity" does not include an elementary school, middle school, high school, college or university activity or an activity that is incidental to a nonathletic program;



(5) "school athletic activity" means a sanctioned middle school, junior high school or senior high school function that the New Mexico activities association regulates; and

(6) "student athlete" means a middle school, junior high school or senior high school student who engages in, is eligible to engage in or seeks to engage in a school athletic activity.

**History:** Laws 2010, ch. 96 § 1; 2016, ch. 53, § 1; 2017, ch. 69, § 1; 2021, ch. 54, § 6.

**The 2021 amendment**, effective June 18, 2021, removed osteopathic physicians and practicing osteopathic physician assistants licensed pursuant to the Osteopathic Medicine Act from the definition of "licensed health care professional", and added osteopathic physicians and practicing osteopathic physician assistants licensed pursuant to the Medical Practice Act to the definition of "licensed health care professional"; and in Subsection G, changed "Osteopathic Medicine" to "Medical Practice" throughout.

**The 2017 amendment**, effective July 1, 2017, required brain injury training for student athletes, and required acknowledgment of training and information by the student athlete; in the catchline, added "and student athletes", and added "requiring acknowledgment of training and information"; in Subsection C, after "school athletic activities", added "and each student athlete"; in Subsection D, Paragraph D(1), in the introductory clause, after "school athletic activities", added "and each student athlete", in Subparagraph D(1)(b), after "coach", added "or student athlete", in Paragraph D(2), after the first occurrence of "brain injury", added "training and"; in Subsection E, after "academic year or", added "the first", after "school athletic activities", added "by a student athlete during an academic year", after the first occurrence of "brain injury", added "training and", after "athlete's parent or guardian", added "confirming that the student athlete has received

the brain injury training required by this section and that the student athlete and parent or guardian understand the brain injury information", and added the last sentence of the subsection; in Subsection F, changed "2 of this 2016 act" to "22-13-31.1 NMSA 1978"; and in Subsection G, Subparagraph G(3)(b), after "licensed pursuant to", deleted "Chapter 61, Article 10 NMSA 1978" and added "the Osteopathic Medicine Act", and in Subparagraph G(3)(d), after "Osteopathic", deleted "Physicians' Assistants" and added "Medicine".

**The 2016 amendment**, effective May 18, 2016, extended the time out of commission for student athletes who have suffered a possible brain injury, and established a brain injury protocol compliance certification for nonscholastic youth athletic activities taking place on school district property; in the catchline, added "nonscholastic youth athletic activity on school district property; brain injury protocol compliance; certification"; in Subsection B, in the introductory sentence, after "activity no sooner than", deleted "one week after" and added "two hundred forty hours from the hour in which", in Paragraph (2), after "receives a", added "written"; added new Subsection F and redesignated former Subsection F as Subsection G; in Subsection G, added new Paragraphs (3) and (4) and redesignated former Paragraphs (3) and (4) as Paragraphs (5) and (6), respectively, deleted former Paragraph (5), and in Paragraph (6), after "school athletic activity", deleted "and".

## **22-13-31.1. Brain injury; protocols; training of coaches; brain injury education.**

A. A coach shall not allow a youth athlete to participate in a youth athletic activity on the same day that the youth athlete:

(1) exhibits signs, symptoms or behaviors consistent with a brain injury after a coach, a league official or a youth athlete reports, observes or suspects that a youth athlete exhibiting these signs, symptoms or behaviors has sustained a brain injury; or

(2) has been diagnosed with a brain injury.

B. A coach may allow a youth athlete who has been prohibited from participating in a youth athletic activity pursuant to Subsection A of this section to participate in a youth athletic activity no sooner than two hundred forty hours from the hour in which the youth athlete received a brain injury and only after the youth athlete:

(1) no longer exhibits any sign, symptom or behavior consistent with a brain injury; and

(2) receives a written medical release from a licensed health care professional.

C. Each youth athletic league shall ensure that each coach participating in youth athletic activities and each youth athlete in the league receives training provided pursuant to Paragraph (1) of Subsection D of this section.

D. The department of health shall consult with the brain injury advisory council to promulgate rules to establish:

(1) protocols and content consistent with current medical knowledge for training each coach participating in youth athletic activities and each youth athlete to:

(a) understand the nature and risk of brain injury associated with youth athletic activity;

(b) recognize signs, symptoms or behaviors consistent with a brain injury when a coach or youth athlete suspects or observes that a youth athlete has received a brain injury;

(c) understand the need to alert appropriate medical professionals for urgent diagnosis or treatment; and

(d) understand the need to follow medical direction for proper medical protocols; and

(2) the nature and content of brain injury training and information forms and educational materials for, and the means of providing these forms and materials to, coaches, youth athletes and youth athletes' parents or guardians regarding the nature and risk of brain injury resulting from youth athletic activity, including the risk of continuing or returning to youth athletic activity after a brain injury.

E. At the beginning of each youth athletic activity season or the first participation in youth athletic activities by a youth athlete during a youth athletic activity season, a youth athletic league shall provide a brain injury training and information form created pursuant to Subsection D of this section to a youth athlete and the youth athlete's parent or guardian. The youth athletic league shall receive signatures on the brain injury training and information form from the youth athlete and the youth athlete's parent or guardian confirming that the youth athlete has received the brain injury training required by this section and that the youth athlete and parent or guardian understand the brain injury information before permitting the youth athlete to begin or continue participating in youth athletic activities for the athletic season or term of participation.

F. As used in this section:

(1) "brain injury" means a body-altering physical trauma to the brain, skull or neck caused by blunt or penetrating force, concussion, diffuse axonal injury, hypoxia-anoxia or electrical charge;

(2) "licensed health care professional" means:

(a) a practicing physician or physician assistant licensed pursuant to the Medical Practice Act [Chapter 61, Article 6 NMSA 1978];

(b) a practicing osteopathic physician licensed pursuant to the Medical Practice Act;

(c) a practicing certified nurse practitioner licensed pursuant to the Nursing Practice Act [Chapter 61, Article 3 NMSA 1978];

(d) a practicing osteopathic physician assistant licensed pursuant to the Medical Practice Act;

(e) a practicing psychologist licensed pursuant to the provisions of the Professional Psychologist Act [Chapter 61, Article 9 NMSA 1978];

(f) a practicing athletic trainer licensed pursuant to the provisions of the Athletic Trainer Practice Act [Chapter 61, Article 14D NMSA 1978]; or

(g) a practicing physical therapist licensed pursuant to the provisions of the Physical Therapy Act [61-12D-1 to 61-12D-19 NMSA 1978];

(3) "youth athlete" means an individual under nineteen years of age who engages in, is eligible to engage in or seeks to engage in a youth athletic activity; and

(4) "youth athletic activity" means an organized athletic activity in which the participants, a majority of whom are under nineteen years of age, are engaged in an athletic game or competition against another team, club or entity, or in practice or preparation for an organized athletic game or competition against another team, club or entity. "Youth athletic activity" does not include an elementary school, middle school, high school, college or university activity or an activity that is incidental to a nonathletic program.

**History:** Laws 2016, ch. 53, § 2; 2017, ch. 69, § 2; 2021, ch. 54, § 7.

**Compiler's notes.** — Laws 2016, ch. 53, § 2 was not enacted as part of the Public School Code, but was compiled there for the convenience of the user.

**The 2021 amendment**, effective June 18, 2021, removed osteopathic physicians and practicing osteopathic physician assistants licensed pursuant to the Osteopathic Medicine Act from the definition of "licensed health care professional", and added osteopathic physicians and practicing osteopathic physician assistants licensed pursuant to the Medical Practice Act to the definition of "licensed health care professional"; and in Subsection F, changed "Osteopathic Medicine" to "Medical Practice" throughout.

**The 2017 amendment**, effective July 1, 2017, required brain injury training for youth athletes participating in youth athletic activities, and required acknowledgment of training and information by the youth athlete; in Subsection C, after "youth athletic activities", added "and each youth athlete in the league"; in Subsection D, Paragraph D(1), after "youth athletic activities", added "and each youth athlete", in Subparagraph D(1)(b), after "coach", added "or youth athlete", in Paragraph D(2), after the first occurrence of "brain injury", added "training and"; in Subsection E, after "beginning of each", added "youth", after the next occurrence of "athletic", added "activity", after "season or", added "the first", after "youth athletic activities", added "by a youth athlete during a



youth athletic activity season", after the first occurrence of "brain injury", added "training and", after the second occurrence of "brain injury", added "training and", and after "youth athlete's parent or guardian", added "confirming that the youth athlete has received the brain injury training required by this section and that the youth athlete and parent or guardian understand the brain injury

information"; and in Subsection F, Subparagraph F(2)(b), after "pursuant to", deleted "Chapter 61, Article 10 NMSA 1978" and added "the Osteopathic Medicine Act", in Subparagraph F(2)(d), after "Osteopathic", deleted "Physicians' Assistants" and added "Medicine", and in Paragraph F(3), after "engage in a", deleted "community" and added "youth".

## **22-13-32. Intervention for students displaying characteristics of dyslexia.**

A. Within the course of the 2019-2020 and 2020-2021 school years and in each subsequent school year, all first grade students shall be screened for dyslexia.

B. A student whose dyslexia screening demonstrates characteristics of dyslexia and who is having difficulty learning to read, write, spell, understand spoken language or express thoughts clearly shall receive appropriate classroom interventions or be referred to a student assistance team.

C. In accordance with department response to intervention procedures, guidelines and policies, each school district or charter school shall provide timely, appropriate, systematic, scientific, evidence-based interventions prescribed by the student assistance team, with progress monitoring to determine the student's response or lack of response.

D. A parent of a student referred to a student assistance team shall be informed of the parent's right to request an initial special education evaluation at any time during the school district's or charter school's implementation of the interventions prescribed by the student assistance team. If the school district or charter school agrees that the student may have a disability, the student assistance team shall refer the child for an evaluation. The student shall be evaluated within sixty days of receiving the parental consent for an initial evaluation. If the school district or charter school refuses the parent's request for an initial evaluation, the school district or charter school shall provide written notice of the refusal to the parent, including notice of the parent's right to challenge the school district's or charter school's decision as provided in state and federal law and rules.

E. Within the course of the 2019-2020 and 2020-2021 school years, every school district and charter school shall develop and implement a literacy professional development plan that includes a detailed framework for structured literacy training by a licensed and accredited or credentialed teacher preparation provider for all elementary school teachers and for training in evidence-based reading intervention for reading interventionists and special education teachers working with students demonstrating characteristics of dyslexia or diagnosed with dyslexia. The plan shall continue to be implemented each school year and may be updated as necessary. The department shall provide lists of recommended teacher professional development materials and opportunities for teachers and school administrators regarding evidence-based reading instruction for students at risk for reading failure and displaying the characteristics of dyslexia.

F. School districts and charter schools shall train school administrators and teachers who teach reading to implement appropriate evidence-based reading interventions. School districts and charter schools shall train special education teachers to provide structured literacy training for students who are identified with dyslexia as a specific learning disability and who are eligible for special education services.

G. The department shall provide technical assistance for special education diagnosticians and other special education professionals regarding the formal special education evaluation of students suspected of having a specific learning disability, such as dyslexia.

H. The department shall adopt rules, standards and guidelines necessary to implement this section.

**History: Laws 2010, ch. 59, § 2; 2019, ch. 256, § 2.**

**The 2019 amendment**, effective June 14, 2019, required early screening and intervention for students displaying characteristics of dyslexia, and required school districts to develop and implement a literacy professional development plan to assist elementary school teachers and teachers working with students demonstrating

characteristics of dyslexia or diagnosed with dyslexia; added new Subsection A and redesignated former Subsections A through G as Subsections B through H, respectively; in Subsection B, after "student," deleted "who, despite effective classroom instruction in general education as provided by department standards" and added "whose dyslexia screening", and after "clearly shall",

added "receive appropriate classroom interventions or"; in Subsection C, after "scientific," deleted "research-based" and added "evidence-based", and after "lack of response", deleted "for a student in the secondary tier of response to intervention who meets the criteria in Subsection A of this section prior to referring the student for a special education evaluation."; in Subsection E, after the subsection designation, added "Within the course of the 2019-2020 and 2020-2021 school years, every school district and charter school shall develop and implement a literacy professional development plan that includes a detailed framework for structured literacy training by a licensed and accredited or credentialed teacher preparation provider for all elementary school teachers and for training in evidence-based reading intervention for reading interventionists and special education teachers working with students demonstrating characteristics of dyslexia or diagnosed with dyslexia. The plan shall continue to be implemented each school year and may be updated as necessary", and after "regarding", deleted "research-based"

and added "evidence-based"; and in Subsection F, after "implement appropriate", deleted "research-based" and added "evidence-based", after "reading interventions", deleted "prior to referring the student for a special education evaluation", and after "provide", deleted "appropriate specialized reading instruction" and added "structured literacy training".

**Contingent effective dates.** — Laws 2019, ch. 256, § 3 provided that the provisions of Laws 2019, ch. 256 shall become effective upon Senate Bill 536, House Bill 548 or similar legislation of the first session of the fifty-fourth legislature becoming law that contains an appropriation for early screening and intervention for students displaying characteristics of dyslexia. Laws 2019, ch. 278 (Senate Bill 536), effective June 14, 2019, was signed by the governor. Laws 2019, ch. 278, § 26(A)(2) provided, "(2) three hundred fifty-seven thousand dollars (\$357,000) for a short dyslexia screening for first grade students and for a dyslexia professional development plan that provides dyslexia training for teachers".

## **22-13-33. Appointing a point of contact person for certain students.**

### **A. As used in this section:**

(1) "foster care" means twenty-four-hour substitute care for a student placed away from the student's parents or guardians and for whom the children, youth and families department has placement and care responsibility, including placements in foster family homes, foster homes of relatives, group homes, emergency shelters, treatment foster homes, residential facilities, child care institutions and preadoptive homes. For the purposes of this section, a student is in foster care regardless of whether the foster care facility is licensed and payments are made by the state, tribal or local agency for the care of the student, whether adoption subsidy payments are being made prior to the finalization of an adoption or whether there is federal matching of any payments that are made; and

(2) "involved in the juvenile justice system" means a student who has been referred to the children, youth and families department due to allegations that the student has committed a delinquent offense and voluntary or involuntary conditions have been imposed on the student, including a student who is participating in a diversion program, is under a consent decree or time waiver, is currently supervised by the children, youth and families department, has recently entered or left a juvenile or criminal justice placement or is on supervised release or parole.

**B.** Each school district and charter school authorized by the department shall designate an individual to serve as a point of contact for students in foster care and students involved in the juvenile justice system. Charter schools authorized by school districts shall use the district's point of contact. Multiple school districts or charter schools authorized by the department may share a single designated point of contact with approval from the department and from the children, youth and families department.

**C.** For students transferring into the school district or charter school authorized by the department, the point of contact person shall be responsible for:

(1) ensuring that a student is immediately enrolled regardless of whether the records normally required for enrollment are produced by the last school the student attended or by the student;

(2) ensuring that the enrolling school communicates with the last school attended by a transferring student to obtain relevant academic and other records within two business days of the student's enrollment;

(3) ensuring that the enrolling school performs a timely transfer of credits that the student earned in the last school attended; and

(4) collaborating with the education program staff in a juvenile or criminal justice placement and the educational decision maker appointed by the children's court to create and implement a plan for assisting the transition of a student to the school district or charter school authorized by the department to minimize disruption to the student's education.



D. For students transferring out of the school district or charter school authorized by the department, the point of contact person shall be responsible for providing all records to the new school within two business days of receiving a request from the receiving school.

E. For students in foster care, the point of contact person shall be responsible for:

(1) complying with state policies and developing school district or charter school policies in collaboration with the children, youth and families department for:

(a) best interest determinations about whether the student will remain in the school of origin;

(b) transportation policies to ensure that students receive transportation to their school of origin if it is in their best interest to remain in the school of origin; and

(c) dispute resolution;

(2) convening or participating in best interest determination meetings in collaboration with the children, youth and families department pursuant to state policies and the school district's or charter school authorized by the department's policies; and

(3) ensuring that transportation occurs to the student's school of origin pursuant to the school district's or charter school authorized by the department's policies and in compliance with state policies.

F. For students in foster care and students involved in the juvenile justice system, the point of contact person shall be responsible for:

(1) ensuring that a student has equal opportunity to participate in sports and other extracurricular activities, career and technical programs or other special programs for which the student qualifies;

(2) ensuring that a student in high school receives timely and ongoing assistance and advice from counselors to improve the student's college and career readiness;

(3) ensuring that a student receives all special education services and accommodations to which the student is entitled under state and federal law;

(4) identifying school staff at each school site who can ensure that students are appropriately supported throughout their enrollment;

(5) supporting communication among the school; the children, youth and families department; the student; the student's educational decision maker appointed by the children's court; caregivers; and other supportive individuals that the student identifies to ensure that the responsibilities listed in this subsection are implemented; and

(6) ensuring that other school staff and teachers have access to training and resources about the educational challenges and needs of system-involved youth, including trauma-informed practices and the impact of trauma on learning.

G. The children, youth and families department shall notify a school when a student in the school enters foster care or a student in foster care enrolls in a school.

H. The student or the student's educational decision maker may notify a school that the student is involved in the juvenile justice system to obtain support and services from the point of contact.

**History:** Laws 2017, ch. 64, § 1.

**Effective dates.** — Laws 2017, ch. 64 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

## 22-13-34. Purple star public schools program.

A. The department shall develop a "purple star public schools program" that provides a mechanism for public schools to ease the transition of students of military families into new schools by providing academic, social and emotional support to those students or, for public schools not located near a military installation, those schools that want to recognize and celebrate military service and the accomplishments of active military and veterans.

B. A public school that has students from active-duty military families may apply to the department to be a purple star public school by:

- (1) designating school staff as a point of contact for military-related students and their families and for the military;
- (2) providing professional development for point-of-contact staff;
- (3) including a page on its school website that features resources and information for military families;
- (4) describing the academic, social and emotional supports available to assist transitioning military students; and
- (5) submitting a resolution to the local school board supporting military students and the public school's application to become a purple star public school.

C. A public school that does not have students from active-duty military families may apply to be a purple star public school by:

- (1) emphasizing the importance and honor of military service;
- (2) recognizing the service to the country and accomplishments of veterans, active-duty and reserve military and the national guard in their communities;
- (3) sponsoring special events recognizing military service;
- (4) celebrating students who have committed to serving in the military; and
- (5) submitting a resolution to the local school board supporting students of military families and the public school's application to become a purple star public school.

**History:** Laws 2021, ch. 75, § 1.

**Effective dates.** — Laws 2021, ch. 75 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

## ARTICLE 13A

### Incentives for School Improvement

(Repealed by Laws 2003, ch. 153, § 73.)

**Compiler's notes.** — Laws 2003, ch. 143, § 2, effective July 1, 2004, and contingent upon adoption of an amendment to N.M. Const., art. XII, § 6, repealed Articles 1, 2, 13, 13A and 15 of Chapter 22 NMSA 1978. The amendment to

art. XII, § 6 was adopted at the special election held September 23, 2003. Laws 2003, ch. 153, § 73, repealed Article 13A, effective April 4, 2003.

#### 22-13A-1. Repealed.

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-13A-1 NMSA 1978, as enacted by Laws 1989, ch. 137, § 1, relating to the short title, effective April 4, 2003. For

provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*.

#### 22-13A-2. Repealed.

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-13A-2 NMSA 1978, as enacted by Laws 1989, ch. 137, § 2, relating to the purpose of the Incentives for School

Improvement Act, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*.

#### 22-13A-3. Repealed.

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-13A-3 NMSA 1978, as enacted by Laws 1989, ch. 137, § 3, relating to defining terms used in the Incentives for School

Improvement Act, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*.

#### 22-13A-4. Repealed.

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-13A-4 NMSA 1978, as enacted by Laws 1989, ch. 137, § 4, relating to the creation and administration of the incentives

for school improvement program, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*.



**22-13A-5. Repealed.**

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-13A-5 NMSA 1978, as enacted by Laws 1989, ch. 137, § 5, relating to the measurement criteria for the incentives for

school improvement program, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*.

**22-13A-6. Repealed.**

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-13A-6 NMSA 1978, as enacted by Laws 1989, ch. 137, § 6, relating to the creation of the incentives for school

improvement fund, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*.

**ARTICLE 13B****Twenty-First Century Education**

(Repealed by Laws 1993, ch. 286, § 1.)

**22-13B-1. Repealed.**

**Repeals.** — Laws 1990 (1st S.S.), ch. 9, § 13 repealed 22-13B-1 NMSA 1978, as enacted by Laws 1990 (1st S.S.), ch. 9, § 1, relating to the short title of the Twenty-First

Century Education Act, effective July 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

**22-13B-2. Repealed.**

**Repeals.** — Laws 1990 (1st S.S.), ch. 9, § 13 repealed 22-13B-2 NMSA 1978, as enacted by Laws 1990 (1st S.S.), ch. 9, § 2, relating to the purpose of the act, effective

July 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

**22-13B-3. Repealed.**

**Repeals.** — Laws 1990 (1st S.S.), ch. 9, § 13 repealed 22-13B-3 NMSA 1978, as enacted by Laws 1990 (1st S.S.), ch. 9, § 3, relating to definitions, effective July 1, 1998. For

provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

**22-13B-4. Repealed.**

**Repeals.** — Laws 1990 (1st S.S.), ch. 9, § 13 repealed 22-13B-4 NMSA 1978, as enacted by Laws 1990 (1st S.S.), ch. 9, § 4, relating to creation and membership of commission,

effective July 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

**22-13B-5. Repealed.**

**Repeals.** — Laws 1990 (1st S.S.), ch. 9, § 13 repealed 22-13B-5 NMSA 1978, as enacted by Laws 1990 (1st S.S.), ch. 9, § 5, relating to purpose and duty of commission,

effective July 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

**22-13B-6. Repealed.**

**Repeals.** — Laws 1990 (1st S.S.), ch. 9, § 13 repealed 22-13B-6 NMSA 1978, as enacted by Laws 1990 (1st S.S.), ch. 9, § 6, relating to administration, effective July 1, 1998.

For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

**22-13B-7. Repealed.**

**Repeals.** — Laws 1990 (1st S.S.), ch. 9, § 13 repealed 22-13B-7 NMSA 1978, as enacted by Laws 1990 (1st S.S.), ch. 9, § 7, relating to the twenty-first century education

fund, effective July 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

## 22-13B-8. Repealed.

**Repeals.** — Laws 1990 (1st S.S.), ch. 9, § 13 repealed 22-13B-8 NMSA 1978, as enacted by Laws 1990 (1st S.S.), ch. 9, § 8, relating to board regulations, effective July 1,

1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

## 22-13B-9. Repealed.

**Repeals.** — Laws 1990 (1st S.S.), ch. 9, § 13 repealed 22-13B-9 NMSA 1978, as enacted by Laws 1990 (1st S.S.), ch. 9, § 9, relating to program applications,

evaluations and monitoring, effective July 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

# ARTICLE 13C

## Hunger-Free Students' Bill of Rights

Sec.

22-13C-1. Short title.

22-13C-2. Definitions.

22-13C-3. Meal application availability and clarity.

22-13C-4. Requirement to provide meals and ensure that eligible students are enrolled.

22-13C-5. Anti-stigmatization and antidiscrimination practices.

Sec.

22-13C-6. Debt collection practices; uncollectable debt.

22-13C-7. Applicability.

22-13C-8. School meals; reduced-price copayments eliminated.

## 22-13C-1. Short title.

This act [22-13C-1 through 22-13C-7 NMSA 1978] may be cited as the "Hunger-Free Students' Bill of Rights Act".

**History:** Laws 2017, ch. 117, § 1.

**Effective dates.** — Laws 2017, ch. 117 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

## 22-13C-2. Definitions.

As used in the Hunger-Free Students' Bill of Rights Act:

A. "meal application" means an application for free or reduced-fee meals pursuant to the national school lunch program and school breakfast program; and

B. "school" means a public school district, a public school, a private school or a religious school.

**History:** Laws 2017, ch. 117, § 2.

**Effective dates.** — Laws 2017, ch. 117 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

## 22-13C-3. Meal application availability and clarity.

A. A school shall provide:

(1) a free, printed meal application in every school enrollment packet, or if the school chooses to use an electronic meal application, provide in school enrollment packets an explanation of the electronic meal application process and instructions for how parents or guardians may request a paper application at no cost; and

(2) meal applications and instructions in a language that parents and guardians understand. If a parent or guardian cannot read or understand a meal application, the school shall offer assistance in completing the application.



B. If a school becomes aware that a student who has not submitted a meal application is eligible for free or reduced-fee meals, the school shall complete and file an application for the student under the authority granted by Title 7, Section 245.6(d) of the Code of Federal Regulations.

C. Subsections A and B of this section do not apply to a school that provides free meals to all students in a year in which the school does not collect meal applications from students.

D. The liaison required of a school pursuant to the federal McKinney-Vento Homeless Assistance Act shall coordinate with the nutrition department to make sure that a homeless student receives free school meals and shall be appropriately coded and entered in the student-teacher accountability reporting system. The requirements of this subsection do not apply to a private or religious school.

**History:** Laws 2017, ch. 117, § 3.

**Effective dates.** — Laws 2017, ch. 117 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

## **22-13C-4. Requirement to provide meals and ensure that eligible students are enrolled.**

A. Regardless of whether or not a student has money to pay for a meal or owes money for earlier meals, a school:

(1) shall provide a United States department of agriculture reimbursable meal to a student who requests one, unless the student's parent or guardian has specifically provided written permission to the school to withhold a meal; and

(2) shall not require that a student throw away a meal after it has been served because of the student's inability to pay for the meal or because money is owed for earlier meals.

B. If a student owes money for five or more meals, a school shall:

(1) check the state list of students categorically eligible for free meals to determine if the student is categorically eligible;

(2) make at least two attempts, not including the application or instructions included in a school enrollment packet, to reach the student's parent or guardian and have the parent or guardian fill out a meal application; and

(3) require a principal, assistant principal or counselor to contact the parent or guardian to offer assistance with a meal application, determine if there are other issues within the household that have caused the child to have insufficient funds to purchase a school meal and offer any other assistance that is appropriate.

**History:** Laws 2017, ch. 117, § 4.

**Effective dates.** — Laws 2017, ch. 117 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

## **22-13C-5. Anti-stigmatization and antidiscrimination practices.**

A. A school shall not:

(1) publicly identify or stigmatize a student who cannot pay for a meal or who owes a meal debt by, for example, requiring that a student wear a wristband or hand stamp; or

(2) require a student who cannot pay for a meal or who owes a meal debt to do chores or other work to pay for meals; provided that chores or work required of all students regardless of a meal debt is permitted.

B. A school shall direct communications about a student's meal debt to a parent or guardian and not the student. Nothing in this subsection prohibits a school from sending a student home with a letter addressed to a parent or guardian.

**History:** Laws 2017, ch. 117, § 5.

**Effective dates.** — Laws 2017, ch. 117 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

## 22-13C-6. Debt collection practices; uncollectable debt.

A school shall not require a parent or guardian to pay fees or costs from collection agencies hired to collect a meal debt.

**History:** Laws 2017, ch. 117, § 6.

**Effective dates.** — Laws 2017, ch. 117 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

## 22-13C-7. Applicability.

The Hunger-Free Students' Bill of Rights Act applies to a public school district, a public school, a private school or a religious school that participates in the national school lunch program or school breakfast program.

**History:** Laws 2017, ch. 117, § 7.

**Effective dates.** — Laws 2017, ch. 117 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

## 22-13C-8. School meals; reduced-price copayments eliminated.

A. As used in this section:

(1) "reduced-price copayment" means the amount a reduced-price-eligible student would be charged for a reduced-price meal; and

(2) "reduced-price-eligible student" means a student who meets the federal income eligibility guidelines for family-size income levels for meals at a reduced price pursuant to the national school lunch program and the federal school breakfast program.

B. School districts and charter schools that administer a school breakfast or school lunch program shall not charge a reduced-price-eligible student a reduced-price copayment for meals.

C. The department shall provide funding to each school district and charter school that administers a school breakfast or school lunch program to cover the cost of eliminating reduced-price copayments. Funding shall be based on a per-meal basis at the difference between the federal free meal rate and the reduced-price copayment rate. When calculating the amount due a school district or charter school, the department shall assume that the number of reduced-price-eligible students will remain at the same level as the previous year. If a school district or charter school has not previously had a school breakfast program or school lunch program in which meals were served to reduced-price-eligible students, the department shall work with the school district or charter school to determine an accurate estimate of funding for the program.

D. By August 1 of each year, the department shall inform school districts and charter schools of the amounts the school districts and charter schools will receive to offset the elimination of reduced-price copayments for the upcoming school year. School districts and charter schools are not required to demonstrate their expenses to receive funding pursuant to this section.

E. The department shall promulgate rules necessary to implement the provisions of this section, including procedures for reimbursing school districts and charter schools.

**History:** Laws 2020, ch. 12, § 1.

**Effective dates.** — Laws 2020, ch. 12 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 20, 2020, 90 days after adjournment of the legislature.

**Applicability.** — Laws 2020, ch. 12, § 2 provided that the provisions of Laws 2020, ch. 12, § 1 apply to the 2020–2021 and subsequent school years.



## ARTICLE 13D

### K-5 Plus

Sec. 22-13D-1. Short title.  
22-13D-2. K-5 plus; eligibility; requirements.

Sec. 22-13D-3. K-5 plus; oversight; reporting.  
22-13D-4. K-5 plus; application.

#### 22-13D-1. Short title.

Sections 2 through 5 [22-13D-1 through 22-13D-4 NMSA 1978] of this act may be cited as the "K-5 Plus Act".

**History:** Laws 2019, ch. 206, § 2 and Laws 2019, ch. 207, § 2.

**Duplicate laws.** — Laws 2019, ch. 206, § 2 and Laws 2019, ch. 207, § 2, both effective June 14, 2019, enacted identical new sections. The section is set out as enacted by Laws 2019, ch. 207, § 2. See 12-1-8 NMSA 1978.

**Applicability.** — Laws 2019, ch. 206, § 29 provided that the provisions of Sections 2 through 19 of this act apply to the program cost calculation in fiscal year 2020 and subsequent fiscal years.

#### 22-13D-2. K-5 plus; eligibility; requirements.

A. A school district or charter school may apply to participate in the K-5 plus program and is eligible to receive program units for students enrolled in elementary schools approved by the department to participate in the K-5 plus program. In approving schools for participation in K-5 plus, the department shall prioritize elementary schools:

- (1) in which eighty percent or more of the elementary school's students are eligible for free or reduced-fee lunch;
- (2) that are low-performing elementary schools; and
- (3) that meet criteria established by department rule.

B. Each K-5 plus school shall:

- (1) except as provided in Subsection C of this section, provide no fewer than two hundred five instructional days per school year or twenty-five additional instructional days per school year, whichever requires the addition of the fewest number of instructional days, to all elementary school students enrolled in the elementary school;
- (2) provide a good-faith attempt to keep students with the same teacher and cohort of students during K-5 plus and the regular school year and minimize mid-year transfers to only those transfers that are in the best interest of the student;
- (3) include additional professional development for teachers teaching at a K-5 plus school in how young children learn to read; and
- (4) be considered an extended school calendar for all students in each participating school.

C. An elementary school operating a four-day school week shall provide no fewer than one hundred seventy-five instructional days per school year or twenty additional instructional days per school year, whichever requires the addition of the fewest number of instructional days to all elementary students enrolled in the elementary school.

D. A school district or charter school that qualified for K-5 plus program units in the prior fiscal year shall not be required to add more instructional days to the current school year to qualify for program units in the current school year if the school district or charter school provides the same or more total instructional days and total instructional hours than it provided in the prior school year.

E. An elementary school is ineligible for K-5 plus program units if it fails to meet the requirements of this section.

**History:** Laws 2019, ch. 206, § 3; 2019, ch. 207, § 3; 2021, ch. 134, § 3.

The 2021 amendment, effective June 18, 2021, changed K-5 plus programs to K-5 plus schools, required

K-5 plus schools to add instructional days to the calendar, and provided an exception for certain school districts or charter schools that qualified for K-5 plus program units in the prior fiscal year; in Subsection A, deleted former Paragraph A(3) and redesignated former Paragraph A(4) as Paragraph A(3); in Subsection B, in the introductory clause, changed "program" to "school", in Paragraph B(1), added "except as provided in Subsection C of this section", after "no fewer than", added "two hundred five instructional days per school year or", and after "twenty-five additional instructional days", deleted "prior to the start of the regular school year" and added "per school year, whichever requires the addition of the fewest number of instructional days, to all elementary school students enrolled in the elementary school", in Paragraph B(2), added "provide a good-faith attempt to", after "keep students", deleted "that participate in the K-5 plus program", after

"during", added "K-5 plus and", and after "regular school year", added "and minimize mid-year transfers to only those transfers that are in the best interest of the student", in Paragraph B(3), after "development for", added "teachers teaching at a", and after "K-5 plus", changed "teachers" to "school", and in Paragraph B(4), after "be", deleted "implemented school-wide" and added "considered an extended school calendar for all students in each participating school"; added new Subsections C and D and redesignated former Subsection C as Subsection E; and in Subsection E, after "requirements of", deleted "Subsection B of".

**Applicability.** — Laws 2019, ch. 206, § 29 provided that the provisions of Sections 2 through 19 of this act apply to the program cost calculation in fiscal year 2020 and subsequent fiscal years.

### 22-13D-3. K-5 plus; oversight; reporting.

The department shall:

- A. enforce the provisions of the K-5 Plus Act;
- B. issue rules for the development and implementation of K-5 plus schools;
- C. assist school districts and charter schools in developing and evaluating K-5 plus schools;
- D. develop and disseminate information on best practices in the area of academic success of early learners;
- E. establish reporting and evaluation requirements, including student and program assessments, for K-5 plus schools;
- F. annually report to the legislature and the governor on the efficacy of K-5 plus schools; and
- G. establish a K-5 plus advisory committee composed of representatives of school districts and charter schools that have K-5 plus schools, the legislative education study committee, the legislative finance committee and other stakeholders. The advisory committee shall meet twice a year to advise the department on K-5 plus implementation.

**History:** Laws 2019, ch. 206, § 4; 2019, ch. 207, § 4; 2021, ch. 134, § 4.

The 2021 amendment, effective June 18, 2021, changed K-5 plus programs to K-5 plus schools, and removed a provision related to the evaluation of K-5 plus students participating in K-5 plus; changed "programs" to "schools" throughout; deleted former subsection designation "A" and redesignated former Paragraphs A(1) through A(7) as Subsections A through G, respectively; in

Subsection E, added "K-5 plus" preceding "schools" and after "schools", deleted "participating in the program"; and deleted former Subsection B, which related to the evaluation of certain students participating in K-5 plus.

**Applicability.** — Laws 2019, ch. 206, § 29 provided that the provisions of Sections 2 through 19 of this act apply to the program cost calculation in fiscal year 2020 and subsequent fiscal years.

### 22-13D-4. K-5 plus; application.

A. School districts and charter schools that wish to establish a new K-5 plus school shall apply through their annual educational plans submitted to the department pursuant to the Public School Finance Act [Chapter 22, Article 8 NMSA 1978].

B. For public schools that previously offered a K-5 plus program, each school district and charter school, in lieu of submitting an application in its annual educational plan, shall notify the department of its intent to provide the K-5 plus program and no formal application shall be required.

C. For planning purposes, no later than October 15 of each year, a school district or charter school that wishes to apply for a new K-5 plus school for the next fiscal year shall submit to the department the actual number of students participating in its approved K-5 plus schools in the current year and an estimate of the number of students the school district or charter school expects will participate in each K-5 plus school in the next year. Nothing in this subsection shall be construed to prohibit the department from approving a new K-5 plus school in a school district or charter school that did not submit the information required by this subsection to the department if sufficient funding is available to fund the school.



D. No later than November 15 of each year, the department shall notify the legislature of the number of students participating in K-5 plus schools in the current school year and of the number of students projected to participate in K-5 plus schools in the next school year.

**History:** Laws 2019, ch. 206, § 5; 2019, ch. 207, § 5; 2021, ch. 134, § 5.

The 2021 amendment, effective June 18, 2021, changed K-5 plus programs to K-5 plus schools, dispensed with the formal application process for school districts and charter schools that previously offered a K-5 plus program and plan to continue participating in the program, and authorized the public education department to approve a new K-5 plus school in a school district or charter school that did not submit the required information if sufficient funding is available to fund the school; changed "programs" to "schools" throughout; in Subsection A, after "wish to", deleted "participate in the" and added "establish a new"; added a new Subsection B and redesignated former Subsections B and C as Subsections C and D,

respectively; and in Subsection C, deleted "The department shall not approve a new K-5 plus program unless the school district or charter school notifies the department of its intent to start a new program as required by this section" and added "Nothing in this subsection shall be construed to prohibit the department from approving a new K-5 plus school in a school district or charter school that did not submit the information required by this subsection to the department if sufficient funding is available to fund the school."

**Applicability.** — Laws 2019, ch. 206, § 29 provided that the provisions of Sections 2 through 19 of this act apply to the program cost calculation in fiscal year 2020 and subsequent fiscal years.

## ARTICLE 14

### Vocational Education or Rehabilitation

Sec.

22-14-1. Definitions.

22-14-2. Vocational education; state governing authority.

22-14-2.1. Vocational rehabilitation; state governing authority.

22-14-3. State agency for vocational education; authority.

22-14-3.1. State agency for vocational rehabilitation; authority.

22-14-4. Repealed.

22-14-5. Instructional support and vocational education division; powers; duties.

22-14-6. Repealed.

22-14-7. Vocational rehabilitation division; director.

22-14-8. Vocational rehabilitation division; powers; duties.

22-14-9. Custody of funds; budgets; disbursements.

22-14-10. Recompiled.

22-14-11. Vocational rehabilitation; eligibility.

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22-14-12. Hearings.

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22-14-14. Limitations on political activities.

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22-14-16. Admission to state educational institutions; exemption from certain fees.

Sec.

22-14-17. Repealed.

22-14-18. Repealed.

22-14-19. Repealed.

22-14-20. New Mexico school for the visually handicapped; certain functions transferred.

22-14-21. Products of clients of the commission for the blind; purchasing agent to determine value.

22-14-22. Purchases by state agencies and subdivisions.

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22-14-30. Vocational rehabilitation division; designated agency for federal funds.

22-14-31. Pre-apprenticeship programs.

22-14-32. Licensure not required; background checks; school-sponsored activity and volunteers.

#### 22-14-1. Definitions.

As used in Sections 22-14-2 through 22-14-16 NMSA 1978:

A. "vocational education" means vocational or technical training or retraining conducted as part of a program designed to enable an individual to engage in a remunerative occupation. Vocational education may provide but is not limited to guidance and counseling, vocational instruction, training for vocational education instructors, transportation and training material and equipment;

B. "person with a disability" means a person with a physical or mental disability that constitutes a substantial handicap to employment but that is of such a nature that vocational rehabilitation may be reasonably expected to enable the person to engage in a remunerative occupation;

C. "vocational rehabilitation" means services or training necessary to enable a person with a disability to engage in a remunerative occupation. Vocational rehabilitation may provide but is

not limited to medical or vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training, physical restoration, transportation, occupational licenses, customary occupational tools or equipment, maintenance and training material and equipment; and

D. "federal aid funds" means funds, gifts or grants received by the state under any federal aid for vocational education or vocational rehabilitation.

**History:** 1953 Comp., § 77-12-1, enacted by Laws 1967, ch. 16, § 191; 2007, ch. 46, § 11.

**Cross references.** — For technical and vocational institute districts, *see* 21-16-1 NMSA 1978 et seq.

For development training, *see* 21-19-7 NMSA 1978 et seq.

**The 2007 amendment**, effective June 15, 2007, amended the section to change a 1953 compilation reference and to make other non-substantive language changes.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Physical or mental illness as basis of dismissal of student from school, college, or university, 17 A.L.R.4th 519.

When does change in "educational placement" occur for purposes of § 615(b)(1)(C) of the Education for All Handicapped Children Act of 1975 (20 USCS § 1415(b)(1)(C)), requiring notice to parents prior to such change, 54 A.L.R. Fed. 570.

What constitutes services that must be provided by federally assisted schools under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C.A. § 1400 et seq.), 161 A.L.R. Fed. 1

## 22-14-2. Vocational education; state governing authority.

A. The commission is the governing authority and shall establish policies for the conduct of all programs of the state and state plans established relating to vocational education unless otherwise provided by law.

B. The commission is the sole agency of the state for the administration or for the supervision of the administration of any state plan relating to vocational education or for any federal aid funds, except as may otherwise be provided by law.

C. The commission may delegate to the department its administrative functions relating to vocational education.

**History:** 1953 Comp., § 77-12-2, enacted by Laws 1967, ch. 16, § 192; 2005, ch. 328, § 1.

**Cross references.** — For designation of public education department as the sole educational agency for state for administration or supervision of administration of state plan established for funds received pursuant to federal statutes generally, *see* 22-9-2 NMSA 1978.

For the powers and duties of the public education commission and the public education department, *see* N.M. Const., art. XII, § 6, 9-24-4 and 9-24-9 NMSA 1978.

**The 2005 amendment**, effective June 17, 2005, changed "state board" to "commission" and deleted "vocational rehabilitation" in Subsections A and B; and added Subsection C to provide that the commission may delegate to administrative functions relating to vocational education to the department.

### 22-14-2.1. Vocational rehabilitation; state governing authority.

A. The department is the governing authority and shall establish policies for the conduct of all programs of the state and state plans established relating to vocational rehabilitation, unless otherwise provided by law.

B. The department is the sole agency of the state for the administration or for the supervision of the administration of any state plan relating to vocational rehabilitation, or for any federal aid funds, except as may otherwise be provided by law.

**History:** Laws 2005, ch. 328, § 2.

**Effective dates.** — Laws 2005, ch. 328 contained no effective date provision, but, pursuant to N.M. Const.,

art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 22-14-3. State agency for vocational education; authority.

The commission is the sole agency of the state for the supervision of the administration of federal aid funds relating to vocational education. The commission may:

A. enter into an agreement with the appropriate federal agency to procure for the state the benefits of the federal statute;



- B. establish a state plan, if required by the federal statute, that meets the requirements of the federal statute to qualify the state for the benefits of the federal statute;
- C. provide for reports to be made to the federal agency as may be required;
- D. provide for reports to be made to the commission or the department from agencies receiving federal aid funds;
- E. make surveys and studies in cooperation with other agencies to determine the needs of the state in the areas where the federal aid funds are to be applied;
- F. establish standards to which agencies must conform in receiving federal aid funds;
- G. give technical advice and assistance to any agency in connection with that agency obtaining federal aid funds;
- H. coordinate as required by the federal agency with the state workforce development board; and
- I. as required by the federal agency, make available a list of all school dropout, post-secondary and adult programs assisted pursuant to the state plan.

**History:** 1953 Comp., § 77-12-3, enacted by Laws 1967, ch. 16, § 193; 2005, ch. 328, § 3.

**Cross references.** — For designation of public education department as the sole educational agency for state for administration or supervision of administration of state plan established for funds received pursuant to federal statutes generally, *see* 22-9-2 NMSA 1978.

For the powers and duties of the public education commission and the public education department, *see* N.M. Const., art. XII, § 6, 9-24-4 and 9-24-9 NMSA 1978.

**The 2005 amendment**, effective June 17, 2005, deleted the former provision that the state board was the sole

agency for the administration of federal funds and provided that the commission is the sole agency for the administration of federal funds relating to vocational education; added Subsection H to provide that the commission may coordinate as required by the federal agency with the state workforce development board; and added Subsection I to provide that the commission may as required by the federal agency make available a list of school dropout, post-secondary and adult programs assisted pursuant to the state plan.

### 22-14-3.1. State agency for vocational rehabilitation; authority.

The department is the sole agency of the state for the administration or the supervision of the administration of any federal aid funds pertaining to vocational rehabilitation. The department may:

- A. enter into an agreement with the appropriate federal agency to procure for the state the benefits of the federal statute;
- B. establish a state plan, if required by the federal statute, that meets the requirements of the federal statute to qualify the state for the benefits of the federal statute;
- C. provide for reports to be made to the federal agency as may be required;
- D. provide for reports to be made to the department from agencies receiving federal aid funds;
- E. make surveys and studies in cooperation with other agencies to determine the needs of the state in the areas where the federal aid funds are to be applied;
- F. establish standards to which agencies must conform in receiving federal aid funds; and
- G. give technical advice and assistance to any agency in connection with that agency obtaining federal aid funds.

**History:** Laws 2005, ch. 328, § 4.

**Effective dates.** — Laws 2005, ch. 328 contained no effective date provision, but, pursuant to N.M. Const.,

art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

### 22-14-4. Repealed.

**Repeals.** — Laws 2005, ch. 328, § 9 repealed 22-14-4 NMSA 1978, as enacted by Laws 1967, ch. 16, § 194, relating to the vocational education division, effective June 17,

2005. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*.

### 22-14-5. Instructional support and vocational education division; powers; duties.

Subject to the policies of the commission, the instructional support and vocational education division of the department shall:

- A. provide vocational education to qualified persons;
- B. act as the representative of the commission in administering any state plan or federal aid funds relating to vocational education;
- C. cooperate and make agreements with public or private agencies to establish or to maintain a vocational education program;
- D. enter into reciprocal agreements with other states to provide vocational education;
- E. accept gifts or grants to be used for vocational education;
- F. enforce rules for the administration of laws relating to vocational education; and
- G. conduct research and compile statistics relating to vocational education.

**History:** 1953 Comp., § 77-12-5, enacted by Laws 1967, ch. 16, § 195; 1993, ch. 226, § 30; 2005, ch. 328, § 5.

The 2005 amendment, effective June 17, 2005, changed "state board" to "commission" and the "vocational education division" to the "instructional support and vocational education division".

The 1993 amendment, effective July 1, 1993, inserted "of the department of education" in the introductory paragraph and substituted "enforce" for "adopt" at the beginning of Subsection F.

## 22-14-6. Repealed.

**Repeals.** — Laws 1993, ch. 226, § 54 repealed 22-14-6 NMSA 1978, as enacted by Laws 1971, ch. 324, § 1, transferring the division of the services for the blind of the health and social services department to the vocational

rehabilitation division of the department of education, effective July 1, 1993. For provisions of former section, see the 1992 NMSA 1978 on *NMOneSource.com*.

## 22-14-7. Vocational rehabilitation division; director.

- A. The "vocational rehabilitation division" is created within the department.
- B. The secretary shall appoint a director of the vocational rehabilitation division to be known as the "director of vocational rehabilitation".

**History:** 1953 Comp., § 77-12-6, enacted by Laws 1967, ch. 16, § 196; 2005, ch. 328, § 6.

The 2005 amendment, effective June 17, 2005, deleted the former provision in Subsection B that with the approval of the state board, the state superintendent shall

appoint a director; provided in Subsection B that the secretary shall appoint a director; and deleted former Subsection C, which provided that the state board may delegate to the vocational rehabilitation division its administrative functions relating to vocational rehabilitation.

## 22-14-8. Vocational rehabilitation division; powers; duties.

The vocational rehabilitation division of the public education department shall:

- A. provide vocational rehabilitation to qualified individuals;
- B. administer any state plan or federal aid funds relating to vocational rehabilitation;
- C. cooperate and make agreements with public or private agencies to establish or to maintain a vocational rehabilitation program;
- D. enter into reciprocal agreements with other states to provide vocational rehabilitation;
- E. accept gifts or grants to be used for vocational rehabilitation;
- F. enforce regulations for the administration of laws relating to vocational rehabilitation;
- G. conduct research and compile statistics relating to vocational rehabilitation; and
- H. ensure that behavioral health services, including mental health and substance abuse services, provided, contracted for or approved are in compliance with the requirements of Section 9-7-6.4 NMSA 1978.

**History:** 1953 Comp., § 77-12-7, enacted by Laws 1967, ch. 16, § 197; 1989, ch. 88, § 1; 1993, ch. 226, § 31; 1993, ch. 229, § 2; 2004, ch. 46, § 11.

The 2004 amendment, effective May 19, 2004, added Subsection H and made other minor amendments.

The 1993 amendment, deleted former Subsection H, which read "coordinate programming related to the

transition of persons with disabilities from secondary and post-secondary education programs to employment or vocational placement" and made grammatical changes.

The 1989 amendment, effective June 16, 1989, added Subsection H.



## 22-14-9. Custody of funds; budgets; disbursements.

A. The state treasurer shall be the custodian of all federal aid funds. The state treasurer shall hold these funds in separate accounts according to the purposes of the funds.

B. All state funds, federal aid funds or grants to the state relating to vocational education shall be budgeted and accounted for as provided by law and by the rules of the department of finance and administration. These funds or grants shall be disbursed by warrants of the department of finance and administration on vouchers issued by the director of the instructional support and vocational education division or the director's authorized representative.

C. All state funds, federal aid funds or grants to the state relating to vocational rehabilitation shall be budgeted and accounted for as provided by law and by the rules of the department of finance and administration. These funds or grants shall be disbursed by warrants of the department of finance and administration on vouchers issued by the director of the vocational rehabilitation division or the director's authorized representative.

D. All federal aid funds received by the state to be used for vocational education or vocational rehabilitation programs may be expended in any succeeding year from the year received.

**History:** 1953 Comp., § 77-12-8, enacted by Laws 1967, ch. 16, § 198; 2005, ch. 328, § 7.

**Cross references.** — For provisions relating to custody, budgeting and disbursement of federal aid funds generally, see 22-9-5 NMSA 1978.

**The 2005 amendment,** effective June 17, 2005, changed "vocational education" to "the instructional

support and vocational education division"; provided that warrants may be issued by the director's authorized representative in Subsection B and provided in Subsection C that warrants may be issued by the vocational rehabilitation division or the director's authorized representative.

## 22-14-10. Recompiled.

**Recompilations.** — Laws 1993, ch. 226, § 53B recompiled former 22-14-10 NMSA 1978 as 22-14-30 NMSA 1978, effective July 1, 1993.

## 22-14-11. Vocational rehabilitation; eligibility.

Vocational rehabilitation shall be provided to any person who:

- A. is a resident of the state at the time of filing an application for vocational rehabilitation; and
- B. qualifies for eligibility under a vocational rehabilitation program established by the state; or
- C. qualifies for eligibility under the terms of an agreement that the state has with the federal government or with another state.

**History:** 1953 Comp., § 77-12-9, enacted by Laws 1967, ch. 16, § 199; 2005, ch. 328, § 8.

**The 2005 amendment,** effective June 17, 2005, deleted "vocational education".

### 22-14-11.1. Third party liability.

A. The vocational rehabilitation division shall make reasonable efforts to ascertain any legal liability of third parties who are or may be liable to pay all or part of the cost of rehabilitation services of an applicant or client of vocational rehabilitation.

B. When the division provides vocational rehabilitation services to qualified individuals, the division is subrogated to any right of the individual against a third party for recovery of costs incurred.

**History:** Laws 1983, ch. 60, § 1.

## 22-14-12. Hearings.

A. A fair hearing shall be provided for any individual applying for or receiving vocational rehabilitation aggrieved by any action or inaction of the vocational rehabilitation division or of the director of vocational rehabilitation.

B. The state board [department] shall adopt regulations for the conduct of hearings pursuant to this section.

**History:** 1953 Comp., § 77-12-10, enacted by Laws 1967, ch. 16, § 200; 1983, ch. 60, § 2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the public education department as the sole educational agency of state for administration or supervision of state plan established for funds received pursuant to federal statute relating to school lunch programs, see 22-9-2 NMSA 1978.

### 22-14-13. Nontransferable or nonassignable rights.

The rights of any individual under the provisions of any state law relating to vocational rehabilitation are not transferable or assignable in law or in equity.

**History:** 1953 Comp., § 77-12-11, enacted by Laws 1967, ch. 16, § 201.

### 22-14-14. Limitations on political activities.

No person engaged in administering any vocational education or vocational rehabilitation program pursuant to Sections 22-14-1 through 22-14-16 NMSA 1978 shall use his official authority or influence to permit the use of the vocational education or vocational rehabilitation program to interfere with any public election or partisan political campaign. Nor shall such person take any active part in the management of a political campaign, or participate in any political activity beyond the person's constitutional rights of voting and of free speech. Nor shall he be required to contribute or render service, assistance, subscription, assessment or contribution for any political purpose. Any person violating the provisions of this section shall be subject to discharge or suspension.

**History:** 1953 Comp., § 77-12-12, enacted by Laws 1967, ch. 16, § 202.

### 22-14-15. Repealed.

**Repeals.** — Laws 1983, ch. 60, § 4, repealed 22-14-15 NMSA 1978, as enacted by Laws 1967, ch. 16, § 203,

relating to the cooperation of health officials in the examination of applicants for vocational rehabilitation.

### 22-14-16. Admission to state educational institutions; exemption from certain fees.

Upon written request of the department, all state educational institutions shall accept for admission, without any charge for any fees except tuition charges, a person with a disability meeting the standards of the institution.

**History:** 1953 Comp., § 77-12-14, enacted by Laws 1967, ch. 16, § 204; 2007, ch. 46, § 12.

**Cross references.** — For the transfer of powers and duties of the former state board, see 9-24-1 NMSA 1978.

**The 2007 amendment,** effective June 15, 2007, amended the section to make non-substantive language changes.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Physical or mental illness as basis of dismissal of student from school, college, or university, 17 A.L.R.4th 519.

### 22-14-17. Repealed.

**Repeals.** — Laws 1983, ch. 156, § 3, repealed 22-14-17 NMSA 1978, as enacted by Laws 1976 (S.S.), ch. 30, § 1,

relating to the northern New Mexico rehabilitation center, effective July 1, 1983.



## 22-14-18. Repealed.

**Repeals.** — Laws 1983, ch. 156, § 3, repealed 22-14-18 NMSA 1978, as enacted by Laws 1976 (S.S.), ch. 30, § 2,

relating to the northern New Mexico rehabilitation center, effective July 1, 1983.

## 22-14-19. Repealed.

**Repeals.** — Laws 1983, ch. 156, § 3, repealed 22-14-19 NMSA 1978, as enacted by Laws 1976 (S.S.), ch. 30, § 3,

relating to the northern New Mexico rehabilitation center, effective July 1, 1983.

## 22-14-20. New Mexico school for the visually handicapped; certain functions transferred.

There is transferred to the services for the blind administrative unit of the vocational rehabilitation division of the department of education [public education department] those powers, fiscal responsibilities, duties, records, equipment, lands, buildings and personnel of the New Mexico school for the visually handicapped pertaining to the training, rehabilitating and employing of blind persons over the age of eighteen years in cooperation with any other federal or state agency.

**History:** 1953 Comp., § 73-23-1.2, enacted by Laws 1971, ch. 324, § 5; 1973, ch. 209, § 2; 1978 Comp., § 21-5-3, recompiled as § 22-14-20 by Laws 1983, ch. 60, § 3.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed

references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**Cross references.** — For divisions of the department, see 9-24-14 NMSA 1978.

## 22-14-21. Products of clients of the commission for the blind; purchasing agent to determine value.

It is the duty of the state purchasing agent to determine the fair market value of all products manufactured by clients of the commission for the blind and offered for sale to the state, or any other governmental agency or political subdivision thereof having its own purchasing agency, by the commission for the blind and approved for that use by the state purchasing agent, to revise the prices from time to time in accordance with changing market conditions and to make such rules and regulations regarding specifications, time of delivery and other relevant matters as are necessary to carry out the purpose of Sections 22-14-21 through 22-14-23 NMSA 1978.

**History:** 1941 Comp., § 6-410, enacted by Laws 1953, ch. 163, § 1; 1953 Comp., § 73-23-7; Laws 1977, ch. 159, § 1; 1978 Comp., § 21-5-9, recompiled as § 22-14-21 by Laws 1983, ch. 60, § 3; 1993, ch. 226, § 32.

**Cross references.** — For the state purchasing agent, see 13-1-95 NMSA 1978.

For the commission for the blind, see 28-7-16 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, rewrote the catchline, which formerly read "Products of clients of services for the blind; division of vocational rehabilitation; purchasing agent to determine value"; substituted

"the commission for the blind" for "services for the blind" in two places; substituted "22-14-21 through 22-14-23 NMSA 1978" for "73-23-7 through 73-23-9 NMSA 1953" at the end of the section; and made minor stylistic changes throughout the section.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Works and Contracts § 10.  
72 C.J.S. Supp. Public Contracts § 4.

## 22-14-22. Purchases by state agencies and subdivisions.

Except as hereinafter provided, all products thereafter procured by or for the state, or any governmental agency or political subdivision thereof having its own purchasing agency, shall be procured in accordance with applicable specifications of the state purchasing agent from the commission for the blind or duly established agencies or branches thereof whenever the products are available at the price determined, as provided in Section 22-14-21 NMSA 1978, to be a fair

market price for the product so manufactured, and no advertisement or notice for bids from other suppliers shall be necessary.

**History:** 1941 Comp., § 6-411, enacted by Laws 1953, ch. 163, § 2; 1953 Comp., § 73-23-8; 1977, ch. 159, § 2; 1978 Comp., § 21-5-10, recompiled as § 22-14-22 by Laws 1983, ch. 60, § 3; 1993, ch. 226, § 33.

The 1993 amendment, effective July 1, 1993, substituted "the commission for the blind" for "services for the blind"; substituted "22-14-21 NMSA 1978" for "73-23-7 NMSA 1953"; and made minor stylistic changes.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Works and Contracts § 10.  
72 C.J.S. Supp. Public Contracts § 4.

### 22-14-23. Application of funds.

All money received by the commission for the blind or any duly established agency or branch thereof from the sale of products manufactured by clients of the commission for the blind to the state, any subdivision thereof or any other purchaser shall be placed in a special fund, which shall be used only for ordinary and necessary business expenses and to purchase raw materials, supplies and capital improvements for the manufacturing of products and to pay such compensation to the clients manufacturing the products as may be determined to be reasonable by the commission for the blind.

**History:** 1941 Comp., § 6-412, enacted by Laws 1953, ch. 163, § 3; 1953 Comp., § 73-23-9; Laws 1977, ch. 159, § 3; 1981, ch. 71, § 1; 1978 Comp., § 21-5-11, recompiled as § 22-14-23 by Laws 1983, ch. 60, § 3; 1993, ch. 226, § 34.

The 1993 amendment, effective July 1, 1993, substituted "the commission for the blind" for "services for the blind" in two places; inserted "manufactured by clients of

the commission for the blind"; and made minor stylistic changes.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 63A Am. Jur. 2d Public Funds § 5; 68 Am. Jur. 2d Schools § 53 et seq.

### 22-14-24. Purpose.

The purpose of Sections 22-14-24 through 22-14-29 NMSA 1978 is to provide blind persons with remunerative employment, to enlarge the economic opportunities for the blind and to stimulate them to greater efforts in striving to make themselves self-supporting, by authorizing blind persons licensed in accordance with the provisions of those sections to operate vending stands on any state property where vending stands may be properly and satisfactorily operated by blind persons, by granting blind persons a preference in the operation of vending stands on state property, by authorizing cooperation with the United States government in the administration of the vending stand program for the blind on federal property and by authorizing the commission to establish, maintain and operate a vending stand program for the blind.

**History:** 1953 Comp., § 59-12-1, enacted by Laws 1957, ch. 180, § 1; 1971, ch. 324, § 2; 1978 Comp., § 28-9-1, recompiled as § 22-14-24 by Laws 1983, ch. 60, § 3; 1986, ch. 108, § 10.

**Cross references.** — For employment of the disabled, see 28-10-1 NMSA 1978 et seq.

### 22-14-25. Definitions.

For the purposes of Sections 22-14-24 through 22-14-29 NMSA 1978:

A. "blind person" means a person having not more than ten percent visual acuity in the better eye with correction. This means a person who has:

- (1) not more than 20/200 central visual acuity in the better eye after correction; or
  - (2) an equally disabling loss of the visual field, i.e., a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees.
- Such blindness shall be certified by a duly licensed ophthalmologist, subject to approval of the New Mexico board of medical examiners;



B. "commission" means the commission for the blind;

C. "license" means a written instrument issued by the commission to a blind person pursuant to Sections 22-14-24 through 22-14-29 NMSA 1978, authorizing the blind person to operate a vending stand on state, federal or other property;

D. "state property" means any building or land owned, leased or occupied by any department or agency of the state or any instrumentality wholly owned by the state or by any county or municipality or by any other local governmental entity; and

E. "vending stand" means:

(1) such shelters, counters, shelving, display and wall cases, refrigerating apparatus and other appropriate auxiliary equipment as are necessary for the vending of such articles as may be approved by the commission, agency or person having control of the property on which the stand is to be located; and

(2) manual or coin-operated vending machines or similar devices for vending the articles mentioned in Paragraph (1) of this subsection.

**History:** 1953 Comp., § 59-12-2, enacted by Laws 1957, ch. 180, § 2; 1978 Comp., § 28-9-2, recompiled as § 22-14-25 by Laws 1983, ch. 60, § 3; 1986, ch. 108, § 11.

**Cross references.** — For the commission on the blind, see 28-7-16 NMSA 1978.

## 22-14-26. Repealed.

**Repeals.** — Laws 1986, ch. 108, § 16 repealed former 22-14-26 NMSA 1978, as enacted by Laws 1971, ch. 324,

§ 3 and recompiled by Laws 1983, ch. 60, § 3, defining "division," effective July 1, 1986.

## 22-14-27. Assuring preferences to blind persons.

The head or governing body of each department or agency and of each county or municipality or other local governmental entity having control of state property shall:

A. adopt policies and take action as may be necessary to assure that blind persons licensed by the commission will be given a preference in the establishment and operation of vending stands on property under its control, when vending stands may be properly and satisfactorily operated by blind persons;

B. cooperate with the commission in surveys of property under its control to find suitable locations for the operation of vending stands by blind persons and, after it has been determined that there is need for a vending stand and after the commission has determined that the stand may be properly and satisfactorily operated by a blind person, issue to the commission a permit for the operation of a vending stand by a licensed blind person and cooperate with the commission in the installation of the vending stand; and

C. provide appropriate vending space and utility services for the operation of vending stands at no cost to the commission or to the blind licensee.

**History:** 1953 Comp., § 59-12-3, enacted by Laws 1957, ch. 180, § 3; 1978 Comp., § 28-9-4, recompiled as § 22-14-27 by Laws 1983, ch. 60, § 3; 1985, ch. 233, § 1; 1986, ch. 108, § 12.

effort between the division (now the commission) and the agency, it was the division that made the determination as to the need for a vending stand and the further determination that such stand might be properly and satisfactorily operated by a blind person. 1964 Op. Att'y Gen. No. 64-77.

### ANNOTATIONS

**Determinations where cooperative effort.** — While under this section there was to be a cooperative

## 22-14-28. Powers and duties of the commission relating to the vending stand program.

In carrying out the provisions of Sections 22-14-24 through 22-14-29 NMSA 1978, the commission:

A. shall prescribe regulations governing:

(1) personnel standards;

(2) the protection of records and confidential information;

(3) eligibility for licensing of blind persons as vending stand operators;

(4) termination of licenses;

(5) the title to vending stand equipment and the interest in stocks of merchandise;

(6) procedures for fair hearings; and

(7) such other regulations as may be necessary to carry out the purposes of Sections 22-14-24 through 22-14-29 NMSA 1978;

B. shall appoint such personnel as may be necessary for the administration of the vending stand program;

C. shall make surveys to find locations where vending stands may be properly and satisfactorily operated by blind persons and shall establish vending stands as it deems appropriate;

D. shall furnish each vending stand established with adequate suitable equipment, shall be responsible for the maintenance and repair of the equipment and shall furnish each vending stand with an adequate initial stock of merchandise;

E. shall provide such management and supervisory services as are deemed necessary by the commission to assure that each vending stand will be operated in the most effective and productive manner possible;

F. shall cooperate with the United States department of education in the administration of the vending stand program on federal property and adopt such methods of operation and take such action as may be required to secure the full benefits of that program;

G. shall prepare and submit to the governor annual reports of activities and expenditures and, prior to each regular session of the legislature, estimates of sums required for carrying out the purpose of Sections 22-14-24 through 22-14-29 NMSA 1978 and estimates of the amounts to be made available for this purpose from all sources;

H. shall take such other action as may be necessary or appropriate to carry out the purposes of Sections 22-14-24 through 22-14-29 NMSA 1978;

I. may enter into agreements with private nonprofit organizations for furnishing services to the vending stand program; provided that all such services and activities of the nonprofit organizations relating to the vending stand program shall be subject to the commission's supervision and control;

J. may, in its discretion, set aside funds from the operation of vending stands for such purposes as maintenance and replacement of equipment, the purchase of new equipment, the provision of management services, guaranteeing a fair minimum return to all vending stand operators and such other purposes as it may determine appropriate and which are not inconsistent with federal laws and regulations relating to the "setting aside of funds"; provided that in no case shall the amount set aside from any vending stand exceed a reasonable sum in relation to the net profit to the operator of the stand in the opinion of the executive officer of the agency; and

K. may accept gifts and donations made unconditionally, or subject to such conditions as it may determine appropriate, for the purposes of carrying out the provisions of Sections 22-14-24 through 22-14-29 NMSA 1978 and may use, hold, invest or reinvest such gifts for those purposes.

**History:** 1953 Comp., § 59-12-4, enacted by Laws 1957, ch. 180, § 4; 1978 Comp., § 28-9-5, recompiled as § 22-14-28 by Laws 1983, ch. 60, § 3; 1986, ch. 108, § 13.

#### ANNOTATIONS

**Broad powers granted.** — In order that the division (now the commission) be able to achieve the statutory ends, the legislature granted it broad powers. 1964 Op. Att'y Gen. No. 64-77.

### 22-14-29. Hearings.

The commission shall provide an opportunity for a fair hearing to any licensed vending stand operator dissatisfied with any action arising from the operation or administration of the vending stand program.

**History:** 1953 Comp., § 59-12-5, enacted by Laws 1957, ch. 180, § 5; 1978 Comp., § 28-9-6, recompiled as § 22-14-29 by Laws 1983, ch. 60, § 3; 1986, ch. 108, § 14.



## 22-14-30. Vocational rehabilitation division; designated agency for federal funds.

The vocational rehabilitation division of the department of education [public education department] is designated the sole state agency to administer and receive any federal funds relating to vocational rehabilitation of the blind.

**History:** 1953 Comp., § 77-12-8.1, enacted by Laws 1971, ch. 324, § 4; 1978 Comp., § 22-14-10, recompiled as § 22-14-30 by Laws 1993, ch. 226, § 53.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be

deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

## 22-14-31. Pre-apprenticeship programs.

### A. As used in this section:

- (1) "apprenticeable trade" means a skilled trade that possesses the following characteristics:
  - (a) it is customarily learned in a practical way through a structured, systematic program of on-the-job supervised training;
  - (b) it is clearly identified and commonly recognized throughout an industry;
  - (c) it involves manual, mechanical or technical skills and knowledge that require a minimum of two thousand hours of on-the-job work experience; and
  - (d) it requires related instruction to supplement on-the-job training;
- (2) "apprenticeship" means a formal educational method for training a person in a skilled trade that combines supervised employment with classroom study;
- (3) "course of instruction" means an organized and systematic program of study designed to provide the pre-apprentice with knowledge of the theoretical subjects related to one or more specific apprenticeable trades and that meets apprenticeship-related instruction requirements; provided that "course of instruction" may include hands-on training but does not include on-the-job training;
- (4) "industry instructor" means a person who is:
  - (a) working or has worked in an apprenticeable trade for the number of years required by established industry practices of the particular trade to be an industry-recognized expert in the trade; or
  - (b) a career-technical faculty member at a public post-secondary educational institution;
- (5) "local school board" includes the governing body of a charter school;
- (6) "pre-apprentice" means a public school student who is enrolled in a pre-apprenticeship program;
- (7) "pre-apprenticeship program" means a local school board-approved course of instruction offered through a provider that results, upon satisfactory completion of the program, in a certificate of completion that is acceptable to an apprenticeship training program registered with the apprenticeship council; and
- (8) "provider" means a registered apprenticeship program, an employer of an apprenticeable trade, a union, a trade association, a post-secondary educational institution or other person approved by the local school board to provide a pre-apprenticeship program.

B. Any school district or charter school may allow pre-apprenticeship programs to be offered to qualified eleventh and twelfth grade students. The local school board shall only approve providers and pre-apprenticeship programs, including courses of instruction and industry instructors, that meet apprenticeship requirements of the apprenticeship council or the apprenticeship requirements of an appropriate nationally recognized trade organization. Pre-apprenticeship programs shall meet department content and performance standards and shall be provided at no cost to students.

C. A person may apply to the local school board to become a provider by submitting an application in the form prescribed by the local school board. The application shall include:

(1) the pre-apprenticeship program to be offered by the provider, including the course of instruction and the provision of tools, supplies and textbooks that will be provided by the pre-apprenticeship program;

(2) a description of the way in which a pre-apprentice's coursework and program participation will be evaluated and reported as grades to the high school;

(3) a description of the qualifications for pre-apprentices, the way in which students will be recruited and accepted into the pre-apprenticeship program and the circumstances under which a pre-apprentice may be dismissed from the pre-apprenticeship program;

(4) the names and qualifications of the pre-apprenticeship program's industry instructors;

(5) a description of the location where the pre-apprenticeship program will be conducted; and

(6) any other information the local school board deems necessary to determine the fitness of the applicant to deliver a pre-apprenticeship program and the appropriateness of the program in achieving school district or charter school goals.

D. In approving an application, the local school board shall include its approvals of the provider, the pre-apprenticeship program and the industry instructors. If a single applicant proposes to offer more than one pre-apprenticeship program, each program and its industry instructors shall be approved by the local school board.

E. Pre-apprenticeship programs shall be designed so that pre-apprentices may earn elective credits toward high school graduation and meet requirements for apprenticeship-related supplemental instruction or post-secondary education course credits. Pre-apprenticeship programs shall be offered during the school day whenever possible. Programs may be conducted at industry locations, including union halls or other industry training facilities; at existing school facilities, if available; or at any other location approved by the local school board.

F. To qualify for a pre-apprenticeship program, a student must:

(1) be at least sixteen years of age;

(2) be in the eleventh or twelfth grade;

(3) have at least the number of electives required for the pre-apprenticeship program applied for and commit those electives to the program; and

(4) meet other requirements of the pre-apprenticeship program approved by the local school board.

G. Once a provider and pre-apprenticeship program have been approved, the provider shall recruit students and accept and retain or dismiss them as provided in the provider's approved application.

H. Once accepted into a pre-apprenticeship program, a student may withdraw only with the approval of the high school principal.

I. If a provider wishes to cease its pre-apprenticeship program, it shall notify the local school board, the superintendent and the principals of the pre-apprentices' high schools. The notification shall include a plan for the continuation of the pre-apprenticeship program of the pre-apprentices currently enrolled in the provider's program.

**History:** Laws 2009, ch. 256, § 2.

**Effective dates.** — Laws 2009, ch. 256 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## **22-14-32. Licensure not required; background checks; school-sponsored activity and volunteers.**

A. The provisions of the School Personnel Act [Chapter 22, Article 10A NMSA 1978], including licensure requirements, shall not apply to industry instructors, except that they shall be required to undergo a background check as provided for licensed school employees in Section 22-10A-5 NMSA 1978. The school district or charter school may act on the information received from the background check and refuse to approve a person as an industry instructor. An industry instructor shall provide for the safety of students under the industry instructor's care in the same manner



as required of licensed school employees and shall not allow persons who have not been vetted through the background check process to have unsupervised contact with students.

B. For purposes of the public school insurance authority, each pre-apprenticeship program shall be considered a school-sponsored activity and each industry instructor shall be considered a school volunteer.

**History:** Laws 2009, ch. 256, § 3.

**Effective dates.** — Laws 2009, ch. 256 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## ARTICLE 15

### Instructional Material

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#### 22-15-1. Short title.

Sections 22-15-1 through 22-15-14 NMSA 1978 may be cited as the "Instructional Material Law".

**History:** 1953 Comp., § 77-13-1, enacted by Laws 1967, ch. 16, § 205; 1975, ch. 270, § 1; 2005, ch. 80, § 1.

**Cross references.** — For courses of instruction generally, see 22-13-1 NMSA 1978 et seq.

The 2005 amendment, effective April 4, 2005, made no changes to this section.

#### ANNOTATIONS

##### Constitutionality of textbook loan program.

The Instructional Material Law (IML), §§ 22-15-1 to -14 NMSA 1978, in which the New Mexico public education department purchases textbooks that are loaned free of charge to public and private school students enrolled in first through twelfth grade and in early childhood education programs, does not violate Article IV, Section 31, Article IX, Section 14, or Article XII, Section 3 of the New Mexico constitution. The textbook loan program, which provides a generally available public benefit to students, does not result in the use of public funds in support of private schools as prohibited by Article XII, Section 3, and is consistent with Article IV, Section 31, which addresses appropriations for educational purposes, and Article IX, Section 14, which limits any donation to or in aid of any person, association or public or private corporation. *Moses v. Ruszkowski*, 2019-NMSC-003.

**Constitutionality.** — N.M. Const., Art. XII, § 3 expressly prohibits the appropriation of public funds to sectarian, denominational or private schools. The Instructional

Material Law, §§ 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, violates N.M. Const., Art. XII, § 3, because the constitutional provision expressly restricts the use of public funds to other than sectarian schools and expressly prohibits the appropriation of educational funds to private schools. *Moses v. Skandera*, 2015-NMSC-036, 367 P.3d 838, rev'g 2015-NMCA-036, 346 P.3d 396, vacated sub nom. *N.M. Ass'n of Non-public Sch. v. Moses*, 137 S.Ct. 2325 (2017) (mem.).

Where petitioners filed a complaint for declaratory judgment against the secretary of the New Mexico public education department seeking a declaration that the state issuing instructional materials to students attending private schools is unconstitutional, the New Mexico supreme court held that the Instructional Material Law, §§ 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, violates N.M. Const., Art. XII, § 3, because the constitutional provision expressly restricts the use of public funds to other than sectarian schools and expressly prohibits the appropriation of educational funds to private schools. *Moses v. Skandera*, 2015-NMSC-036, 367 P.3d 838, rev'g 2015-NMCA-036, 346 P.3d 396, vacated

*sub nom. N.M. Ass'n of Non-public Sch. v. Moses*, 137 S.Ct. 2325 (2017) (mem.).

The Instructional Material Law (IML), Sections 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. XII, § 3, because the focus of the IML is not to support private schools, but to provide instructional material for the benefit of students, the program is secular in nature, and the state controls the use and disposition of the instructional material; although the private schools receive some benefit, N.M. Const., art. XII, § 3 will not be interpreted to prohibit indirect and incidental benefit when the legislative purpose of the IML does not focus on support of private schools. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), Sections 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IX, § 14, because under the IML, there is no donation to a private school because there is neither a gift nor an allocation or appropriation of something of value without consideration; although private schools receive possession of the instructional material, as agents for the students, they never have an ownership interest in the instructional

material. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), Sections 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IV, § 31, because under the IML, no funds are appropriated to any private school; the mere indirect or incidental benefit to the private schools does not violate N.M. Const., art. IV, § 31. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), Sections 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. II, § 11, which serves the same goals as the Establishment Clause of the First Amendment of the United States Constitution; the United States Supreme Court has made clear that textbook and instructional material programs that benefit all children, regardless of the school of their attendance, do not conflict with the Establishment Clause. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools § 318 et seq.

Furnishing free textbooks to sectarian school or student therein, 93 A.L.R.2d 986.

## 22-15-2. Definitions.

As used in the Instructional Material Law [22-15-1 through 22-15-14 NMSA 1978]:

- A. "division" or "bureau" means the instructional material bureau of the department;
- B. "director" or "chief" means the chief of the bureau;
- C. "instructional material" means school textbooks and other educational media that are used as the basis for instruction, including combinations of textbooks, learning kits, supplementary material and electronic media;
- D. "multiple list" means a written list of those instructional materials approved by the department;
- E. "membership" means the total enrollment of qualified students on the fortieth day of the school year entitled to the free use of instructional material pursuant to the Instructional Material Law;
- F. "additional pupil" means a pupil in a school district's, state institution's or private school's current year's certified forty-day membership above the number certified in the school district's, state institution's or private school's prior year's forty-day membership;
- G. "school district" includes state-chartered charter schools; and
- H. "other classroom materials" means materials other than textbooks that are used to support direct instruction to students.

**History:** 1953 Comp., § 77-13-2, enacted by Laws 1967, ch. 16, § 206; 1975, ch. 270, § 2; 1993, ch. 226, § 35; 2005, ch. 80, § 2; 2006, ch. 94, § 47; 2007, ch. 285, § 1.

**The 2007 amendment**, effective June 15, 2007, added Subsection H.

**The 2006 amendment**, effective July 1, 2007, added Subsection G to define school district.

**The 2005 amendment**, effective April 4, 2005, changed the definition of "instructional material" to textbooks and

media that are used as the basis for instruction, including combinations of textbooks, kits, supplementary material and electronic media.

**The 2003 amendment**, effective June 20, 2003, substituted "of" for "in" following "material bureau" in Subsection A; and added "including on-line resources, distance learning media and productivity software" at the end of Subsection C.



### 22-15-3. Bureau; chief.

A. The "instructional material bureau" is created within the department of education [public education department].

B. With approval of the state board [department], the state superintendent [secretary] shall appoint a chief of the bureau.

**History:** 1953 Comp., § 77-13-3, enacted by Laws 1967, ch. 16, § 207; 1975, ch. 270, § 3; 1993, ch. 226, § 36.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**The 1993 amendment**, effective July 1, 1993, rewrote the catchline, which formerly read "Division director; surety bond"; substituted "instructional material bureau" for "state instructional material division" in Subsection A; substituted "chief of the bureau" for "director of the division to be known as the 'state instructional material director'"; and deleted former Subsection C, pertaining to the official bond of the director.

### 22-15-4. Bureau; duties.

Subject to the policies and rules of the department, the bureau shall:

A. administer the provisions of the Instructional Material Law [22-15-1 through 22-15-14 NMSA 1978];

B. enforce rules for the handling, safekeeping and distribution of instructional material and instructional material funds and for inventory and accounting procedures to be followed by school districts, state institutions and private schools pursuant to the Instructional Material Law;

C. withdraw or withhold the privilege of participating in the free use of instructional material in case of any violation of or noncompliance with the provisions of the Instructional Material Law or any rules adopted pursuant to that law;

D. enforce rules relating to the use and operation of instructional material depositories in the instructional material distribution process; and

E. enforce rules that require local school boards to implement a process that ensures that parents and other community members are involved in the instructional material review process.

**History:** 1953 Comp., § 77-13-4, enacted by Laws 1967, ch. 16, § 208; 1975, ch. 270, § 4; 1993, ch. 226, § 37; 1997, ch. 100, § 1; 2005, ch. 80, § 3; 2009, ch. 221, § 3.

**The 2009 amendment**, effective July 1, 2010, in Subsection B, after "and private schools"; deleted "and adult basic education centers".

**The 2005 amendment**, effective April 4, 2005, added Subsection E to require the bureau to enforce rules that require local school boards to implement a process that ensures parents and community members are involved in the instructional material review process.

**The 1997 amendment**, effective July 1, 1998, inserted "and instructional material funds" in Subsection B.

**The 1993 amendment**, effective July 1, 1993, substituted "Bureau" and "bureau" for "Division" and "division" in the catchline and introductory paragraph; inserted "and regulations" in the introductory paragraph; deleted "adopt and" at the beginning of Subsection B; and added Subsection D, making related grammatical changes.

### 22-15-5. Instructional material fund.

A. The state treasurer shall establish a nonreverting fund to be known as the "instructional material fund". The fund consists of appropriations, gifts, grants, donations and any other money credited to the fund. The fund shall be administered by the department, and money in the fund is appropriated to the department to carry out the provisions of the Instructional Material Law [22-15-1 through 22-15-14 NMSA 1978].

B. The instructional material fund shall be used for the purpose of paying for the cost of purchasing instructional material pursuant to the Instructional Material Law. Transportation charges for the delivery of instructional material to a school district, a state institution or a private school as agent and emergency expenses incurred in providing instructional material to students may be included as a cost of purchasing instructional material. Charges for rebinding of used instructional

material that appears on the multiple list pursuant to Section 22-15-8 NMSA 1978 may also be included as a cost of purchasing instructional material.

**History:** 1953 Comp., § 77-13-5, enacted by Laws 1967, ch. 16, § 209; 1975, ch. 270, § 5; 1992, ch. 76, § 1; 1997, ch. 100, § 2; 2009, ch. 221, § 4.

The 2009 amendment, effective July 1, 2010, in Subsection A, added the last sentence; in Subsection B, after "a private school as agent", deleted "or an adult basic education center".

The 1997 amendment, effective July 1, 1998, made a stylistic change in Subsection B.

The 1992 amendment, effective May 20, 1992, inserted "a" preceding "state institution" in the second sentence of Subsection B and added the third sentence of that subsection.

## ANNOTATIONS

### Constitutionality of textbook loan program. —

The Instructional Material Law (IML), §§ 22-15-1 to -14 NMSA 1978, in which the New Mexico public education department purchases textbooks that are loaned free of charge to public and private school students enrolled in first through twelfth grade and in early childhood education programs, does not violate Article IV, Section 31, Article IX, Section 14, or Article XII, Section 3 of the New Mexico constitution. The textbook loan program, which provides a generally available public benefit to students, does not result in the use of public funds in support of private schools as prohibited by Article XII, Section 3, and is consistent with Article IV, Section 31, which addresses appropriations for educational purposes, and Article IX, Section 14, which limits any donation to or in aid of any person, association or public or private corporation. *Moses v. Ruszkowski*, 2019-NMSC-003.

**Constitutionality.** — N.M. Const., Art. XII, § 3 expressly prohibits the appropriation of public funds to sectarian, denominational or private schools. The Instructional Material Law, §§ 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, violates N.M. Const., Art. XII, § 3, because the constitutional provision expressly restricts the use of public funds to other than sectarian schools and expressly prohibits the appropriation of educational funds to private schools. *Moses v. Skandera*, 2015-NMSC-036, 367 P.3d 838, rev'g 2015-NMCA-036, 346 P.3d 396, vacated sub nom. *N.M. Ass'n of Non-public Sch. v. Moses*, 137 S.Ct. 2325 (2017) (mem.).

Where petitioners filed a complaint for declaratory judgment against the secretary of the New Mexico public education department seeking a declaration that the state issuing instructional materials to students attending private schools is unconstitutional, the New Mexico supreme court held that the Instructional Material Law, §§ 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, violates N.M. Const., Art. XII, § 3, because the constitutional provision expressly restricts the

use of public funds to other than sectarian schools and expressly prohibits the appropriation of educational funds to private schools. *Moses v. Skandera*, 2015-NMSC-036, 367 P.3d 838, rev'g 2015-NMCA-036, 346 P.3d 396, vacated sub nom. *N.M. Ass'n of Non-public Sch. v. Moses*, 137 S.Ct. 2325 (2017) (mem.).

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. XII, § 3, because the focus of the IML is not to support private schools, but to provide instructional material for the benefit of students, the program is secular in nature, and the state controls the use and disposition of the instructional material; although the private schools receive some benefit, N.M. Const., art. XII, § 3 will not be interpreted to prohibit indirect and incidental benefit when the legislative purpose of the IML does not focus on support of private schools. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IX, § 14, because under the IML, there is no donation to a private school because there is neither a gift nor an allocation or appropriation of something of value without consideration; although private schools receive possession of the instructional material, as agents for the students, they never have an ownership interest in the instructional material. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IV, § 31, because under the IML, no funds are appropriated to any private school; the mere indirect or incidental benefit to the private schools does not violate N.M. Const., art. IV, § 31. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. II, § 11, which serves the same goals as the establishment clause of the first amendment of the United States constitution; the United States supreme court has made clear that textbook and instructional material programs that benefit all children, regardless of the school of their attendance, do not conflict with the establishment clause. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

## 22-15-6. Disbursements from the instructional material fund.

Disbursements from the instructional material fund shall be by warrant of the department of finance and administration upon vouchers issued by the department of education [public education department].



**History:** 1953 Comp., § 77-13-6, enacted by Laws 1967, ch. 16, § 210; 1975, ch. 270, § 6; 1993, ch. 226, § 38.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**The 1993 amendment**, effective July 1, 1993, substituted "department of education" for "director".

## ANNOTATIONS

### **Constitutionality of textbook loan program.** —

The Instructional Material Law (IML), §§ 22-15-1 to -14 NMSA 1978, in which the New Mexico public education department purchases textbooks that are loaned free of charge to public and private school students enrolled in first through twelfth grade and in early childhood education programs, does not violate Article IV, Section 31; Article IX, Section 14, or Article XII, Section 3 of the New Mexico constitution. The textbook loan program, which provides a generally available public benefit to students, does not result in the use of public funds in support of private schools as prohibited by Article XII, Section 3, and is consistent with Article IV, Section 31, which addresses appropriations for educational purposes, and Article IX, Section 14, which limits any donation to or in aid of any person, association or public or private corporation. *Moses v. Ruszkowski*, 2019-NMSC-003.

**Constitutionality.** — N.M. Const., Art. XII, § 3 expressly prohibits the appropriation of public funds to sectarian, denominational or private schools. The Instructional Material Law, §§ 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, violates N.M. Const., Art. XII, § 3, because the constitutional provision expressly restricts the use of public funds to other than sectarian schools and expressly prohibits the appropriation of educational funds to private schools. *Moses v. Skandera*, 2015-NMSC-036, 367 P.3d 838, rev'g 2015-NMCA-036, 346 P.3d 396, vacated sub nom. *N.M. Ass'n of Non-public Sch. v. Moses*, 137 S.Ct. 2325 (2017) (mem.).

Where petitioners filed a complaint for declaratory judgment against the secretary of the New Mexico public education department seeking a declaration that the state issuing instructional materials to students attending private schools is unconstitutional, the New Mexico supreme court held that the Instructional Material Law, §§ 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, violates N.M. Const., art. XII, § 3, because the constitutional provision expressly restricts the

use of public funds to other than sectarian schools and expressly prohibits the appropriation of educational funds to private schools. *Moses v. Skandera*, 2015-NMSC-036, 367 P.3d 838, rev'g 2015-NMCA-036, 346 P.3d 396, vacated sub nom. *N.M. Ass'n of Non-public Sch. v. Moses*, 137 S.Ct. 2325 (2017) (mem.).

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. XII, § 3, because the focus of the IML is not to support private schools, but to provide instructional material for the benefit of students, the program is secular in nature, and the state controls the use and disposition of the instructional material; although the private schools receive some benefit, N.M. Const., art. XII, § 3 will not be interpreted to prohibit indirect and incidental benefit when the legislative purpose of the IML does not focus on support of private schools. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IX, § 14, because under the IML, there is no donation to a private school because there is neither a gift nor an allocation or appropriation of something of value without consideration; although private schools receive possession of the instructional material, as agents for the students, they never have an ownership interest in the instructional material. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IV, § 31, because under the IML, no funds are appropriated to any private school; the mere indirect or incidental benefit to the private schools does not violate N.M. Const., art. IV, § 31. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. II, § 11, which serves the same goals as the establishment clause of the first amendment of the United States constitution; the United States supreme court has made clear that textbook and instructional material programs that benefit all children, regardless of the school of their attendance, do not conflict with the establishment clause. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

## 22-15-7. Students eligible; distribution.

A. Any qualified student or person eligible to become a qualified student attending a public school, a state institution or a private school approved by the department in any grade from first through the twelfth grade of instruction is entitled to the free use of instructional material. Any student enrolled in an early childhood education program as defined by Section 22-13-3 NMSA 1978 or person eligible to become an early childhood education student as defined by that section



attending a private early childhood education program approved by the department is entitled to the free use of instructional material.

B. Instructional material shall be distributed to school districts, state institutions and private schools as agents for the benefit of students entitled to the free use of the instructional material.

C. Any school district, state institution or private school as agent receiving instructional material pursuant to the Instructional Material Law [22-15-1 through 22-15-14 NMSA 1978] is responsible for distribution of the instructional material for use by eligible students and for the safekeeping of the instructional material.

**History:** 1953 Comp., § 77-13-7, enacted by Laws 1967, ch. 16, § 211; 1975, ch. 270, § 7; 1977, ch. 99, § 1; 1993, ch. 226, § 39; 1997, ch. 100, § 3; 2003, ch. 394, § 5; 2009, ch. 221, § 5.

**Cross references.** — For transfer of usable materials, see 22-15-10 NMSA 1978.

For the transfer of powers and duties of the former state board of education, see 9-24-15 NMSA 1978.

**The 2009 amendment,** effective July 1, 2010, in Subsection A, deleted the last sentence which provided that any student in a basic education program approved by the commission on higher education was entitled to the free use of instructional material from the instructional material bureau; in Subsection B, after "private schools", deleted "and adult basic education centers"; and in Subsection C, after "private school as agent", deleted "and adult basic education centers".

**The 2003 amendment,** effective April 8, 2003, in Subsection A, substituted "commission on higher education" for "state board" following "approved by the" and added "from the instructional material bureau of the department of education" at the end.

**The 1997 amendment,** effective July 1, 1998, in Subsection C, made a stylistic change and substituted "by" for "of".

**The 1993 amendment,** effective July 1, 1993, in Subsection A, substituted "22-13-3 NMSA 1978" for "77-11-2 NMSA 1953" and made a minor stylistic change in the second sentence.

## ANNOTATIONS

### Constitutionality of textbook loan program.

The Instructional Material Law (IML), §§ 22-15-1 to -14 NMSA 1978, in which the New Mexico public education department purchases textbooks that are loaned free of charge to public and private school students enrolled in first through twelfth grade and in early childhood education programs, does not violate Article IV, Section 31, Article IX, Section 14, or Article XII, Section 3 of the New Mexico constitution. The textbook loan program, which provides a generally available public benefit to students, does not result in the use of public funds in support of private schools as prohibited by Article XII, Section 3, and is consistent with Article IV, Section 31, which addresses appropriations for educational purposes, and Article IX, Section 14, which limits any donation to or in aid of any person, association or public or private corporation. *Moses v. Ruszkowski*, 2019-NMSC-003.

**Constitutionality.** — N.M. Const., Art. XII, § 3 expressly prohibits the appropriation of public funds to sectarian, denominational or private schools. The Instructional Material Law, §§ 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, violates N.M. Const., Art. XII, § 3, because the constitutional provision expressly restricts the use of public funds to other than sectarian schools and expressly prohibits the appropriation of educational funds to private

schools. *Moses v. Skandera*, 2015-NMSC-036, 367 P.3d 838, *rev'g* 2015-NMCA-036, 346 P.3d 396, *vacated sub nom. N.M. Ass'n of Non-public Sch. v. Moses*, 137 S.Ct. 2325 (2017) (mem.).

Where petitioners filed a complaint for declaratory judgment against the secretary of the New Mexico public education department seeking a declaration that the state issuing instructional materials to students attending private schools is unconstitutional, the New Mexico supreme court held that the Instructional Material Law, §§ 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, violates N.M. Const., Art. XII, § 3, because the constitutional provision expressly restricts the use of public funds to other than sectarian schools and expressly prohibits the appropriation of educational funds to private schools. *Moses v. Skandera*, 2015-NMSC-036, 367 P.3d 838, *rev'g* 2015-NMCA-036, 346 P.3d 396, *vacated sub nom. N.M. Ass'n of Non-public Sch. v. Moses*, 137 S.Ct. 2325 (2017) (mem.).

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. XII, § 3, because the focus of the IML is not to support private schools, but to provide instructional material for the benefit of students, the program is secular in nature, and the state controls the use and disposition of the instructional material; although the private schools receive some benefit, N.M. Const., art. XII, § 3 will not be interpreted to prohibit indirect and incidental benefit when the legislative purpose of the IML does not focus on support of private schools. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IX, § 14, because under the IML, there is no donation to a private school because there is neither a gift nor an allocation or appropriation of something of value without consideration; although private schools receive possession of the instructional material, as agents for the students, they never have an ownership interest in the instructional material. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IV, § 31, because under the IML, no funds are appropriated to any private school; the mere indirect or incidental benefit to the private schools does not violate N.M. Const., art. IV,



§ 31. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. II, § 11, which serves the same goals as the establishment clause of the first amendment of the United States constitution; the

United States supreme court has made clear that textbook and instructional material programs that benefit all children, regardless of the school of their attendance, do not conflict with the establishment clause. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

**Right to inspect instructional material.** — Local school boards have no authority to prohibit citizens of the state from inspecting instructional material used in a public school within the district. 1988 Op. Att'y Gen. No.88-37.

## 22-15-8. Multiple list; selection; review process.

A. The department shall adopt a multiple list to be made available to students pursuant to the Instructional Material Law [22-15-1 through 22-15-14 NMSA 1978]. At least ten percent of instructional material on the multiple list concerning language arts and social studies shall contain material that is relevant to the cultures, languages, history and experiences of multi-ethnic students. The department shall ensure that parents and other community members are involved in the adoption process at the state level.

B. Pursuant to the provisions of the Instructional Material Law, each school district, state institution or private school as agent may select instructional material for the use of its students from the multiple list adopted by the department. Local school boards shall give written notice to parents and other community members and shall invite parental involvement in the adoption process at the district level. Local school boards shall also give public notice, which notice may include publication in a newspaper of general circulation in the school district.

C. The department shall establish by rule an instructional material review process for the adoption of instructional material on the multiple list. The process shall include:

(1) a summer review institute at which basal materials in the content area under adoption will be facilitated by content and performance experts in the content area and reviewed by reviewers;

(2) that level two and level three-A teachers are reviewers of record; provided that level one teachers, college students completing teacher preparation programs, parents and community leaders will be recruited and partnered with the reviewers of record;

(3) that reviewed materials shall be scored and ranked primarily against how well they align with state academic content and performance standards, but research-based effectiveness may also be considered; and

(4) the adoption of supplementary materials that are not reviewed.

D. Participants in the summer review institute shall receive a stipend commensurate with the level of responsibility and participation as determined by department rule.

E. The department shall charge a processing fee to vendors of instructional materials not to exceed the retail value of the instructional material submitted for adoption.

**History:** 1953 Comp., § 77-13-8, enacted by Laws 1967, ch. 16, § 212; 1975, ch. 270, § 8; 1986, ch. 33, § 31; 1993, ch. 226, § 40; 1997, ch. 100, § 4; 2003, ch. 146, § 1; 2005, ch. 80, § 4; 2009, ch. 221, § 6.

**Cross references.** — For contracts with publishers for purchase and delivery of materials on list, see 22-15-13 NMSA 1978.

**The 2009 amendment**, effective July 1, 2010, in Subsection B, after "private school as agent", deleted "and adult basic education centers".

**The 2005 amendment**, effective April 4, 2005, added Subsection C to require the department to establish an instructional review process for the adoption of instructional material on a multiple list; provided in new Subsection D that participants in the summer review institute shall receive a stipend as determined by department rule; and in new Subsection E, required the department to charge a processing fee to vendors of instructional material.

**The 2003 amendment**, effective June 20, 2003, added the second sentence of Subsection A, pertaining to ten percent of instructional material on the multiple list concerning language arts and social studies.

**The 1997 amendment**, effective July 1, 1998, made a stylistic change in Subsection B.

**The 1993 amendment**, effective July 1, 1993, inserted "and other community members" in the second sentences of Subsections A and B.

### ANNOTATIONS

**Constitutionality of textbook loan program.** — The Instructional Material Law (IML), §§ 22-15-1 to -14 NMSA 1978, in which the New Mexico public education department purchases textbooks that are loaned free of charge to public and private school students enrolled in first through twelfth grade and in early childhood education programs, does not violate Article IV, Section 31,



Article IX, Section 14, or Article XII, Section 3 of the New Mexico constitution. The textbook loan program, which provides a generally available public benefit to students, does not result in the use of public funds in support of private schools as prohibited by Article XII, Section 3, and is consistent with Article IV, Section 31, which addresses appropriations for educational purposes, and Article IX, Section 14, which limits any donation to or in aid of any person, association or public or private corporation. *Moses v. Ruszkowski*, 2019-NMSC-003.

**Constitutionality.** — N.M. Const., Art. XII, § 3 expressly prohibits the appropriation of public funds to sectarian, denominational or private schools. The Instructional Material Law, §§ 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, violates N.M. Const., Art. XII, § 3, because the constitutional provision expressly restricts the use of public funds to other than sectarian schools and expressly prohibits the appropriation of educational funds to private schools. *Moses v. Skandera*, 2015-NMSC-036, 367 P.3d 838, *rev'g* 2015-NMCA-036, 346 P.3d 396, *vacated sub nom. N.M. Ass'n of Non-public Sch. v. Moses*, 137 S.Ct. 2325 (2017) (mem.).

Where petitioners filed a complaint for declaratory judgment against the secretary of the New Mexico public education department seeking a declaration that the state issuing instructional materials to students attending private schools is unconstitutional, the New Mexico supreme court held that the Instructional Material Law, §§ 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, violates N.M. Const., Art. XII, § 3, because the constitutional provision expressly restricts the use of public funds to other than sectarian schools and expressly prohibits the appropriation of educational funds to private schools. *Moses v. Skandera*, 2015-NMSC-036, 367 P.3d 838, *rev'g* 2015-NMCA-036, 346 P.3d 396, *vacated sub nom. N.M. Ass'n of Non-public Sch. v. Moses*, 137 S.Ct. 2325 (2017) (mem.).

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public

education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. XII, § 3, because the focus of the IML is not to support private schools, but to provide instructional material for the benefit of students, the program is secular in nature, and the state controls the use and disposition of the instructional material; although the private schools receive some benefit, N.M. Const., art. XII, § 3 will not be interpreted to prohibit indirect and incidental benefit when the legislative purpose of the IML does not focus on support of private schools. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IX, § 14, because under the IML, there is no donation to a private school because there is neither a gift nor an allocation or appropriation of something of value without consideration; although private schools receive possession of the instructional material, as agents for the students, they never have an ownership interest in the instructional material. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. II, § 11, which serves the same goals as the establishment clause of the first amendment of the United States constitution; the United States supreme court has made clear that textbook and instructional material programs that benefit all children, regardless of the school of their attendance, do not conflict with the establishment clause. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

**Right to inspect instructional material.** — Local school boards have no authority to prohibit citizens of the state from inspecting instructional material used in a public school within the district. 1988 Op. Att'y Gen. No. 88-37.

## 22-15-8.1. Instructional material adoption fund.

The "instructional material adoption fund" is created in the state treasury. The fund consists of fees charged to publishers to review their instructional materials, income from investment of the fund, gifts, grants and donations. Money in the fund shall not revert to any other fund at the end of a fiscal year. The fund shall be administered by the department and money in the fund is appropriated to the department to pay expenses associated with adoption of instructional material for the multiple list.

**History:** Laws 2005, ch. 80, § 5.

**Emergency clauses.** — Laws 2005, ch. 80, § 8 contained an emergency clause and was approved April 4, 2005.

## 22-15-8.2. Reading materials fund; created; purpose; applications.

A. The "reading materials fund" is created in the state treasury. The fund consists of appropriations, gifts, grants and donations. Money in the fund shall not revert to any other fund at the end of a fiscal year. The fund shall be administered by the department, and money in the fund is appropriated to the department to assist public schools that want to change their reading programs



from the current adoption. Money in the fund shall be disbursed on warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of public education or the secretary's authorized representative.

B. A school district that wants to use a scientific research-based core comprehensive, intervention or supplementary reading program may apply to the department for money from the reading materials fund to purchase the necessary instructional materials for the selected program. A school district may apply for funding for its reading program if:

(1) core and supplemental materials are highly rated by either the Oregon reading first center or the Florida center for reading research or the materials are listed in the international dyslexia association's framework for informed reading and language instruction;

(2) the district selects no more than two comprehensive published core reading programs; and

(3) the district has established a professional development plan describing how it will provide teachers with professional development and ongoing support in the effective use of the selected instructional materials.

**History: Laws 2006, ch. 58, § 1.**

**Effective dates.** — Laws 2006, ch. 58 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 17, 2006, 90 days after adjournment of the legislature.

**ANNOTATIONS**

**Constitutionality of textbook loan program.** — The Instructional Material Law (IML), §§ 22-15-1 to -14 NMSA 1978, in which the New Mexico public education department purchases textbooks that are loaned free of charge to public and private school students enrolled in first through twelfth grade and in early childhood education programs, does not violate Article IV, Section 31, Article IX, Section 14, or Article XII, Section 3 of the New Mexico constitution. The textbook loan program, which provides a generally available public benefit to students, does not result in the use of public funds in support of private schools as prohibited by Article XII, Section 3, and is consistent with Article IV, Section 31, which addresses appropriations for educational purposes, and Article IX, Section 14, which limits any donation to or in aid of any person, association or public or private corporation. *Moses v. Ruszkowski*, 2019-NMSC-003.

**Constitutionality.** — N.M. Const., Art. XII, § 3 expressly prohibits the appropriation of public funds to sectarian, denominational or private schools. The Instructional Material Law, §§ 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, violates N.M. Const., Art. XII, § 3, because the constitutional provision expressly restricts the use of public funds to other than sectarian schools and expressly prohibits the appropriation of educational funds to private schools. *Moses v. Skandera*, 2015-NMSC-036, 367 P.3d 838, *rev'g* 2015-NMCA-036, 346 P.3d 396, *vacated sub nom. N.M. Ass'n of Non-public Sch. v. Moses*, 137 S.Ct. 2325 (2017) (mem.).

Where petitioners filed a complaint for declaratory judgment against the secretary of the New Mexico public education department seeking a declaration that the state issuing instructional materials to students attending private schools is unconstitutional, the New Mexico supreme court held that the Instructional Material Law, §§ 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, violates N.M. Const., Art. XII, § 3, because

the constitutional provision expressly restricts the use of public funds to other than sectarian schools and expressly prohibits the appropriation of educational funds to private schools. *Moses v. Skandera*, 2015-NMSC-036, 367 P.3d 838; *rev'g* 2015-NMCA-036, 346 P.3d 396, *vacated sub nom. N.M. Ass'n of Non-public Sch. v. Moses*, 137 S.Ct. 2325 (2017) (mem.).

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. XII, § 3, because the focus of the IML is not to support private schools, but to provide instructional material for the benefit of students, the program is secular in nature, and the state controls the use and disposition of the instructional material; although the private schools receive some benefit, N.M. Const., art. XII, § 3 will not be interpreted to prohibit indirect and incidental benefit when the legislative purpose of the IML does not focus on support of private schools. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IX, § 14, because under the IML, there is no donation to a private school because there is neither a gift nor an allocation or appropriation of something of value without consideration; although private schools receive possession of the instructional material, as agents for the students, they never have an ownership interest in the instructional material. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IV, § 31, because under the IML, no funds are appropriated to any private school; the mere indirect or incidental benefit to the private schools does not violate N.M. Const., art. IV, § 31. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes



instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. II, § 11, which serves the same goals as the establishment clause of the first amendment of the United States constitution;

the United States supreme court has made clear that textbook and instructional material programs that benefit all children, regardless of the school of their attendance, do not conflict with the establishment clause. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

## 22-15-9. Distribution of funds for instructional material.

A. On or before April 1 of each year, the department shall allocate to each school district, state institution or private school as agent not less than ninety percent of its estimated entitlement as determined from the estimated forty-day membership for the next school year. A school district's, state institution's or private school's entitlement is that portion of the total amount of the annual appropriation less a deduction for a reasonable reserve for emergency expenses that its forty-day membership bears to the forty-day membership of the entire state. For the purpose of this allocation, additional pupils shall be counted as six pupils. The allocation for adult basic education shall be based on a full-time equivalency obtained by multiplying the total previous year's enrollment by .25. The department shall transfer the amount of the allocation for adult basic education to the adult basic education fund.

B. On or before January 15 of each year, the department shall recompute each entitlement using the forty-day membership for that year, except for adult basic education, and shall allocate the balance of the annual appropriation adjusting for any over- or under-estimation made in the first allocation.

C. An amount not to exceed fifty percent of the allocations attributed to each school district or state institution may be used for instructional material not included on the multiple list provided for in Section 22-15-8 NMSA 1978, and up to twenty-five percent of this amount may be used for other classroom materials. The local superintendent may apply to the department for a waiver of the use of funds allocated for the purchase of instructional material either included or not included on the multiple list. If the waiver is granted, the school district shall not be required to submit a budget adjustment request to the department. Private schools may expend up to fifty percent of their instructional material funds for items that are not on the multiple list; provided that no funds shall be expended for religious, sectarian or nonsecular materials; and provided further that all instructional material purchases shall be through an in-state depository.

D. The department shall establish procedures for the distribution of funds directly to school districts and state institutions. Prior to the final distribution of funds to any school district or charter school, the department shall verify that the local school board or governing body has adopted a policy that requires that every student have a textbook for each class that conforms to curriculum requirements and that allows students to take those textbooks home.

E. The department shall provide payment to an in-state depository on behalf of a private school for instructional material.

F. A school district or state institution that has funds remaining for the purchase of instructional material at the end of the fiscal year shall retain those funds for expenditure in subsequent years. Any balance remaining in an instructional material account of a private school at the end of the fiscal year shall remain available for reimbursement by the department for instructional material purchases in subsequent years.

**History:** 1953 Comp., § 77-13-9, enacted by Laws 1967, ch. 16, § 213; 1969, ch. 180, § 26; 1975, ch. 270, § 9; 1977, ch. 99, § 2; 1979, ch. 125, § 1; 1992, ch. 76, § 2; 1993, ch. 226, § 41; 1997, ch. 100, § 5; 1999, ch. 237, § 1; 2005, ch. 80, § 6; 2007, ch. 284, § 1.; 2007, ch. 285, § 2; 2009, ch. 221, § 7.

The 2009 amendment, effective July 1, 2010, in Subsection A, added the last sentence; in Subsection C, after "state institution", deleted "or adult basic education center"; at the beginning of the fourth sentence, deleted "Adult basic education centers" and added "Private schools"; after "may expend up to", deleted "one hundred" and added "fifty"; and in the last sentence, after "multiple list", added the remainder of the sentence; in Subsection

D, after "state institutions" deleted "and adult basic education centers"; in Subsection E, after "provide payment to", deleted "a publisher or" and added "an in-state"; and at the end of the sentence, deleted "included on the multiple list provided for in Section 22-15-8 NMSA 1978"; and in Subsection F, after "state institution" deleted "or adult basic education center".

The 2007 amendment, effective June 15, 2007, in Subsection C provided that up to twenty-five percent of the funds appropriated by instructional materials to also be used for other classroom materials.

The 2005 amendment, effective April 4, 2005, in Subsection A, changed the deadline for allocations of entitlements from July 1 to April 1 of each year; in Subsection



C, increased the amount of allocations that may be used for instructional material from thirty to fifty percent and provides for a waiver of the use of funds allocated for instructional material; in Subsection D, required the department make payment to the publisher or depository on behalf of a private school for instructional material on the multiple list; and in Subsection E, provided that funds remaining for the purchase of instructional material at the end of the fiscal year shall be retained and used in subsequent year.

**The 1999 amendment**, effective June 18, 1999, in Subsection A, added the third sentence and deleted the last sentence which read: "For the purpose of this allocation, additional pupils shall be counted as four pupils".

**The 1997 amendment**, effective July 1, 1998, added "Distribution of Funds for" in the section heading; deleted former Subsection A, relating to the establishment of separate instructional material accounts; redesignated the first paragraph of former Subsection B as Subsection A; in the first sentence of Subsection A, deleted "credit" following "allocate" and deleted "the instructional material account of" preceding "each", and deleted "transportation charges and" preceding "emergency" in the second sentence; redesignated the second paragraph of former Subsection B as Subsection B; in Subsection B, in the first sentence, substituted "adjusting" for "compensating" and deleted "of credit" following "under-estimation", and deleted the former second sentence, relating to disposition of funds remaining for the allocation; rewrote Subsection C; added Subsection D and redesignated former Subsection D as Subsection E; and rewrote Subsection E.

**The 1993 amendment**, effective July 1, 1993, substituted "department of education" for "division" throughout the section; substituted "not less than ninety percent" for "equal to ninety percent" in the first sentence of the first paragraph of Subsection B; deleted the former third sentence of the first paragraph of Subsection B, which read "Kindergarten MEM shall be calculated on a .5 full-time equivalent basis"; rewrote Subsection C; and substituted "expenditure" for "requisitioning against" near the end of Subsection D.

**The 1992 amendment**, effective May 20, 1992, substituted "forty-day membership" for "forty-day average daily membership" several times throughout the section; in Subsection B made minor stylistic changes in the first and second sentences and substituted "MEM" for "ADM" in the third sentence; and, in Subsection C, inserted "including the rebinding of used instructional material" in the first and second sentences.

## ANNOTATIONS

### Constitutionality of textbook loan program. —

The Instructional Material Law (IML), §§ 22-15-1 to -14 NMSA 1978, in which the New Mexico public education department purchases textbooks that are loaned free of charge to public and private school students enrolled in first through twelfth grade and in early childhood education programs, does not violate Article IV, Section 31, Article IX, Section 14, or Article XII, Section 3 of the New Mexico constitution. The textbook loan program, which provides a generally available public benefit to students, does not result in the use of public funds in support of private schools as prohibited by Article XII, Section 3, and is consistent with Article IV, Section 31, which addresses appropriations for educational purposes, and Article IX, Section 14, which limits any donation to or in aid of any person, association or public or private corporation. *Moses v. Ruszkowski*, 2019-NMSC-003.

**Constitutionality.** — N.M. Const., Art. XII, § 3 expressly prohibits the appropriation of public funds to sectarian, denominational or private schools. The Instructional Material Law, §§ 22-15-1 through 22-15-14

NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, violates N.M. Const., Art. XII, § 3, because the constitutional provision expressly restricts the use of public funds to other than sectarian schools and expressly prohibits the appropriation of educational funds to private schools. *Moses v. Skandera*, 2015-NMSC-036, 367 P.3d 838, *rev'd* 2015-NMCA-036, 346 P.3d 396, *vacated sub nom. N.M. Ass'n of Non-public Sch. v. Moses*, 137 S.Ct. 2325 (2017) (mem.).

Where petitioners filed a complaint for declaratory judgment against the secretary of the New Mexico public education department seeking a declaration that the state issuing instructional materials to students attending private schools is unconstitutional, the New Mexico supreme court held that the Instructional Material Law, §§ 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, violates N.M. Const., Art. XII, § 3, because the constitutional provision expressly restricts the use of public funds to other than sectarian schools and expressly prohibits the appropriation of educational funds to private schools. *Moses v. Skandera*, 2015-NMSC-036, 367 P.3d 838, *rev'd* 2015-NMCA-036, 346 P.3d 396, *vacated sub nom. N.M. Ass'n of Non-public Sch. v. Moses*, 137 S.Ct. 2325 (2017) (mem.).

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. XII, § 3, because the focus of the IML is not to support private schools, but to provide instructional material for the benefit of students, the program is secular in nature, and the state controls the use and disposition of the instructional material; although the private schools receive some benefit, N.M. Const., art. XII, § 3 will not be interpreted to prohibit indirect and incidental benefit when the legislative purpose of the IML does not focus on support of private schools. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IX, § 14, because under the IML, there is no donation to a private school because there is neither a gift nor an allocation or appropriation of something of value without consideration; although private schools receive possession of the instructional material, as agents for the students, they never have an ownership interest in the instructional material. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IV, § 31, because under the IML, no funds are appropriated to any private school; the mere indirect or incidental benefit to the private schools does not violate N.M. Const., art. IV, § 31. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public



education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. II, § 11, which serves the same goals as the establishment clause of the first amendment of the United States constitution; the United States supreme court has made clear that textbook and instructional material programs that benefit all children, regardless of the school of their attendance, do

not conflict with the establishment clause. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

**Textbooks for student in private schools.** — The public education department's payment of public money for textbooks that are provided to students attending private schools, including sectarian and denominational schools, may violate Article IX, Section 14 and Article XII, Section 3 of the New Mexico Constitution. 2010 Op. Att'y Gen. No. 10-06.

## 22-15-10. Sale or loss or return of instructional material.

A. With the approval of the chief, instructional material acquired by a school district, state institution or private school pursuant to the Instructional Material Law [22-15-1 through 22-15-14 NMSA 1978] may be sold at a price determined by officials of the school district, state institution or private school. The selling price shall not exceed the cost of the instructional material to the state.

B. A school district, state institution or private school may hold the parent or student responsible for the loss, damage or destruction of instructional material while the instructional material is in the possession of the student. A school district may withhold the grades, diploma and transcripts of the student responsible for damage or loss of instructional material until the parent or student has paid for the damage or loss. When a parent or student is unable to pay for damage or loss, the school district shall work with the parent or student to develop an alternative program in lieu of payment. Where a parent is determined to be indigent according to guidelines established by the department, the school district shall bear the cost.

C. A school district or state institution that has funds remaining for the purchase of instructional material at the end of the fiscal year shall retain those funds for expenditure in subsequent years.

D. All money collected by a private school for the sale, loss, damage or destruction of instructional material received pursuant to the Instructional Material Law shall be sent to the department.

E. Upon order of the chief, a school district, state institution or private school shall transfer to the department or its designee instructional material, purchased with instructional material funds, that is in usable condition and for which there is no use expected by the respective schools.

**History:** 1953 Comp., § 77-13-10, enacted by Laws 1967, ch. 16, § 214; 1975, ch. 270, § 10; 1989, ch. 280, § 1; 1993, ch. 226, § 42; 1997, ch. 100, § 6; 2009, ch. 221, § 8.

**Cross references.** — For transfer of powers and duties of former chief of public school finance, see 9-6-3.1 NMSA 1978.

For transfer of the powers and duties of the former state board and department of education, see 9-24-15 NMSA 1978.

**The 2009 amendment**, effective July 1, 2010, in Subsections A, B and E, after "private school", deleted "or adult basic education center"; in Subsection C, after "state institution" deleted "or adult basic education center"; in Subsection B, in the first, second and third sentences, after "parent", deleted "guardian"; and in the last sentence, after "parent", deleted "or guardian".

**The 1997 amendment**, effective July 1, 1998, substituted "acquired by" for "distributed to" in Subsection A; in Subsection B, deleted "as agent" following "center" in the first sentence and deleted "of education" in the last sentence; added Subsection C and redesignated the remaining subsections accordingly; rewrote Subsection D; in Subsection E, deleted "as ordered" following "transfer" and substituted "purchased with" for "purchased from the"; and made stylistic changes throughout the section.

**The 1993 amendment**, effective July 1, 1993, substituted "chief" for "director" in Subsections A and D; substituted "department of education" and "department" for "division" in Subsections C and D; added the final sentence of Subsection C; and made a minor stylistic change in Subsection D.

**The 1989 amendment**, effective June 16, 1989, added the last three sentences in Subsection B and made minor stylistic changes.

### ANNOTATIONS

**Constitutionality of textbook loan program.** — The Instructional Material Law (IML), §§ 22-15-1 to -14 NMSA 1978, in which the New Mexico public education department purchases textbooks that are loaned free of charge to public and private school students enrolled in first through twelfth grade and in early childhood education programs, does not violate Article IV, Section 31, Article IX, Section 14, or Article XII, Section 3 of the New Mexico constitution. The textbook loan program, which provides a generally available public benefit to students, does not result in the use of public funds in support of private schools as prohibited by Article XII, Section 3, and is consistent with Article IV, Section 31, which addresses appropriations for educational purposes, and Article IX, Section 14, which limits any donation to or in aid of any person, association or public or private corporation. *Moses v. Ruszkowski*, 2019-NMSC-003.

**Constitutionality.** — N.M. Const., Art. XII, § 3 expressly prohibits the appropriation of public funds to sectarian, denominational or private schools. The Instructional Material Law, §§ 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, violates N.M. Const., Art. XII, § 3, because the constitutional



provision expressly restricts the use of public funds to other than sectarian schools and expressly prohibits the appropriation of educational funds to private schools. *Moses v. Skandera*, 2015-NMSC-036, 367 P.3d 838, *rev'd* 2015-NMCA-036, 346 P.3d 396, *vacated sub nom. N.M. Ass'n of Non-public Sch. v. Moses*, 137 S.Ct. 2325 (2017) (mem.).

Where petitioners filed a complaint for declaratory judgment against the secretary of the New Mexico public education department seeking a declaration that the state issuing instructional materials to students attending private schools is unconstitutional, the New Mexico supreme court held that the Instructional Material Law, §§ 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, violates N.M. Const., Art. XII, § 3, because the constitutional provision expressly restricts the use of public funds to other than sectarian schools and expressly prohibits the appropriation of educational funds to private schools. *Moses v. Skandera*, 2015-NMSC-036, 367 P.3d 838, *rev'd* 2015-NMCA-036, 346 P.3d 396, *vacated sub nom. N.M. Ass'n of Non-public Sch. v. Moses*, 137 S.Ct. 2325 (2017) (mem.).

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. XII, § 3, because the focus of the IML is not to support private schools, but to provide instructional material for the benefit of students, the program is secular in nature, and the state

controls the use and disposition of the instructional material; although the private schools receive some benefit, N.M. Const., art. XII, § 3 will not be interpreted to prohibit indirect and incidental benefit when the legislative purpose of the IML does not focus on support of private schools. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IX, § 14, because under the IML, there is no donation to a private school because there is neither a gift nor an allocation or appropriation of something of value without consideration; although private schools receive possession of the instructional material, as agents for the students, they never have an ownership interest in the instructional material. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. II, § 11, which serves the same goals as the establishment clause of the first amendment of the United States constitution; the United States supreme court has made clear that textbook and instructional material programs that benefit all children, regardless of the school of their attendance, do not conflict with the establishment clause. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

## 22-15-11. Record of instructional material.

Each school district, state institution or private school shall keep accurate records of all instructional material, including cost records, on forms and by procedures prescribed by the bureau.

**History:** 1953 Comp., § 77-13-11, enacted by Laws 1967, ch. 16, § 215; 1975, ch. 270, § 11; 1997, ch. 100, § 7; 2009, ch. 221, § 9.

**The 2009 amendment**, effective July 1, 2010, after "private school", deleted "or adult basic education center".

**The 1997 amendment**, effective July 1, 1998, deleted former Subsection A, which read: "The division shall keep accurate records of the cost of all instructional material distributed pursuant to the Instructional Material Law", deleted the Subsection B designation, and substituted "including cost records" for "distributed to it pursuant to the Instructional Material Law".

### ANNOTATIONS

**Constitutionality of textbook loan program.** — The Instructional Material Law (IML), §§ 22-15-1 to -14 NMSA 1978, in which the New Mexico public education department purchases textbooks that are loaned free of charge to public and private school students enrolled in first through twelfth grade and in early childhood education programs, does not violate Article IV, Section 31, Article IX, Section 14, or Article XII, Section 3 of the New Mexico constitution. The textbook loan program, which provides a generally available public benefit to students, does not result in the use of public funds in support of private schools as prohibited by Article XII, Section 3, and is consistent with Article IV, Section 31, which addresses appropriations for educational purposes, and Article IX, Section 14, which limits any donation to or in aid of any

person, association or public or private corporation. *Moses v. Ruszkowski*, 2019-NMSC-003.

**Constitutionality.** — The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. XII, § 3, because the focus of the IML is not to support private schools, but to provide instructional material for the benefit of students, the program is secular in nature, and the state controls the use and disposition of the instructional material; although the private schools receive some benefit, N.M. Const., art. XII, § 3 will not be interpreted to prohibit indirect and incidental benefit when the legislative purpose of the IML does not focus on support of private schools. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IX, § 14, because under the IML, there is no donation to a private school because there is neither a gift nor an allocation or appropriation of something of value without consideration; although private schools receive possession of the instructional material, as agents for the students, they never have an ownership interest in the instructional

material. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. II, § 11, which

serves the same goals as the establishment clause of the first amendment of the United States constitution; the United States supreme court has made clear that textbook and instructional material programs that benefit all children, regardless of the school of their attendance, do not conflict with the establishment clause. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

## 22-15-12. Repealed.

**Repeals.** — Laws 2017, ch. 65, § 4 repealed 22-15-12 NMSA 1978, as enacted by Laws 1967, ch. 16, § 216, relating to annual reports, effective June 16, 2017. For

provisions of former section, see the 2016 NMSA 1978 on *NMOneSource.com*.

## 22-15-13. Contracts with publishers.

A. The department may enter into a contract with a publisher or a publisher's authorized agent for the purchase and delivery of instructional material selected from the multiple list adopted by the department.

B. Payment for instructional material purchased by the department shall be made only upon performance of the contract and the delivery and receipt of the instructional material.

C. Each publisher or publisher's authorized agent contracting with the state for the sale of instructional material shall agree:

(1) to file a copy of each item of instructional material to be furnished under the contract with the department with a certificate attached identifying it as an exact copy of the item of instructional material to be furnished under the contract;

(2) that the instructional material furnished pursuant to the contract shall be of the same quality in regard to paper, binding, printing, illustrations, subject matter and authorship as the copy filed with the department; and

(3) that if instructional material under the contract is sold elsewhere in the United States for a price less than that agreed upon in the contract with the state, the price to the state shall be reduced to the same amount.

D. Each contract executed for the acquisition of instructional material shall include the right of the department to transcribe and reproduce instructional material in media appropriate for the use of students with visual impairment who are unable to use instructional material in conventional print and form. Publishers of adopted textbooks also shall be required to provide those materials to the department or its designated agent in an electronic format specified by the department that is readily translatable into Braille and also can be used for large print or speech access within a time period specified by the department.

E. Beginning with instructional material for the 2013-2014 school year, publishers of instructional material on the multiple list shall be required to provide those materials in both written and electronic formats.

**History:** 1953 Comp., § 77-13-13, enacted by Laws 1967, ch. 16, § 217; 1975, ch. 270, § 13; 1993, ch. 156, § 6; 1993, ch. 226, § 44; 2011, ch. 114, § 1.

**Cross references.** — For transfer of the powers and duties of the former state board and department of education, see 9-24-15 NMSA 1978.

**The 2011 amendment**, effective June 17, 2011, added Subsection E to require publishers to provide instructional material in both written and electronic format beginning with the 2013-2014 school year.

**The 1993 amendment**, effective July 1, 1993, substituted "authorized agent" for "representative" in Subsections A and C.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 79 C.J.S. Schools and School Districts §§ 491, 492.

## 22-15-14. Reports; budgets.

A. Annually, the department of education [public education department] shall submit a budget for the ensuing fiscal year to the department of finance and administration showing the



expenditures for instructional material to be paid out of the instructional material fund, including reasonable transportation charges and emergency expenses.

B. Upon request, the department of education [public education department] shall make reports to the state board [department] concerning the administration and execution of the Instructional Material Law [22-15-1 through 22-15-14 NMSA 1978].

**History:** 1953 Comp., § 77-13-14, enacted by Laws 1967, ch. 16, § 218; 1975, ch. 270, § 14; 1993, ch. 226, § 45.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state

department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**Cross references.** — For instructional material fund generally, see 22-15-5 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, substituted "department of education" for "division" in Subsections A and B.

## 22-15-15. Short title.

This act [22-15-15 to 22-15-20 NMSA 1978] may be cited as the "Historical Codes Act".

**History:** Laws 1981, ch. 29, § 1.

## 22-15-16. Purpose.

It is the purpose of the Historical Codes Act [22-15-15 to 22-15-20 NMSA 1978] to promote an appreciation, necessary to a complete education, for the heritage and history of our civilization through the posting of historical codes pursuant to the provisions of the Historical Codes Act.

**History:** Laws 1981, ch. 29, § 2.

## 22-15-17. Funding.

Each local school board is authorized to accept contributions from private sources in order to carry out the provisions of the Historical Codes Act [22-15-15 to 22-15-20 NMSA 1978].

**History:** Laws 1981, ch. 29, § 3.

## 22-15-18. Posting of copy.

Each local school board may, to the extent funds are available pursuant to Section 3 [22-15-17 NMSA 1978] of the Historical Codes Act, post, in a nondiscriminatory manner not favoring one religious or ethno-cultural background over another, durable, permanent copies of the historical codes in each regular instructional classroom in the school district.

**History:** Laws 1981, ch. 29, § 4.

## 22-15-19. Other funds prohibited.

No funds from any other source other than those accepted pursuant to Section 3 [22-15-17 NMSA 1978] of the Historical Codes Act shall be used to carry out the provisions of Section 4 [22-15-18 NMSA 1978] of that act.

**History:** Laws 1981, ch. 29, § 5.

**Cross references.** — For the federal Individuals with Disabilities Education Act, see Titles 20, 25, 29 and 42 U.S.C.

## 22-15-20. Definition.

As used in the Historical Codes Act [22-15-15 to 22-15-20 NMSA 1978], "historical codes" means:

- A. the ten commandments;
- B. the code of Hammurabi;
- C. any injunctive compendium from the Koran;
- D. any compendium of Confucian teachings;
- E. any excerpts from the Bhagavad-Gita;
- F. the teachings of Gautama Buddha or his followers; or
- G. any other teachings representing disparate ethno-cultural or religious backgrounds.

**History:** Laws 1981, ch. 29, § 6; .

## 22-15-21. Repealed.

**Repeals.** — Laws 2003, ch. 313, § 7 repealed 22-15-21 NMSA 1978, as enacted by Laws 1993, ch. 156, § 1, relating to the short title of the Braille Literacy Act, effective July 1, 2003. For provisions of former section, *see* the 2002

NMSA 1978 on *NMOneSource.com*. For similar present provisions, *see* the Braille Access Act, 22-15-26 NMSA 1978 et seq.

## 22-15-22. Repealed.

**Repeals.** — Laws 2003, ch. 313, § 7 repealed 22-15-22 NMSA 1978, as enacted by Laws 1993, ch. 156, § 2, relating to definitions in the Braille Literacy Act, effective July 1, 2003. For provisions of former section, *see* the 2002

NMSA 1978 on *NMOneSource.com*. For similar present provisions, *see* the Braille Access Act, 22-15-26 NMSA 1978 et seq.

## 22-15-23. Repealed.

**Repeals.** — Laws 2003, ch. 313, § 7 repealed 22-15-23 NMSA 1978, as enacted by Laws 1993, ch. 156, § 3, relating to Braille instruction, effective July 1, 2003. For

provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*. For similar present provisions, *see* the Braille Access Act, 22-15-26 NMSA 1978 et seq.

## 22-15-24. Repealed.

**Repeals.** — Laws 2003, ch. 313, § 7 repealed 22-15-24 NMSA 1978, as enacted by Laws 1993, ch. 156, § 4, relating to individualized planning and assessment, effective July 1, 2003. For provisions of former section, *see* the 2002

NMSA 1978 on *NMOneSource.com*. For similar present provisions, *see* the Braille Access Act, 22-15-26 NMSA 1978 et seq.

## 22-15-25. Repealed.

**Repeals.** — Laws 2003, ch. 313, § 7 repealed 22-15-25 NMSA 1978, as enacted by Laws 1993, ch. 156, § 5, relating to personnel qualifications, effective July 1, 2003. For

provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*. For similar present provisions, *see* the Braille Access Act, 22-15-26 NMSA 1978 et seq.

## 22-15-26. Short title.

This act [22-15-26 to 22-15-31 NMSA 1978] may be cited as the "Braille Access Act".

**History:** Laws 2003, ch. 313, § 1.

## 22-15-27. Purposes.

The purposes of the Braille Access Act [22-15-26 to 22-15-31 NMSA 1978] are to:

- A. enhance literacy;
- B. increase braille proficiency;



- C. improve employability for blind and visually impaired students; and
- D. reduce the cost of acquiring braille and other alternate accessible format materials.

History: Laws 2003, ch. 313, § 2.

## 22-15-28. Definitions.

As used in the Braille Access Act [22-15-26 to 22-15-31 NMSA 1978]:

- A. "alternate accessible format" means one of several alternatives to traditional print, including braille, large print and computer text files;
- B. "braille" means the tactile system of reading and writing used by persons who are blind and visually impaired, as defined by the braille authority of North America;
- C. "department" means the state department of public education;
- D. "educational institution" means a public school or public post-secondary educational institution;
- E. "instructional materials" means textbooks, workbooks, teacher manuals or editions, black-line masters, transparencies, test packets, software, CD-ROMs, videotapes and cassette tapes;
- F. "structural integrity" means all of the printed instructional materials, including the text of the material, sidebars, table of contents, chapter headings and subheadings, footnotes, indexes, glossaries and bibliographies. "Structural integrity" need not include nontextual elements such as pictures, illustrations, graphs or charts, though the publisher should include a brief textual description of any such nontextual element when it is practical to do so and mention of the nontextual element when a description is not practical;
- G. "student" means a blind or visually handicapped person accepted, enrolled or attending an educational institution; and
- H. "textbook" means a book, a system of instructional materials or a combination of a book and supplementary instructional material that conveys information to the student or otherwise contributes to the learning process, including electronic textbooks.

History: Laws 2003, ch. 313, § 3.

## 22-15-29. Instructional materials.

A. A publisher that prints instructional materials for students attending educational institutions shall provide, upon request of the educational institution, any printed instructional materials in an electronic format mutually agreed upon by the publisher and the educational institution.

B. The formats used shall include any nationally recognized standard for conversion of publishing files to braille, such as DAISY/NISO XML.

C. If no nationally recognized standard is appropriate, as determined by the department, publishers shall provide the file in another mutually agreed upon computer or electronic format, such as Microsoft Word, ASCII text or LaTeX.

D. The educational institution may use the electronic version of printed instructional materials that is provided pursuant to the Braille Access Act [22-15-26 to 22-15-31 NMSA 1978] to transcribe or arrange for the transcription of the printed instructional materials into an alternate accessible format. The educational institution has the right to provide the alternate accessible format copy of the printed instructional materials to students as permitted by federal copyright law, including the provisions of Section 316 of Public Law 104-197.

E. The electronic version of the printed instructional materials shall:

- (1) comply with any applicable federal standard;
- (2) otherwise maintain the structural integrity of the printed instructional materials; and
- (3) include the latest corrections and revisions of the printed instructional materials as necessary.

F. The publisher shall provide the electronic versions of the printed instructional materials to the educational institution at no additional cost and within ten business days after receipt of a written request that does all of the following:

- (1) certifies that the educational institution or the student has purchased the printed instructional materials for use by the student;
- (2) certifies that the student is unable to use printed instructional materials;
- (3) certifies that the printed instructional materials are for use by the student in connection with a course at the educational institution; and
- (4) is signed by the:
  - (a) person responsible for providing educational services pursuant to the federal Individuals with Disabilities Education Act;
  - (b) coordinator of services for students with disabilities at the educational institution;
  - (c) person responsible for monitoring the educational institution's compliance with the federal Americans with Disabilities Act of 1990 or Section 504 of the federal Rehabilitation Act of 1973; or
  - (d) vocational rehabilitation counselor responsible for providing services under an individualized plan for employment created pursuant to the federal Rehabilitation Act of 1973.

G. A publisher may require that the request include a statement signed by the educational institution agreeing that:

- (1) the electronic copy of the printed instructional materials will be used solely for the student's educational purposes; and
- (2) the student or educational institution will not copy, publish or in any other way distribute the printed instructional materials for use by anyone other than the original student, except that the educational institution may provide the instructional materials to another qualifying student who has signed a statement agreeing to the terms contained in this section and unless it is otherwise permitted by federal law.

H. A publisher who manufactures instructional materials using any type of video or audio format, CD ROM [CD-ROM] or other digital format for students attending educational institutions shall, to the maximum extent practicable, upon request, provide an accessible version of the instructional materials or, if an accessible version is not available, provide other electronic versions of the instructional materials, subject to the same conditions and limitations for printed instructional materials.

I. Nothing in the Braille Access Act [22-15-26 to 22-15-31 NMSA 1978] shall be deemed to authorize any use of instructional materials that would constitute an infringement of copyright pursuant to applicable federal copyright law.

**History:** Laws 2003, ch. 313, § 4.

**Cross references.** — For Section 316 of Public Law 104-197, see 17 U.S.C.S. § 121 and note preceding 17 U.S.C.S. § 101.

For the Americans with Disabilities Act, see 42 U.S.C.S. 12101 et seq.

For the Rehabilitation Act of 1973, see 29 U.S.C.S. § 701 et seq. Section 504 is codified as 29 U.S.C.S. § 794.

For the federal Individuals with Disabilities Education Act, see 20 U.S.C.

## 22-15-30. Guidelines.

The department, in consultation with representatives from educational institutions and publishers, shall adopt guidelines consistent with the Braille Access Act [22-15-26 to 22-15-31 NMSA 1978] for the implementation and administration of that act. The guidelines shall address all of the following:

- A. the designation of instructional materials deemed required or essential to student success;
- B. definitions clarifying what constitutes nontextual mathematics or science instructional materials that use mathematical notations and clarifying a publisher's obligations in regard to such instructional materials;
- C. definitions clarifying what is required to maintain structural integrity and requirements for textual descriptions of pictures, illustrations, graphs and charts;
- D. requirements for approval and procurement of textbooks that are available in a computer or electronic format and procedures for suspension of publishers from the procurement process if the publisher fails to comply with the provisions of the Braille Access Act;
- E. an administrative complaint process to be followed for complaints against a publisher;



- F. definitions clarifying what constitutes "educational purposes"; and
- G. any other matters the department deems necessary or appropriate to carry out the purposes of the Braille Access Act.

**History:** Laws 2003, ch. 313, § 5.

## 22-15-31. Private right of action.

A student who contends that there has been a violation of the Braille Access Act [22-15-26 to 22-15-31 NMSA 1978] has the right to pursue a private right of action in the district court if the student has exhausted the administrative complaint process. Organizations representing the interests of persons who are blind or who have other disabilities shall have standing to assert any right afforded in the Braille Access Act and shall be subject to the same requirements and terms as a student. Should the student or organization prevail in a lawsuit, the student or organization shall be entitled to injunctive relief and reasonable attorney fees and costs. No other type of monetary damages shall be available.

**History:** Laws 2003, ch. 313, § 6.

# ARTICLE 15A

## Technology for Education

Sec.		Sec.	
22-15A-1.	Short title.	22-15A-8.	Educational technology fund; created.
22-15A-2.	Definitions.	22-15A-9.	Educational technology fund; distribution.
22-15A-3.	Bureau established; chief appointed.	22-15A-10.	Annual report.
22-15A-4.	Bureau duties.	22-15A-11.	Educational technology deficiencies; correction.
22-15A-5.	Council on technology in education; created; purpose.	22-15A-12.	Educational technology deficiency correction fund.
22-15A-6.	Council membership.	22-15A-13.	Obsolete computer replacement.
22-15A-7.	Council duties.		

## 22-15A-1. Short title.

Chapter 22, Article 15A NMSA 1978 may be cited as the "Technology for Education Act".

**History:** Laws 1994, ch. 96, § 1; 2005, ch. 222, § 1.

**The 2005 amendment**, effective June 17, 2005, added the statutory reference of the act.

## 22-15A-2. Definitions.

As used in the Technology for Education Act:

- A. "bureau" means the education technology bureau in the department of education [public education department];
- B. "chief" means the chief of the bureau;
- C. "council" means the council on technology in education; and
- D. "educational technology" means tools used in the educational process that constitute learning resources and may include closed circuit television systems, educational television and radio broadcasting, cable television, satellite, copper and fiber optic transmission, computer, video and audio laser and CD ROM [CD-ROM] discs, video and audio tapes or other technologies and the training, maintenance, equipment and computer infrastructure information, techniques and tools, used to implement technology in classrooms and library and media centers.

**History:** Laws 1994, ch. 96, § 2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education

or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

### 22-15A-3. Bureau established; chief appointed.

A. The "education technology bureau" is created within the department of education [public education department].

B. With the approval of the state board [department], the state superintendent [secretary] shall appoint a chief of the bureau.

**History:** Laws 1994, ch. 96, § 3.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be

deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

### 22-15A-4. Bureau duties.

In accordance with the policies and regulations of the state board [department], the bureau shall:

A. administer the provisions of the Technology for Education Act;

B. develop a statewide plan for the integration of educational technology into the public schools and coordinate technology-related education activities with other state agencies, the federal government, business consortia and public or private agencies or individuals;

C. assist school districts to develop and implement a strategic, long-term plan for utilizing educational technology in the school system;

D. upon approval of a school district's technology plan, make distributions to school districts from the educational technology fund;

E. recommend funding mechanisms that will support the development and maintenance of an effective educational technology infrastructure in the state;

F. promote collaboration among government, business, educational organizations and telecommunications entities to expand and improve the use of technology in education;

G. assess and determine the educational technology needs of school districts; and

H. provide staff support for and coordinate the activities of the council.

**History:** Laws 1994, ch. 96, § 4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be

deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

### 22-15A-5. Council on technology in education; created; purpose.

The "council on technology in education" is created. The council shall advise the bureau, the state board [department] and the legislature regarding the establishment of appropriate educational technology standards, technology-enhanced curricula, instruction, appropriations for educational technology and administrative resources and services for the public schools.

**History:** Laws 1994, ch. 96, § 5.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be

deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

### 22-15A-6. Council membership.

A. The council shall be composed of seventeen members. Members shall be appointed by the state board [department] for terms of four years. As designated by the state board at the time of



initial appointment, the terms of five members shall expire at the end of two years, the terms of five members shall expire at the end of three years and the terms of seven members shall expire at the end of four years.

- B. When appointing members, the state board [department] shall appoint:
- (1) one member who shall have expertise in state government;
  - (2) three members who shall have expertise in school district administration;
  - (3) two members who shall have expertise in providing instructional services in post-secondary, technical-vocational or adult education;
  - (4) three members who shall have expertise in providing instructional services in elementary or secondary schools;
  - (5) two members who shall be parents of school-age children;
  - (6) one member who shall be a public school secondary student;
  - (7) three members who shall have expertise in educational technology; and
  - (8) two members at large.
- C. In making appointments to the council, the state board [department] shall give due consideration to gender and ethnicity to achieve a membership representative of the geographic and cultural diversity of New Mexico.
- D. Members of the council shall elect a chairman from among the membership. The council shall meet at the call of the chairman not less than quarterly.
- E. Members of the council shall receive per diem and mileage pursuant to the provisions of the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] but shall receive no other compensation, perquisite or allowance.

**History:** Laws 1994, ch. 96, § 6.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be

deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## 22-15A-7. Council duties.

The council shall:

- A. advise the bureau on implementation of the provisions of the Technology for Education Act;
- B. work with the bureau to conduct periodic assessments of the need for educational technology in the public school system to support on-site and distance learning and make recommendations to the department on how to meet those needs;
- C. promote the collaborative development and implementation of educational technologies, projects and practices to enhance on-site and distance learning instruction capabilities;
- D. develop and recommend to the department a statewide plan to infuse educational technology into the public school system in support of state and national education goals, including a statewide cyber academy plan that states short- and long-range goals for distance learning; and
- E. provide assistance to the bureau in review of school district technology plans to support on-site and distance learning.

**History:** Laws 1994, ch. 96, § 7; 2007, ch. 292, § 8.

**The 2007 amendment,** effective June 15, 2007, required the council to support on-site and distance learning, and to develop and recommend a statewide cyber

academy plan. Laws 2007, ch. 292, § 8 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 293, § 8. *See* 12-1-8 NMSA 1978.

## 22-15A-8. Educational technology fund; created.

The "educational technology fund" is created in the state treasury. Money in the fund is appropriated to the department of education [public education department] for the purpose of implementing the provisions of the Technology for Education Act. Money in the fund shall be distributed in the manner provided in the Technology for Education Act. Money in the fund shall only be expended pursuant to warrants issued by the department of finance and administration pursuant to

vouchers signed by the chief or the state superintendent [secretary]. Money in the fund shall not revert at the end of the fiscal year but shall remain to the credit of the fund.

**History:** Laws 1994, ch. 96, § 8.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be

deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

## 22-15A-9. Educational technology fund; distribution.

A. Upon annual review and approval of a school district's educational technology plan, the bureau shall determine a separate distribution from the educational technology fund for each school district.

B. On or before July 31 of each year, the bureau shall distribute money in the educational technology fund directly to each school district in an amount equal to ninety percent of the school district's estimated adjusted entitlement calculated pursuant to Subsection C of this section. A school district's unadjusted entitlement is that portion of the total amount of the annual appropriation that the projected membership bears to the projected membership of the state. Kindergarten membership shall be calculated on a one-half full-time-equivalent basis.

C. A school district's estimated adjusted entitlement shall be calculated by the bureau using the following procedure:

(1) a base allocation is calculated by multiplying the total annual appropriation by seventy-five thousandths percent;

(2) the estimated adjusted entitlement amount for a school district whose unadjusted entitlement is at or below the base allocation shall be equal to the base allocation. For a school district whose unadjusted entitlement is higher than the base allocation, the estimated adjusted entitlement shall be calculated pursuant to Paragraphs (3) through (6) of this subsection;

(3) the total projected membership in those school districts that will receive the base allocation pursuant to Paragraph (2) of this subsection is subtracted from the total projected state membership;

(4) the total of the estimated adjusted entitlement amounts that will be distributed to those school districts receiving the base allocation pursuant to Paragraph (2) of this subsection is subtracted from the total appropriation;

(5) the projected membership for the district is divided by the result calculated pursuant to Paragraph (3) of this subsection; and

(6) the estimated adjusted entitlement amount for the school district equals the number calculated pursuant to Paragraph (5) of this subsection multiplied by the value calculated pursuant to Paragraph (4) of this subsection.

D. On or before January 30 of each year, the bureau shall recompute each adjusted entitlement using the final funded membership for that year and, without making any additional reductions, shall allocate the balance of the annual appropriation adjusting for any over- or under-projection of membership.

E. A school district receiving funding pursuant to the Technology for Education Act is responsible for the purchase, distribution, use and maintenance of educational technology.

F. As used in this section, "membership" means the total enrollment of qualified students, as defined in the Public School Finance Act [Chapter 22, Article 8 NMSA 1978], on the current roll of class or school on a specified day. The current roll is established by the addition of original entries and reentries minus withdrawals. Withdrawal of students, in addition to students formally withdrawn from the public school, includes students absent from the public school for as many as ten consecutive school days.

**History:** Laws 1994, ch. 96, § 9; 2000, ch. 89, § 1; 2003, ch. 147, § 11; 2004, ch. 125, § 5; 2005, ch. 274, § 3.

The 2005 amendment, effective April 6, 2005, in Subsection C(6), provided that the estimated adjusted

entitlement amount for the school district, equals the number calculated pursuant to Subsection C(5) multiplied by the value calculated pursuant to Subsection C(6); and deleted former Subsections C(7) through (13).



**The 2004 amendment**, effective May 19, 2004, amended Subsection C to rewrite Paragraph (7) to substitute for "legislative council service" the "department of finance and administration" and to add at the end of the paragraph "An appropriation made in a fiscal year shall be deemed to be accepted by a school district unless, prior to July 15 of the fiscal year following the appropriation, the district notifies the department of finance and administration and the public education department that the district is rejecting the appropriation" and to amend Paragraph (10) to substitute "the immediately two preceding" for "prior" preceding "fiscal years".

**The 2003 amendment**, effective April 4, 2003, rewrote Subsection C and inserted "without making any additional reductions" preceding "shall allocate" in Subsection D.

**The 2000 amendment**, effective May 17, 2000, in Subsection B, inserted "adjusted" following "district's estimated", substituted "calculated pursuant to Subsection C of this section" for "as determined by the projected membership for the school year" in the first sentence and inserted "unadjusted" following "school district's" in the second sentence; added present Subsection C and redesignated the remaining subsections accordingly; and inserted "adjusted" preceding "entitlement" in present Subsection D.

## 22-15A-10. Annual report.

Annually, at a time specified by the department of education [public education department], each school district receiving distributions from the educational technology fund shall file a report with the department of education [public education department] regarding distributions received, direct legislative appropriations for educational technology made and not rejected, expenditures made and educational technology obtained by the district and such other related information as may be required by the department of education [public education department].

**History:** Laws 1994, ch. 96, § 10; 2003, ch. 147, § 12.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state

department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**The 2003 amendment**, effective April 4, 2003, substituted "each school district" for "each local school district" and inserted "direct legislative appropriations for educational technology made and not rejected" following "distributions received".

## 22-15A-11. Educational technology deficiencies; correction.

A. No later than September 1, 2005, the bureau, with the advice of the council and the secretary of information technology, shall define and develop minimum educational technology adequacy standards to supplement the adequacy standards developed by the public school capital outlay council for school districts to use to identify outstanding serious deficiencies in educational technology infrastructure.

B. A school district shall use the standards to complete a self-assessment of the outstanding educational technology deficiencies within the school district and provide cost projections to correct the outstanding deficiencies.

C. The bureau shall develop a methodology for prioritizing projects that will correct the deficiencies.

D. After a public hearing and to the extent that money is available in the educational technology deficiency correction fund, the bureau shall approve allocations from the fund on the established priority basis and, working with the school district and pursuant to the Procurement Code [13-1-28 through 13-1-199 NMSA 1978], enter into contracts to correct the deficiencies.

E. No allocation shall be made pursuant to this section unless:

(1) the method for prioritizing projects developed by the bureau has been reviewed and approved by the council;

(2) the school district has agreed to consult and coordinate with the public school facilities authority before installing any educational technology infrastructure;

(3) the council has approved the proposed allocation; and

(4) for the 2009 and subsequent fiscal years, the initial assessment required in the Technology for Education Act has been verified by an independent third party as determined in consultation with the public school capital outlay council.

F. In entering into contracts to correct deficiencies pursuant to this section, the bureau shall include such terms and conditions as necessary to ensure that the state money is expended in the most prudent manner possible consistent with the original purpose.

**History:** Laws 2005, ch. 222, § 2; 2007, ch. 290, § 23; 2007, ch. 292, § 9; 2007, ch. 293, § 9; 2007, ch. 294, § 1.

**2007 Multiple Amendments.** — Laws 2007, ch. 290, § 23, Laws 2007, ch. 292, § 9, Laws 2007, ch. 293, § 9 and Laws 2007, ch. 294, § 1 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2007, ch. 294, § 1, as the last act signed by the governor, is set out above and incorporates all amendments. The amendments enacted by Laws 2007, ch. 290, § 23, Laws 2007, ch. 292, § 9, Laws 2007, ch. 293,

§ 9 and Laws 2007, ch. 294, § 1 are described below. To view the session laws in their entirety, see the 2007 session laws on *NMOneSource.com*.

Laws 2007, ch. 294, § 1, effective July 1, 2007, Laws 2007, ch. 292, § 9, effective June 15, 2007, and Laws 2007, ch. 293, § 9, effective June 15, 2007, added a new Subsection E and relettered former Subsection E as F.

Laws 2007, ch. 290, § 23, effective July 1, 2007, in Subsection A, changed "chief information officer" to "secretary of information technology".

## 22-15A-12. Educational technology deficiency correction fund.

The "educational technology deficiency correction fund" is created in the state treasury. The fund shall consist of money appropriated, distributed or transferred to the fund by law. Earnings from investment of the fund shall be credited to the fund. Money in the fund is appropriated to the education technology bureau for the purpose of making allocations to correct educational technology deficiencies pursuant to Section 22-15A-11 NMSA 1978. Except as otherwise provided, any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the chief of the education technology bureau.

**History:** Laws 2005, ch. 222, § 3.

**Effective dates.** — Laws 2005, ch. 222 contained no effective date provision, but, pursuant to N.M. Const.,

art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 22-15A-13. Obsolete computer replacement.

To the extent that money has been appropriated to replace functionally obsolete computers and network devices in public schools, including charter schools, on a five-year cycle, the bureau shall base allocations on a ratio of one computer to three students in each school. Prior to making allocations, the bureau shall compile and maintain an inventory of computer and network devices in public schools, including charter schools, and develop a methodology for prioritizing the replacement of computers and network devices to ensure that state money is expended in the most prudent manner possible consistent with the original purpose.

**History:** Laws 2007, ch. 292, § 10; 2007, ch. 293, § 10.

**Compiler's notes.** — Laws 2007, ch. 292, § 10 and Laws 2007, ch. 293, § 10 enacted identical new sections, effective June 15, 2007.

# ARTICLE 15B

## Educational Technology Opportunity Program

Sec.

22-15B-1. Statewide educational technology opportunity program; findings and purpose.

Sec.

22-15B-2. Educational technology opportunity program; duties of the state department of public education [public education department].

### 22-15B-1. Statewide educational technology opportunity program; findings and purpose.

A. The legislature finds that:

- (1) local school districts need increased access to information technologies, extensive professional development and sustained network support to use technology effectively;
- (2) the technological needs of New Mexico's individual school children and classrooms are best defined by the teachers and principals who work with them on a day-to-day basis;



(3) New Mexico is fortunate to have high technology laboratories and corporations that have programs to supply low-cost, state-of-the-art central processing units for use in New Mexico classrooms; and

(4) there are large nonprofit programs in place to build and rehabilitate computers for New Mexico classrooms using a combination of donated, surplus and purchased equipment.

B. The purpose of this act is to establish a statewide educational technology opportunity program for New Mexico's teachers and students by creating a partnership between private industry, state government and local school districts that will build, distribute and install low-cost, network-ready computers in New Mexico classrooms over the next three years.

**History:** Laws 1999, ch. 234, § 1.

**Compiler's notes.** — The phrase "this act", referred to in Subsection B, means Laws 1999, ch. 234, which enacted 22-15B-1 and 22-15B-2 NMSA 1978.

## **22-15B-2. Educational technology opportunity program; duties of the state department of public education [public education department].**

A. The state department of public education [public education department] shall contract with a nonprofit corporation to administer the statewide educational technology opportunity program. The department shall select a contractor that has a program in place to build and rehabilitate computers for New Mexico classrooms using a combination of donated, surplus and purchased equipment. In administering the statewide educational technology opportunity program, the contractor, in coordination with the department, shall:

(1) solicit and accept applications for computer assistance from local school teachers through the local school principals;

(2) establish criteria for evaluating applications for computer assistance. The criteria shall include requirements for an established technology plan and an established network infrastructure;

(3) establish a review process involving public and private entities to evaluate each application, determine the amount of computer assistance needed and allocate the available computers to ensure that computer assistance is distributed equitably; and

(4) submit an annual report to the state board [department] of education, the governor and the legislature on the progress of the program, showing the regional distribution of the program, the number of computers distributed and the cost of each computer.

B. Upon the approval of an application for computer assistance, the contractor shall distribute the allocated computers directly to the classroom and teacher. Pursuant to the contract and upon the receipt of an invoice, the state department of public education shall reimburse the contractor for the state portion of the cost of the computer assistance granted.

C. The state department of public education [public education department], after consulting with private industry, local school districts and other interested parties, shall promulgate such rules as are necessary to implement the statewide educational technology opportunity program.

**History:** Laws 1999, ch. 234, § 2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be

deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

## **ARTICLE 15C**

### **School Library Materials**

Sec.

22-15C-1. Short title.

22-15C-2. Definitions.

22-15C-3. School library material fund; creation.

Sec.

22-15C-4. Administration of the school library material fund; bureau; duties.

22-15C-5. Students eligible; distribution.

Sec.	Sec.
22-15C-6. Distribution of money for school library material.	22-15C-8. Record of school library material.
22-15C-7. Sale or loss or return of school library material.	22-15C-9. Annual report.
	22-15C-10. Reports; budgets.

## 22-15C-1. Short title.

Chapter 22, Article 15C NMSA 1978 may be cited as the "School Library Material Act".

**History:** Laws 2003, ch. 149, § 1; 2006, ch. 94, § 48.

**The 2006 amendment**, effective July 1, 2007, added the statutory reference.

## 22-15C-2. Definitions.

As used in the School Library Material Act:

- A. "additional student" means a student in the certified forty-day membership of the current year for a school district or state institution above the number certified in the forty-day membership of the prior year for the school district or state institution;
- B. "bureau" means the instructional material bureau of the department;
- C. "bureau of Indian education" means the bureau of Indian education of the United States department of the interior;
- D. "fund" means the school library material fund;
- E. "governmentally controlled school" means a bureau of Indian education school that is governmentally owned and controlled, is located in New Mexico, provides instruction for first through twelfth grades and is not sectarian or denominational;
- F. "library material processing" means cataloging of school library material, including in electronic format, according to nationally accepted standards, and the application of bar code labels and call-number classification labels to the material;
- G. "membership" means the total enrollment of qualified students on the fortieth day of the school year entitled to the free use of school library material pursuant to the School Library Material Act;
- H. "qualified student" means a public school or governmentally controlled school student who:
  - (1) has not graduated from high school;
  - (2) is regularly enrolled in one-half or more of the minimum course requirements approved by the department for public school students or by the bureau of Indian education for students enrolled in a governmentally controlled school; and
  - (3) in terms of age:
    - (a) is at least five years of age prior to 12:01 a.m. on September 1 of the school year; or
    - (b) is at least three years of age at any time during the school year and is receiving special education services pursuant to regulation of the department;
- I. "school library material" means books and other educational media, including online reference and periodical databases, that are made available in a school library to students for circulation and use in the library; and
- J. "school district" includes state-chartered charter schools.

**History:** Laws 2003, ch. 149, § 2; 2006, ch. 94, § 49; 2009, ch. 134, § 1.

**Cross references.** — For the transfer of powers and duties of the former department of education, see 9-24-15 NMSA 1978.

**The 2009 amendment**, effective June 19, 2009, added Subsection C; added Subsection E; in Subsection H, after "public school", added "or governmentally controlled school"; in Paragraph (2) of Subsection H, after "public

school students", added "or by the bureau of Indian education for students enrolled in a governmentally controlled school"; and in Paragraph (3) of Subsection H, at the beginning of the sentence, added "in terms of age:".

**The 2006 amendment**, effective July 1, 2007, in Paragraphs (2) and (4) of Subsection F, changed "state board" to "department" and added Subsection H to define school district.



### 22-15C-3. School library material fund; creation.

The "school library material fund" is created in the state treasury. The purpose of the fund is to provide an account from which the department may distribute money to school districts, state institutions and governmentally controlled schools to pay for the cost of purchasing school library material. The cost of purchasing school library material may include shipping and handling charges for the delivery of school library material. The fund shall consist of appropriations, gifts, grants, donations and bequests. Money in the fund is appropriated to the department to pay for the cost of purchasing school library material. Disbursements from the fund shall be by warrant of the secretary of finance and administration upon vouchers signed by the secretary or the secretary's designated representative. Money in the fund shall not revert to the general fund at the end of a fiscal year.

**History:** Laws 2003, ch. 149, § 3; 2009, ch. 134, § 2.

**Cross references.** — For the transfer of powers and duties of the former department of education and former state superintendent, *see* 9-24-15 NMSA 1978.

**The 2009 amendment**, effective June 19, 2009, after "state institutions", added "and governmentally controlled schools".

### 22-15C-4. Administration of the school library material fund; bureau; duties.

Subject to the policies and rules of the department, the bureau shall:

- A. administer the provisions of the School Library Material Act;
- B. enforce rules for the handling, safekeeping and distribution of school library material and money from the fund;
- C. enforce inventory and accounting procedures to be followed by school districts, state institutions and governmentally controlled schools; and
- D. withdraw or withhold the privilege of participating in the free use of school library material in case of noncompliance with the provisions of the School Library Material Act or rules adopted pursuant to that act.

**History:** Laws 2003, ch. 149, § 4; 2009, ch. 134, § 3.

**Cross references.** — For the transfer of powers and duties of the former state board of education, *see* 9-24-15 NMSA 1978.

**The 2009 amendment**, effective June 19, 2009, in Subsection C, after "state institutions", added "and governmentally controlled schools".

### 22-15C-5. Students eligible; distribution.

A. A qualified student or person eligible to become a qualified student attending a public school, a state institution or a governmentally controlled school in a grade from the first through the twelfth grade of instruction is entitled to the free use of school library material. A student enrolled in an early childhood education program as defined in Section 22-13-3 NMSA 1978 is also entitled to the free use of school library material.

B. A school district, a state institution or a governmentally controlled school shall purchase school library material as an agent for the benefit of students entitled to the free use of school library material.

C. A school district, a state institution or a governmentally controlled school receiving school library material pursuant to the School Library Material Act is responsible for circulation of the school library material for use by eligible students and for the safekeeping of the school library material.

**History:** Laws 2003, ch. 149, § 5; 2009, ch. 134, § 4.

**The 2009 amendment**, effective June 19, 2009, in Subsection A, after "state institution", added "or a governmentally controlled school"; in Subsection B, after

"state institution", added "or a governmentally controlled school"; and in Subsection C, after "state institution", added "or a governmentally controlled school".

## 22-15C-6. Distribution of money for school library material.

A. On or before July 1 of each year, the department shall allocate from the fund at least ninety percent of the estimated entitlement for each school district, state institution or governmentally controlled school as determined from the estimated forty-day membership for the next school year to each school district, state institution and governmentally controlled school. The entitlement of a school district, a state institution or a governmentally controlled school is the portion of the total amount of the annual appropriation less a deduction for a reasonable reserve for emergency expenses that its forty-day membership bears to the forty-day membership of the entire state. Additional students shall be counted as six students for the purpose of the allocation.

B. On or before January 15 of each year, the department shall recompute each entitlement using the forty-day membership for that year and shall allocate the balance of the annual appropriation adjusting for any over- or under-estimation made in the first allocation.

C. The department shall establish procedures to distribute funds directly to school districts, state institutions and governmentally controlled schools.

D. A school district, a state institution or a governmentally controlled school that has funds remaining for the purchase of school library material at the end of a fiscal year shall retain those funds for expenditure in subsequent years.

**History:** Laws 2003, ch. 149, § 6; 2005, ch. 213, § 1; 2009, ch. 134, § 5.

**The 2009 amendment**, effective June 19, 2009, in Subsection A, after the first occurrence of "state institution", added "or governmentally controlled school"; after the second occurrence of "state institution", added "and governmentally controlled school"; and after the third

occurrence of "state institution", added "or a governmentally controlled school"; in Subsection C, after "state institution", added "or a governmentally controlled school"; and in Subsection D, after "state institution", added "or a governmentally controlled school".

**The 2005 amendment**, effective June 17, 2005, changed "distribute" to "allocate" in Subsection A.

## 22-15C-7. Sale or loss or return of school library material.

A. With the approval of the bureau, school library material acquired by a school district, a state institution or a governmentally controlled school pursuant to the School Library Material Act may be sold at a price determined by officials of the school district, state institution or governmentally controlled school. The selling price shall not exceed the cost of school library material to the state.

B. A school district, a state institution or a governmentally controlled school may hold a parent, guardian or student responsible for loss, damage or destruction of school library material while the school library material is in the possession of a student. A school district or a governmentally controlled school may withhold the grades, diploma and transcripts of a student responsible for damage or loss of school library material until the parent, guardian or student has paid for the damage or loss. When a parent, guardian or student is unable to pay for the damage or loss, the school district shall work with the parent, guardian or student to develop an alternative program in lieu of payment. Where a parent or guardian is determined to be indigent according to guidelines established by the department, the school district shall bear the cost.

C. A school district, a state institution or a governmentally controlled school that has funds remaining for the purchase of school library material at the end of a fiscal year shall retain the funds for expenditure in subsequent years.

**History:** Laws 2003, ch. 149, § 7; 2009, ch. 134, § 6.

**Cross references.** — For transfer of powers and duties of the state board of education to the public education department, see 9-24-15 NMSA 1978.

**The 2009 amendment**, effective June 19, 2009, in Subsection A, after the first occurrence of "state institution", added "or a governmentally controlled school" and

after the second occurrence of "state institution", added "or governmentally controlled school"; in Subsection B, after "state institution" added "or a governmentally controlled school" and after "school district", added "or a governmentally controlled school"; in Subsection C, after "state institution", added "or a governmentally controlled school".



## 22-15C-8. Record of school library material.

A school district, a state institution or a governmentally controlled school shall keep an accurate record of school library material that includes a cost record. A school district, a state institution or a governmentally controlled school shall comply with record-keeping procedures prescribed by the bureau.

**History:** Laws 2003, ch. 149, § 8; 2009, ch. 134, § 7.

**The 2009 amendment**, effective June 19, 2009, after the first occurrence of "state institution", added "or a

governmentally controlled school" and after the second occurrence of "state institution", added "or governmentally controlled school".

## 22-15C-9. Annual report.

Annually, at a time specified by the department, each local school district, state institution or governmentally controlled school acquiring school library material pursuant to the School Library Material Act shall file a report with the department.

**History:** Laws 2003, ch. 149, § 9; 2009, ch. 134, § 8.

**Cross references.** — For the transfer of powers and duties of the former department of education, *see* 9-24-15 NMSA 1978.

**The 2009 amendment**, effective June 19, 2009, after "state institution", added "or a governmentally controlled school".

## 22-15C-10. Reports; budgets.

A. Annually, the department shall submit a budget for the next fiscal year to the department of finance and administration showing expenditures for school library material to be paid from the fund, including reasonable shipping and handling charges and library material processing expenses.

B. Upon request, the department shall make reports to the public education commission concerning the administration and execution of the School Library Material Act.

**History:** Laws 2003, ch. 149, § 10; 2009, ch. 134, § 9.

**Cross references.** — For the transfer of powers and duties of the former department of education, *see* 9-24-15 NMSA 1978.

**The 2009 amendment**, effective June 19, 2009, in Subsection B, changed "state board" to "public education commission".

# ARTICLE 15D

## Fine Arts Education

Sec.

22-15D-1. Short title.

22-15D-2. Purpose.

22-15D-3. Definition.

22-15D-4. Department; powers and duties.

Sec.

22-15D-5. Program plan and evaluation.

22-15D-6. Fine arts education programs; eligibility for state financial support.

## 22-15D-1. Short title.

Chapter 22, Article 15D NMSA 1978 may be cited as the "Fine Arts Education Act".

**History:** Laws 2003, ch. 152, § 1; 2006, ch. 94, § 50.

**The 2006 amendment**, effective July 1, 2007, added the statutory reference.

## 22-15D-2. Purpose.

A. The purpose of the Fine Arts Education Act is to encourage school districts and state-chartered charter schools to offer opportunities for elementary school students to participate in fine arts activities, including visual arts, music, theater and dance.

B. Participation in fine arts programs encourages cognitive and affective development by:

- (1) focusing on a variety of learning styles and engaging students who might otherwise fail;
- (2) training students in complex thinking and learning;
- (3) helping students to devise creative solutions for problems;
- (4) providing students new challenges; and
- (5) teaching students how to work cooperatively with others and to understand and value diverse cultures.

**History:** Laws 2003, ch. 152, § 2; 2006, ch. 94, § 51.

**The 2006 amendment**, effective July 1, 2007, added state-chartered charter schools in Subsection A.

### 22-15D-3. Definition.

As used in the Fine Arts Education Act, "fine arts education programs" includes programs of education through which students participate in activities related to visual arts, music, theater and dance.

**History:** Laws 2003, ch. 152, § 3.

### 22-15D-4. Department; powers and duties.

The department shall issue guidelines for the development and implementation of fine arts education programs. The department shall:

- A. administer and enforce the provisions of the Fine Arts Education Act; and
- B. assist school districts and charter schools in developing and evaluating programs.

**History:** Laws 2003, ch. 152, § 4; 2006, ch. 94, § 52.

**Cross references.** — For the transfer of powers and duties of the former state board of education and the former department of education, *see* 9-24-15 NMSA 1978.

**The 2006 amendment**, effective July 1, 2007, changed "state board" to "department"; changed "local school boards" to "school districts and charter schools" in Subsection B (formerly Paragraph (2) of Subsection B).

### 22-15D-5. Program plan and evaluation.

A. A school district or charter school may prepare and submit to the department a fine arts education program plan in accordance with guidelines issued by the department.

B. At a minimum, the plan shall include the fine arts education programs being taught, the ways in which the fine arts are being integrated into the curriculum and an evaluation component.

C. At yearly intervals, the school district or charter school, the department and a parent advisory committee from the school district or charter school shall review the goals and priorities of the plan and make appropriate recommendations to the secretary.

**History:** Laws 2003, ch. 152, § 5; 2006, ch. 94, § 53; 2015, ch. 108, § 13.

**Cross references.** — For the transfer of powers and duties of the former state board of education and the former department of education, *see* 9-24-15 NMSA 1978.

**The 2015 amendment**, effective July 1, 2015, removed "state-chartered" from each reference to "charter school" regarding fine arts education programs; in Subsection A, after "school district or", deleted "state-chartered", and

in Subsection C, after "school district or", deleted "state-chartered".

**The 2006 amendment**, effective July 1, 2007, changed "local school boards" to "school district or state-chartered charter school" in Subsections A and C; changed "state board" to "department" in Subsection A; and in Subsection C, changed "state board" to "secretary" and provided for parent advisory committees from charter schools.

### 22-15D-6. Fine arts education programs; eligibility for state financial support.

A. To be eligible for state financial support, a fine arts education program shall:

- (1) provide for the educational needs of students in the areas of visual arts, music, theater or dance;



- (2) integrate the fine arts into the curriculum;
  - (3) use certified school instructors to supervise those who are teaching the program if those persons do not hold valid teaching licenses in one or more of the disciplines included in fine arts education; and
  - (4) require background checks in accordance with Section 22-10-3.3 NMSA 1978 [recompiled].
- B. A fine arts education program shall meet each requirement of Subsection A of this section and be approved by the department of education [public education department] to be eligible for state financial support.

**History:** Laws 2003, ch. 152, § 6.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2003, ch. 153, § 36 recompiled former 22-10-3.3 NMSA 1978 as 22-10A-5 NMSA 1978, effective April 4, 2003.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## ARTICLE 15E

### Mathematics and Science Education Act

Sec.

22-15E-1. Short title.

22-15E-2. Definitions.

22-15E-3. Bureau created; duties.

22-15E-4. Mathematics and science advisory council; created; members; terms; vacancies.

Sec.

22-15E-5. Council duties.

22-15E-6. Mathematics and science proficiency fund; created; purpose; annual reports.

#### 22-15E-1. Short title.

This act [Chapter 22, Article 15E NMSA 1978] may be cited as the "Mathematics and Science Education Act".

**History:** Laws 2007, ch. 44, § 1 and Laws 2007, ch. 239, § 1.

**Compiler's notes.** — Laws 2007, ch. 44 and Laws 2007, ch. 239, effective June 15, 2007, enacted duplicate laws.

#### 22-15E-2. Definitions.

As used in the Mathematics and Science Education Act:

- A. "bureau" means the mathematics and science bureau;
- B. "chief" means the chief of the bureau; and
- C. "council" means the mathematics and science advisory council.

**History:** Laws 2007, ch. 44, § 2 and Laws 2007, ch. 239, § 2.

**Compiler's notes.** — Laws 2007, ch. 44 and Laws 2007, ch. 239, effective June 15, 2007, enacted duplicate laws.

#### 22-15E-3. Bureau created; duties.

A. The "mathematics and science bureau" is created in the department. The secretary shall appoint the chief as provided in the Public Education Department Act [Chapter 9, Article 24 NMSA 1978].

B. The bureau shall:

- (1) administer the provisions of the Mathematics and Science Education Act;
- (2) provide staff support for and coordinate the activities of the council;
- (3) work with the council to develop a statewide strategic plan for mathematics and science education in the public schools and coordinate education activities with other state agencies, the federal government, business consortia and public or private organizations or other persons;

- (4) ensure that school districts' plans include goals for improving mathematics and science education aligned to the department's strategic plan;
- (5) recommend funding mechanisms that support the improvement of mathematics and science education in the state, including web-based mathematics and science curricula, mentoring and web-based homework assistance;
- (6) promote partnerships among public schools, higher education institutions, government, business and educational and community organizations to improve the mathematics and science education in the state;
- (7) develop and evaluate curricula, instructional programs and professional development programs in mathematics and science aligned with state academic content and performance standards; and
- (8) assess the outcomes of efforts to improve mathematics and science education using existing data.

**History:** Laws 2007, ch. 44, § 3 and Laws 2007, ch. 239, § 3.

**Compiler's notes.** — Laws 2007, ch. 44 and Laws 2007, ch. 239, effective June 15, 2007, enacted duplicate laws.

#### **22-15E-4. Mathematics and science advisory council; created; members; terms; vacancies.**

A. The "mathematics and science advisory council" is created, composed of twelve members. Members of the council shall be appointed by the secretary for staggered terms of four years; provided that for the initial appointments, four members shall be appointed for two years, four members shall be appointed for three years and four members shall be appointed for four years. Members shall serve until their successors have been appointed and qualified. A vacancy shall be filled by appointment by the secretary for the unexpired term.

B. Using a statewide application process, the secretary shall appoint members from throughout the state so as to ensure representation of the state's demographics, including geographic distribution, gender and ethnic diversity and as follows:

- (1) four members from public schools, including at least two mathematics and science teachers and a school district administrator with experience in mathematics and science curricula;
- (2) three members from public post-secondary educational institutions with expertise in mathematics or science education;
- (3) four members from the private sector, including the national laboratories, museums and science- and engineering-based businesses; and
- (4) one member who represents the New Mexico partnership for mathematics and science education.

C. Members of the council shall elect a chair from among the membership. The council shall meet at the call of the chair not less than quarterly.

D. Members of the council are entitled to receive per diem and mileage pursuant to the provisions of the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] but shall receive no other compensation, perquisite or allowance.

**History:** Laws 2007, ch. 44, § 4; 2007, ch. 239, § 4.

**Compiler's notes.** — Laws 2007, ch. 44, § 4 and Laws 2007, ch. 239, § 4, both effective June 15, 2007, enacted duplicate laws, with the exception of the third sentence

in Subsection A of Laws 2007, ch. 239, "Members shall serve until their successors have been appointed and qualified." The section was set out as enacted by Laws 2007, ch. 239, § 4.

#### **22-15E-5. Council duties.**

The council shall:

- A. advise the bureau on implementation of the bureau's duties pursuant to the Mathematics and Science Education Act;



B. make recommendations to the bureau and the department regarding the statewide strategic plan for improving mathematics and science education and advise on its implementation and incorporation into the department's five-year strategic plan for public elementary and secondary education in the state;

C. advise the bureau, the department and the legislature regarding appropriations for mathematics and science education, administration, resources and services, including programs for public school students and staff;

D. work with the bureau to determine the need for improvement in mathematics and science achievement of public school students and make recommendations to the department on how to meet these needs; and

E. produce an annual report on public elementary and secondary mathematics and science student achievement to be submitted to the department, the governor and the legislature no later than November 30 of each year.

**History:** Laws 2007, ch. 44, § 5 and Laws 2007, ch. 239, § 5.

**Compiler's notes.** — Laws 2007, ch. 44 and Laws 2007, ch. 239, effective June 15, 2007, enacted duplicate laws.

## **22-15E-6. Mathematics and science proficiency fund; created; purpose; annual reports.**

A. The "mathematics and science proficiency fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants, donations and income from investment of the fund. Disbursements from the fund shall be made by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of public education or the secretary's authorized representative.

B. The fund shall be administered by the department, and money in the fund is appropriated to the department to provide awards to public schools, school districts, public post-secondary educational institutions and persons that implement innovative, research-based mathematics and science curricula and professional development programs. The department shall promulgate rules for the application and award of money from the fund, including criteria to evaluate innovative, research-based mathematics and science programs and professional development programs.

C. Each award recipient shall provide an annual report to the bureau that includes a detailed budget report, a description of the services provided and documented evidence of the stated outcomes of the program funded by the mathematics and science proficiency fund and that provides other information requested by the bureau.

**History:** Laws 2007, ch. 44, § 6; 2007, ch. 239, § 6.

**Compiler's notes.** — Laws 2007, ch. 44, § 6 and Laws 2007, ch. 239, § 6, both effective June 15, 2007, enacted duplicate laws, with the exception of the additional

language, "of public education", in the second sentence of Subsection A of Laws 2007, ch. 239. The section was set out as enacted by Laws 2007, ch. 239, § 6.

## **ARTICLE 15F**

### **New Mexico School for the Arts**

Sec.

22-15F-1. Short title.

22-15F-2. Purpose of act.

22-15F-3. Definitions.

22-15F-4. Purpose of school; school exempt from certain provisions of the Charter Schools Act.

22-15F-5. Board created; powers and duties; solicitation of gifts, grants and donations.

Sec.

22-15F-6. Admissions criteria; equal opportunity; outreach.

22-15F-7. Room and board charges.

22-15F-8. Room and board costs; outreach activities; use of state equalization guarantee distributions prohibited.

**22-15F-1. Short title.**

Chapter 22, Article 15F NMSA 1978 may be cited as the "New Mexico School for the Arts Act".

**History:** Laws 2008, ch. 15, § 1; 2013, ch. 108, § 1.

The 2013 amendment, effective July 1, 2013, added the NMSA chapter and article for the New Mexico School

for the Arts Act; and at the beginning of the sentence, deleted "This act" and added "Chapter 22, Article 15F NMSA 1978".

**22-15F-2. Purpose of act.**

The purpose of the New Mexico School for the Arts Act is to provide for the establishment of the "New Mexico school for the arts" as a statewide residential state-chartered charter high school that provides New Mexico students who have demonstrated artistic abilities and potential with the educational opportunity to pursue a career in the arts.

**History:** Laws 2008, ch. 15, § 2.

**Emergency clauses.** — Laws 2008, ch. 15, § 9 contained an emergency clause and was approved February 22, 2008.

**22-15F-3. Definitions.**

As used in the New Mexico School for the Arts Act:

- A. "board" means the governing body of the school; and
- B. "school" means the New Mexico school for the arts.

**History:** Laws 2008, ch. 15, § 3.

**Emergency clauses.** — Laws 2008, ch. 15, § 9 contained an emergency clause and was approved February 22, 2008.

**22-15F-4. Purpose of school; school exempt from certain provisions of the Charter Schools Act.**

A. The commission may charter a "New Mexico school for the arts" as a statewide residential state-chartered charter school for grades nine through twelve to offer intensive preprofessional instruction in the performing and visual arts combined with a strong academic program that leads to a New Mexico diploma of excellence.

B. The school and the board are subject to all the provisions of the Charter Schools Act [Chapter 22, Article 8B NMSA 1978], except Subsection K of Section 22-8B-4 NMSA 1978 and Section 22-8B-4.1 NMSA 1978. The school shall not charge tuition, except as otherwise provided in the Public School Code [Chapter 22 NMSA 1978]. The school shall be supported by state funds in the same manner as other charter high schools authorized by the commission.

**History:** Laws 2008, ch. 15, § 4.

**Emergency clauses.** — Laws 2008, ch. 15, § 9 contained an emergency clause and was approved February 22, 2008.

**22-15F-5. Board created; powers and duties; solicitation of gifts, grants and donations.**

The school shall be governed by a board of at least five members constituted as provided in the school's application for charter. No member of the board shall serve as a member of another charter school. The board shall have such powers and perform such duties as required by state and federal law and the school's charter, including soliciting and receiving gifts, grants and donations to further the purposes of the school and to assist the school in providing free or reduced-fee room and board for those residential students who cannot pay all or part of residential costs.



**History:** Laws 2008, ch. 15, § 5. *(The text of this section is not included in this compilation.)*

**Emergency clauses.** — Laws 2008, ch. 15, § 9 contained an emergency clause and was approved February 22, 2008.

## **22-15F-6. Admissions criteria; equal opportunity; outreach.**

A. The admissions criteria shall be designed to admit students who show exceptional promise or aptitude in the arts and a strong desire to pursue a career in the arts. The admissions process shall be conducted in a way that provides equal opportunity for admission to each prospective student regardless of that student's exposure to previous artistic training and without regard to the student's ability to pay residential costs.

B. The board shall ensure, to the greatest extent possible and without jeopardizing admissions standards, that an equal number of students is admitted to the school from each of the state's congressional districts.

C. The board shall submit an annual report to the charter schools division and the commission that includes demographic information about both applicants and students admitted to the school, including the counties and the congressional districts represented by the students enrolled and the makeup of the student body in terms of socioeconomic status, gender and ethnicity.

D. The school shall conduct outreach activities throughout the state to acquaint potential students with the programs offered by the school. The outreach activities shall include programs for middle school students and workshops for teachers. There shall be no admissions criteria established for participation in outreach activities.

**History:** Laws 2008, ch. 15, § 6. *(The text of this section is not included in this compilation.)* **Emergency clauses.** — Laws 2008, ch. 15, § 9 contained an emergency clause and was approved February 22, 2008.

## **22-15F-7. Room and board charges.**

A. The school shall charge residential students a fee to cover the costs of room and board. The board shall establish a sliding-fee scale based on the student's ability to pay. The commission shall approve room and board charges and the sliding-fee scale during the planning year of the school and may approve changes to the charges and scale as requested by the board.

B. The school shall report each year to the charter schools division and the commission on the number of students requiring financial assistance for room and board; the amount of financial assistance provided; and the amount and source of gifts, grants and donations received by the school to provide that financial assistance.

**History:** Laws 2008, ch. 15, § 7.

**Emergency clauses.** — Laws 2008, ch. 15, § 9 contained an emergency clause and was approved February 22, 2008.

## **22-15F-8. Room and board costs; outreach activities; use of state equalization guarantee distributions prohibited.**

The school, either through a foundation or other private or public funding sources, shall obtain funding to ensure that the school has adequate revenue to pay for all expenses associated with outreach activities provided for in Section 22-15F-6 NMSA 1978 and for room and board costs for those students who are not able to pay the full cost of room and board as provided in Section 22-15F-7 NMSA 1978. The school shall account separately for the costs of outreach activities and room and board and for the revenue received from private or public sources to pay those costs. The school shall not use money received from the state equalization guarantee distribution for these purposes. Failure of the school to secure adequate funding for these purposes shall be grounds for denial or revocation of a charter.

**History: Laws 2008, ch. 15, § 8; 2013, ch. 108, § 2.**

The 2013 amendment, effective July 1, 2013, prohibited the use of state equalization guarantee distributions for outreach activities and room and board expenses for students at the school for the arts; in the title, after "activities", deleted "private funding required" and added "use of state equalization guarantee distributions prohibited"; in the first sentence, after "or other private", added "or public", after "funding sources", added "shall", after

"funding sources shall obtain", deleted "gifts, grants and donations" and adds the word "funding", after "provided for in Section", deleted "6 of the New Mexico School for the Arts Act" and added "22-15F-6 NMSA 1978", and after "as provided in Section", deleted "7 of the New Mexico School for the Arts Act" and added "22-15F-7 NMSA 1978", in the second sentence, after "received from private", added "or public"; and in the third sentence, after "received from the state", added "equalization guarantee distribution".

## ARTICLE 16

### Transportation of Students

Sec.

22-16-1. State transportation division; director.

22-16-2. State transportation division; duties.

22-16-3. School bus service contracts.

22-16-4. School bus routes; limitations; exceptions; minimum requirements.

22-16-4.1. Repealed.

22-16-5. Repealed.

22-16-6. Reimbursement of parents or guardians.

Sec.

22-16-7. Repealed.

22-16-8. Cattle guards on school bus routes.

22-16-9. School buses; termination of use; resale.

22-16-10. Use of state or county equipment for snow removal.

22-16-11. Regulations relative to school buses.

22-16-12. School transportation training fund; created.

#### 22-16-1. State transportation division; director.

A. The "state transportation division" is created within the department of education [public education department].

B. The state superintendent [secretary] shall appoint a director of the state transportation division to be known as the "state transportation director".

C. The state board [department] may delegate to the state superintendent [secretary] its administrative functions relating to public school transportation.

**History: 1953 Comp., § 77-14-1, enacted by Laws 1967, ch. 16, § 219; 1995, ch. 208, § 4.**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Cross references.** — For emergency transportation, *see* 22-17-1 NMSA 1978 et seq.

For divisions of the public education department, *see* 9-24-4 NMSA 1978.

The 1995 amendment, effective July 1, 1995, deleted "With approval of the state board" from the beginning

of Subsection B, and substituted "Superintendent" for "transportation division" in Subsection C.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools §§ 263 to 269.

One transporting children to or from school as independent contractor, 66 A.L.R. 724.

Constitutionality of statute providing school-bus service for pupils of parochial or private schools, 168 A.L.R. 1434.

Buses: constitutionality, under state constitutional provision forbidding financial aid to religious sects, of public provision of school bus service for private school pupils, 41 A.L.R.3d 344.

78 C.J.S. Schools and School Districts § 7.

#### 22-16-2. State transportation division; duties.

Subject to the policies of the state board [department], the state transportation division of the department of education [public education department] shall:

A. establish standards for school bus transportation;

B. establish standards for school bus design and operation pursuant to provisions of Section 22-16-11 NMSA 1978;

C. establish procedures pertaining to the resolution of transportation issues in areas where local school districts are engaged in school district boundary disputes;

D. enforce those regulations adopted by the state board [department] relating to school bus transportation;



- E. audit records of school bus contractors or school district-owned bus operations in accordance with regulations promulgated by the state transportation director;
- F. establish standards and certify for safety, vehicles that are defined as school buses by the Motor Vehicle Code [Articles 1 through 8 of Chapter 66 [except 66-7-102.1] NMSA 1978]; and
- G. establish regulations for the purpose of permitting commercial advertisements on school buses.

**History:** 1953 Comp., § 77-14-2, enacted by Laws 1967, ch. 16, § 220; 1975, ch. 342, § 3; 1976 (S.S.), ch. 20, § 3; 1978, ch. 200, § 2; 1978, ch. 211, § 15; 1979, ch. 53, § 1; 1979, ch. 305, § 5; 1993, ch. 226, § 46; 1995, ch. 208, § 5; 1997, ch. 233, § 2.

**Cross references.** — For divisions of the public education department, see 9-24-4 NMSA 1978.

For transfer of powers and duties of the former state board and former department of education, see 9-24-15 NMSA.

For provisions relating to financing of public school bus transportation generally, see 22-8-29 to 22-8-32 NMSA 1978.

For school bus advertisements, see 22-28-1 NMSA 1978.

For transportation of blind children to New Mexico school for visually handicapped, see 21-5-6 NMSA 1978.

For design and operation regulations for school buses, see 22-16-11 NMSA 1978.

**The 1997 amendment**, effective June 20, 1997, added Subsection G.

**The 1995 amendment**, effective July 1, 1995, inserted "provisions of" in Subsection B, rewrote Subsection C, and in Subsection F, deleted "inspect" preceding "and certify" and inserted "that are".

**The 1993 amendment**, effective July 1, 1993, inserted "of the department of education" in the introductory

paragraph; inserted "for school bus design and operation" and substituted "22-16-11" for "66-7-365" in Subsection B; substituted "vocational and special" for "cooperative" in Paragraph (2) of Subsection C; deleted former Paragraphs (3) to (5) of Subsection C, pertaining to transportation routes to and from training centers for exceptional children, early childhood education programs and state institutions under the authority of the secretary of health, making a related grammatical change; deleted former Subsection D, which read "cooperate with the director in matters relating to the financing of public school bus transportation"; redesignated former Subsections E to G as Subsections D to F; deleted "issue and" at the beginning of Subsection D; substituted "state transportation director" for "school transportation director" in Subsection E; and substituted "the Motor Vehicle Code" for "Section 66-1-4 NMSA 1978" in Subsection F.

#### ANNOTATIONS

**Duty of care.** — The state transportation division of the state board of education had a legal duty to establish bus stops on school bus routes, and thus owed a duty of care to a child injured in an accident while crossing a road to catch the bus to her school. *Gallegos v. State Bd. of Educ.*, 1997-NMCA-040, 123 N.M. 362, 940 P.2d 468.

### 22-16-3. School bus service contracts.

A. A school district may provide transportation services to students through the use of school bus service contracts. School districts may enter into school bus service contracts with individual school bus owner-operators or with school bus fleet owners or with both. A school district shall not enter into any school bus fleet service contract with any person who is simultaneously employed by that school district as an individual school bus owner-operator.

B. All contracts entered into by a school district to provide school bus service to students attending public school within the school district shall be approved by the local school board. The contracts shall be in writing on forms approved by the department and the department shall require documentation that the school district has filed a lien on each school bus as provided in Section 22-8-27 NMSA 1978.

C. In addition to approving the form of the contract, the department shall, by rule, establish the parameters of school bus service contracts to include recognition of fuel costs, operation and maintenance costs and employee salary and benefits costs. In entering into school bus service contracts, school districts shall give preference to in-state service providers and the use of multiple providers. Upon request, the department shall provide assistance to local school districts in the negotiation and award of school bus service contracts.

D. A school district may enter into a school bus service contract for a term not to exceed five years. A school bus service contract may provide, at the expiration of the term of the contract, for annual renewal of the school bus service contract on the same terms and conditions at the option of the local school board.

E. In the event a contract with a school bus operator is terminated or not renewed by either party, the buses owned by the operator that are used pursuant to the operator's school bus service contract shall be appraised by three qualified appraisers appointed by the local school board and approved by the state transportation director. The operator succeeding to the contract shall purchase, with the approval of the operator whose contract was terminated, all of the buses owned by the former operator at their appraised value.

**History:** 1953 Comp., § 77-14-3, enacted by Laws 1967, ch. 16, § 221; 1993, ch. 226, § 47; 1995, ch. 208, § 6; 2009, ch. 92, § 2.

**Cross references.** — For transfer of powers and duties of the former state board and department of education, see 9-24-15 NMSA.

**The 2009 amendment,** effective June 19, 2009, in Subsection B, in the second sentence, after "approved by the", deleted "state board" and added the remainder of the sentence; in Subsection C, after "contract, the", changed "state board" to "department" and changed "regulation" to "rule"; and in Subsection E, after "terminated", added "or not renewed by either party".

**Applicability.** — Laws 2009, ch. 92, § 3 provided that the provisions of Laws 2009, ch. 92, §§ 1 and 2 apply to contracts, including contract renewals, entered into on or after June 19, 2009.

**The 1995 amendment,** effective July 1, 1995, added Subsection A, redesignated former Subsection A as Subsection B, deleted "and the state transportation director" at the end of the first sentence in Subsection B, added Subsection C, redesignated former Subsection B as Subsection D, substituted "five years" for "four years" and deleted "if approval is granted by the state transportation director" following "school board" in Subsection D, and redesignated former Subsection C as Subsection E.

**The 1993 amendment,** effective July 1, 1993, inserted "local school board and the" in the first sentence and substituted "approved by the state board" for "provided by the state transportation division" at the end of the second sentence of Subsection A; and made a minor stylistic change in Subsection C.

2017, ch. 94, § 3

## 22-16-4. School bus routes; limitations; exceptions; minimum requirements.

A. Bus routes shall be established by the local school district.

B. Except as provided in Subsections C and E of this section, no school bus route shall be maintained for distances less than:

- (1) one mile one way for students in grades kindergarten through six;
- (2) one and one-half miles one way for students in grades seven through nine; and
- (3) two miles one way for students in grades ten through twelve.

C. In school districts having hazardous walking conditions as determined by the local school board and confirmed by the state transportation director, students of any grade may be transported a lesser distance than that provided in Subsection B of this section. General standards for determining hazardous walking conditions shall be established by the state transportation division of the department with the approval of the department, but the standards shall be flexibly and not rigidly applied by the local school board and the state transportation director to prevent accidents and help ensure student safety.

D. A school district with from one to six students enrolled in the school district whose residence, within the boundaries of the school district, is five or more miles from the student's or students' school or schools shall be able to provide transportation to and from school by means of a school-district-owned, minimum six-passenger, full-size, extended-length, sport utility vehicle driven by a school district employee certified as an activity driver by the district with both the vehicle and driver insured by the public school insurance authority; provided that the local superintendent is able to demonstrate a need. The department shall adopt rules to provide for the safety of students transported in a sport utility vehicle pursuant to this section.

E. Exceptional children whose handicaps require transportation and three- and four-year-old children who meet the department-approved criteria and definition of developmentally disabled may be transported a lesser distance than that provided in Subsection B of this section.

**History:** 1953 Comp., § 77-14-4, enacted by Laws 1967, ch. 16, § 222; 1975, ch. 342, § 4; 1987, ch. 149, § 3; 1993, ch. 234, § 1; 1995, ch. 208, § 7; 2017, ch. 94, § 1.

**The 2017 amendment,** effective June 16, 2017, authorized certain school districts to transport certain students to and from school by means of a six-passenger sport utility vehicle; in Subsection B, after "Subsections C and", deleted "D" and added "E"; in Subsection C, after the first occurrence of "department", deleted "of education", and after "approval of the", deleted "state board" and added "department"; added a new Subsection D and redesignated former Subsection D as Subsection E; and in Subsection E, after "children who meet the",

deleted "state board-approved" and added "department-approved".

**The 1995 amendment,** effective July 1, 1995, substituted "established by the local school district" for "approved annually" in Subsection A, deleted "approved or" preceding "maintained" in Subsection B, inserted "of the department of education" in Subsection C, and deleted former Subsections E, F and G relating to bus routes serving less than ten students.

**The 1993 amendment,** effective June 18, 1993, in Subsection C, deleted "extremely" preceding "hazardous" near the beginning, added "General" at the beginning of the second sentence and added the language beginning "but the standards" at the end of the second sentence.



## 22-16-4.1. Repealed.

**Repeals.** — Laws 1993, ch. 226, § 54 repealed 22-16-4.1 NMSA 1978, as enacted by Laws 1979, ch. 289, § 2 and ch. 305, § 6, concerning vocational education school bus

routes, effective July 1, 1993. For provisions of former section, see the 1992 NMSA 1978 on *NMOneSource.com*.

## 22-16-5. Repealed.

**Repeals.** — Laws 1995, ch. 208, § 16 repealed 22-16-5 NMSA 1978, as enacted by Laws 1967, ch. 16, § 223, relating to procedures for the local school board to object to

a school bus route, effective July 1, 1995. For provisions of former section, see the 1994 NMSA 1978 on *NMOneSource.com*.

## 22-16-6. Reimbursement of parents or guardians.

A local school board may, subject to regulations adopted by the state board [department], provide per capita or per mile reimbursement to a parent or guardian in cases where regular school bus transportation is impractical because of distance, road conditions or sparseness of population or in cases where the local school board has authorized a parent to receive reimbursement for travel costs incurred by having a child attend a school outside the child's attendance zone.

**History:** 1953 Comp., § 77-14-6, enacted by Laws 1967, ch. 16, § 224; 1973, ch. 337, § 1; 1990 (1st S.S.), ch. 9, § 12; 1993, ch. 226, § 48; 1995, ch. 208, § 8.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**The 1995 amendment,** effective July 1, 1995, deleted "and with the approval of the state transportation director" preceding "provide" near the beginning of the section, and deleted the former last sentence of the section which read: "A schedule providing for the reimbursement of parents and guardians in an amount that is reasonable and comparable to that which would be paid to a school bus contractor for the transportation of pupils, when computation for payment excludes the factors of size and age of school bus equipment and the driver's salary, shall be established by the state transportation division of the department of education with the approval of the state board."

**The 1993 amendment,** effective July 1, 1993, deleted the subsection designation "A" at the beginning of the section and deleted former Subsections B and C, pertaining to the requirement for application for reimbursement of a parent for transportation costs and defining "attendance zone".

**The 1990 (1st S.S.) amendment,** effective June 18, 1990, added the Subsection A designation, inserting therein "subject to regulations adopted by the state board and", "or in cases where the local school board has authorized a parent to receive reimbursement for travel costs incurred by having a child attend a school outside the child's attendance zone", and "of the department of education", made minor stylistic changes, and added Subsections B and C.

### ANNOTATIONS

**Purpose of reimbursement schedule.** — The reimbursement schedule provision is apparently designed to insure a maximum amount of uniformity in payments for this type of transportation in school districts where similar conditions prevail. 1966 Op. Att'y Gen. No. 66-134 (decided under prior law).

## 22-16-7. Repealed.

**Repeals.** — Laws 1993, ch. 226, § 54 repealed 22-16-7 NMSA 1978, as enacted by Laws 1967, ch. 16, § 225, concerning county school bus transportation expenditures,

effective July 1, 1993. For provisions of former section, see the 1992 NMSA 1978 on *NMOneSource.com*.

## 22-16-8. Cattle guards on school bus routes.

The board of county commissioners of each county shall construct cattle guards where privately owned fences intersect school bus routes on county roads when consent is obtained from each owner of real property upon which the cattle guards are to be constructed. The cost of constructing the cattle guards shall be paid out of the county road fund as other county road expenses are paid.

**History:** 1953 Comp., § 77-14-8, enacted by Laws 1967, ch. 16, § 226; 2009, ch. 49, § 1.

**The 2009 amendment,** effective June 19, 2009, required a county to pay for cattle guards only where publicly owned fences intersect a school bus route.

## 22-16-9. School buses; termination of use; resale.

A. When a school bus is being operated for purposes other than to actually transport students to and from school or on school activity trips, all markings indicating "school bus" shall be covered or removed.

B. When a school bus is sold to be used exclusively for purposes other than the transportation of students, all school bus identification shall be removed. In addition, unless the motor vehicle is painted a different color than that prescribed by the state board [department] for school buses, a series of diagonal black stripes shall be painted on the rear of the motor vehicle. The stripes shall be at least three feet long, four inches wide, and shall be spaced not more than ten inches apart.

C. The provisions of this section shall apply to any school bus that is operated on any public street or highway, except for the purpose of taking it to a place to be painted or moving it to a place of storage.

**History:** 1953 Comp., § 77-14-9, enacted by Laws 1967, ch. 16, § 227.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be

deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

## 22-16-10. Use of state or county equipment for snow removal.

The state or any county may, in order to provide for the public health, safety and welfare, use its road equipment for snow removal on any school bus route.

**History:** 1953 Comp., § 77-14-10, enacted by Laws 1975, ch. 79, § 1.

## 22-16-11. Regulations relative to school buses.

A. The state transportation director, appointed as provided in Section 22-16-1 NMSA 1978, shall adopt and enforce regulations adopted by the state board [department] not inconsistent with the Motor Vehicle Code [Articles 1 through 8 of Chapter 66 [except 66-7-102.1] NMSA 1978] to govern the design and operation of all school buses, used for the transportation of school children, when owned and operated by any school district or privately owned and operated under contract with any school district in this state, and the regulations shall by reference be made a part of any such contract with a school district. Every school district, its officers and employees and every person employed under contract by a school district shall be subject to the regulations.

B. Any officer or employee of any school district who violates any of the regulations or fails to include obligation to comply with the regulations in any contract executed by him on behalf of a school district is guilty of misconduct and subject to removal from office or employment. Any person operating a school bus, under contract with a school district, who fails to comply with any of the regulations is guilty of breach of contract, and the contract may be canceled after notice and hearing by the state transportation director acting in conjunction with the responsible officers of the school district.

C. Any driver of a school bus who fails to comply with any of the regulations is guilty of a misdemeanor.

**History:** 1953 Comp., § 64-7-365, enacted by Laws 1978, ch. 35, § 469; 1978 Comp., § 66-7-365, recompiled as § 22-16-11 by Laws 1993, ch. 226, § 53; 1995, ch. 208, § 9.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.



**Cross references.** — For duty of the state transportation division to establish standards pursuant to this section, *see* 22-16-2 NMSA 1978.

For overtaking and passing a school bus, *see* 66-7-347 NMSA 1978.

For the markings which indicate a school bus, *see* 66-7-347 and 22-16-9 NMSA 1978.

For special lighting equipment on school buses, *see* 66-7-348 NMSA 1978.

For the penalty for a misdemeanor, *see* 66-8-7 NMSA 1978.

**The 1995 amendment**, effective July 1, 1995, inserted "adopted by the state board" in Subsection A, substituted "state transportation director" for "director of transportation" in Subsections A and B, and made minor stylistic changes throughout the section.

## ANNOTATIONS

**Liability under Tort Claims Act.** — Neither the adoption and enforcement of regulations to govern the design and operation of school buses, nor the design, planning and enforcement of safety rules for school bus transportation, fall within the meaning of "operation" of a motor vehicle, for purposes of Section 41-4-5 NMSA 1978 (liability of government employees under Tort Claims Act). *Chee Owens v. Leavitts Freight Serv., Inc.*, 1987-NMCA-037, 106 N.M. 512, 745 P.2d 1165.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 79 C.J.S. Schools and School Districts § 480.

Tort liability of public schools and institutions of higher learning for accidents associated with transportation of students, 23 A.L.R.5th 1.

## 22-16-12. School transportation training fund; created.

The "school transportation training fund" is created in the state treasury. The fund consists of payments from school districts and charter schools for school transportation training workshops and other types of school transportation training described in rule provided by the public education department, income from investment of the fund and money otherwise accruing to the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year. The public education department shall administer the fund, and money in the fund is subject to appropriation by the legislature to the public education department to provide public school transportation workshops and training services to school districts and charter schools, including supplies and professional development for public education department staff. Money in the fund shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the secretary of public education or the secretary's authorized representative.

**History:** Laws 2014, ch. 74, § 1.

**Effective dates.** — Laws 2014, ch. 74, § 2 made Laws 2014, ch. 74, § 1 effective July 1, 2014.

**Compiler's notes.** — Laws 2014, ch. 74, § 1 was erroneously compiled as 22-2-22 NMSA 1978 and has been recompiled as 22-16-12 NMSA 1978 by the compiler.

## ARTICLE 17

### Emergency Transportation

Sec.

22-17-1. Short title.

22-17-2. Public regulation commission permits.

Sec.

22-17-3. State transportation director; approval.

22-17-4. Termination of permit.

#### 22-17-1. Short title.

Sections 1 through 4 [22-17-1 to 22-17-4 NMSA 1978] of this act may be cited as the "Emergency Transportation Act".

**History:** 1953 Comp., § 77-14A-1, enacted by Laws 1974, ch. 38, § 1.

#### 22-17-2. Public regulation commission permits.

A. Subject to the Emergency Transportation Act, the public regulation commission may approve a permit application of a school district operating its own school buses or of an independent school bus operator who operates school buses under contract with a school district for the operation of such buses for general public transportation if the commission determines that:

(1) the school district operating its own school buses or the independent school bus operator has complied with laws, regulations and other requirements governing transportation of the general public;

(2) existing public or private transportation systems will not be adversely affected by the use of school buses for general public transportation; and

(3) a public transportation emergency exists within the proposed area of operation necessitating the use of school buses for general public transportation.

B. Notice of approval or denial of the permit application shall be submitted to the state transportation director and to the applicant within ten days of final determination by the public regulation commission.

C. As used in the Emergency Transportation Act, "public transportation emergency" includes an event:

(1) that is open to the public;

(2) that, if in a class A county, is expected to attract over fifty thousand visitors and residents;

(3) that has such insurance or surety as is necessary to insure against all losses and damages proximately caused by or resulting from the negligent operation, maintenance or use of school buses or for loss of or damage to property of others; and

(4) for which school buses are needed to transport the public to the event because:

(a) existing public transportation systems cannot adequately and timely transport the public to the event;

(b) private transportation systems are unavailable or prohibitively expensive; or

(c) the event and the surrounding area are likely to suffer economic hardship if school buses are not utilized pursuant to the Emergency Transportation Act.

**History:** 1953 Comp., § 77-14A-2, enacted by Laws 1974, ch. 38, § 2; 2001, ch. 48, § 2.

**Cross references.** — For exemption of motor vehicles used pursuant to article from motor carrier regulations, see 65-2A-38 NMSA 1978.

For Public Regulation Commission, see 8-7-1 NMSA 1978.

**The 2001 amendment**, effective June 15, 2001, substituted "Public regulation commission" for "Corporation commission" in the section heading; substituted "public regulation" for "state corporation" in Subsection A; in Subsection B, deleted "of the state transportation division of the department of education" following "director", inserted "public regulation" preceding "commission"; and added Subsection C.

### 22-17-3. State transportation director; approval.

A. Upon the receipt of approval of the permit application from the state corporation commission [public regulation commission], the state transportation director may grant a permit to operate school buses for general public transportation to a school district that operates its own school buses or to the independent school bus operator who operates school buses under contract with a school district, if he determines:

(1) that school bus service to students will not be adversely affected by issuing the permit;

(2) that the operation of such buses for general public transportation service by the district or the independent operator will not provide unnecessary duplication of a general public transportation service by school buses of another school district or independent school bus operator contracting with another district; and

(3) that there has been compliance with the rules and regulations of the state transportation director issued pursuant to the Emergency Transportation Act.

B. The state transportation director, subject to the approval of the state superintendent [secretary] of public instruction, shall by regulation provide for application fees, forms and permit procedures pursuant to the Emergency Transportation Act.

C. A permit issued under this section shall be valid for one year and shall be annually renewed upon payment of a reasonable application fee to the state transportation division and certification by the state corporation commission [public regulation commission] of the permittee's compliance with all applicable laws. Notice of renewal of the permit shall be delivered by the state



transportation division to the state corporation commission [public regulation commission] and the local school board concerned.

**History:** 1953 Comp., § 77-14A-3, enacted by Laws 1974, ch. 38, § 3.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1998, ch. 108, § 80 provided that all references in law, rules, tariffs, orders and other official acts to the state corporation commission, the insurance board, the fire board or the New Mexico public utility commission shall

be construed to be references to the public regulation commission.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

## 22-17-4. Termination of permit.

A permit issued pursuant to the Emergency Transportation Act shall be terminated by the state transportation director upon thirty days' written notice to the holder of the permit, if the state transportation director receives written notice from:

A. the state corporation commission [public regulation commission] that it has determined that a public transportation emergency in the area in which the permittee provides general public transportation no longer exists, or that public or private transportation systems are being adversely affected in such area; or

B. the local school board that such board has determined that school bus service to students is being adversely affected by providing general public transportation under the permit.

**History:** 1953 Comp., § 77-14A-4, enacted by Laws 1974, ch. 38, § 4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1998, ch. 108, § 80 provided that all references in law, rules, tariffs, orders and other official acts to the state

corporation commission, the insurance board, the fire board or the New Mexico public utility commission shall be construed to be references to the public regulation commission.

# ARTICLE 18

## General Obligation Bonds of School Districts

Sec.

22-18-1. General obligation bonds; authority to issue.

22-18-2. Bond elections; qualification of voters; calling for bond elections.

22-18-3. Repealed.

22-18-4. Bond elections; conduct.

22-18-5. Bond elections; ballots.

22-18-6. Repealed.

22-18-7. Authority to issue bonds.

Sec.

22-18-8. Restriction on bond elections.

22-18-9. Approval of bond issue by attorney general.

22-18-10. Bond election contests.

22-18-11. General obligation bonds; issuance; sale.

22-18-12. Budgetary provisions; payment of principal and interest.

22-18-13. Timely payment of school district obligations.

## 22-18-1. General obligation bonds; authority to issue.

A. After consideration of the priorities for the school district's capital needs as shown by the facility assessment database maintained by the public school facilities authority and subject to the provisions of Article 9, Section 11 of the constitution of New Mexico and Sections 6-15-1 and 6-15-2 NMSA 1978, a school district may issue general obligation bonds for the purpose of:

(1) erecting, remodeling, making additions to and furnishing school buildings, including teacher housing;

(2) purchasing or improving school grounds;

(3) purchasing computer software and hardware for student use in public schools;

(4) providing matching funds for capital outlay projects funded pursuant to the Public School Capital Outlay Act [Chapter 22, Article 24 NMSA 1978]; or

(5) any combination of these purposes.

B. The bonds shall be fully negotiable and constitute negotiable instruments within the meaning and for all purposes of the Uniform Commercial Code [Chapter 55 NMSA 1978].

**History:** 1953 Comp., § 77-15-1, enacted by Laws 1967, ch. 16, § 228; 1996, ch. 67, § 1; 2005, ch. 274, § 14; 2007, ch. 173, § 21; 2009, ch. 132, § 1; 2021, ch. 52, § 7.

**Cross references.** — For public school finances generally, see 22-8-1 NMSA 1978 et seq.

For school revenue bonds, see 22-19-1 NMSA 1978 et seq.

For school construction, see 22-20-1 NMSA 1978 et seq.

For public school emergency capital outlays, see 22-24-1 NMSA 1978 et seq.

For public school capital improvements, see 22-25-1 NMSA 1978 et seq.

For constitutional provision relating to school district indebtedness, see N.M. Const., art. IX, § 11.

For issuance and sale of bonds by school districts generally, see 6-15-3 to 6-15-10 NMSA 1978.

For issuance of refunding bonds by school districts generally, see 6-15-11 to 6-15-22 NMSA 1978.

For the Public School Lease Purchase Act, see 22-26A-1 NMSA 1978.

**The 2021 amendment**, effective July 1, 2021, authorized general obligation bonds to be used to erect, remodel, or make additions to teacher housing; and in Subsection A, Paragraph A(1), after "buildings", added "including teacher housing".

**The 2009 amendment**, effective June 19, 2009, deleted former Paragraph (5) of Subsection A, which provided for payment pursuant to a financing agreement for the leasing of a building or other real property with an option to purchase.

**The 2007 amendment**, effective June 15, 2007, added Paragraph (5) of Subsection A to provide for the issuance of bonds to make certain lease payments.

**The 2005 amendment**, effective April 6, 2005, provided that a school district may issue bonds after considering the priorities for the school district's capital needs as shown by the facility assessment database maintained by the public school facilities authority and that bonds may be issued to provide matching funds for capital outlay projects funded pursuant to the Public School Capital Outlay Act.

**The 1996 amendment**, effective May 15, 1996, inserted "purchasing computer software and hardware for student use in public schools" near the end of the first sentence.

## ANNOTATIONS

**"School building".** — The term "school building" has been defined by the courts in the context of the expenditure of revenues from a bond issue to mean a structure which is used for teaching. 1981 Op. Att'y Gen. No. 81-01.

**Buildings for teacher housing not school buildings.** — Buildings used for teacher housing, which are not used for instructional purposes, do not fall within the meaning of the term "school building" as it is commonly used in bonding provisions. 1981 Op. Att'y Gen. No. 81-01.

Revenues generated by school district general obligation bonds or pursuant to the Public School Capital Improvements Act may not be spent to construct teacher housing. 1981 Op. Att'y Gen. No. 81-01.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 64 Am. Jur. 2d Public Securities and Obligations §§ 120, 122.

For article, "No Cake For Zuni: The Constitutionality of New Mexico's Public School Capital Finance System," see 37 N.M.L. Rev. 307 (2007).

## 22-18-2. Bond elections; qualification of voters; calling for bond elections.

A. Before any general obligation bonds are issued, a local school board of a school district shall submit to a vote of the qualified electors of the school district the question of creating a debt by issuing the bonds, and a majority of those persons voting on the question shall vote for issuing the general obligation bonds.

B. The election on the question of creating a debt by issuing general obligation bonds shall be held pursuant to the provisions of the Local Election Act [Chapter 1, Article 22 NMSA 1978]. The question shall be submitted to a vote at a district election upon the initiative of a local school board or upon a petition being filed with a local school board signed by qualified electors of the school district. The number of signatures required on the petition shall be at least ten percent of the number of votes cast for governor in the school district in the last preceding general election. For the purpose of determining the number of votes cast for governor in the school district at the last preceding general election, any portion of a voting division within the school district shall be construed to be wholly within the school district. A local school board shall call for a bond election at the next regular local or special election within ninety days following the date a properly signed petition is filed with it; provided that the timing of the election does not conflict with the provisions of Section 1-24-1 NMSA 1978.

**History:** 1953 Comp., § 77-15-2, enacted by Laws 1967, ch. 16, § 229; 2001, ch. 61, § 1; 2018, ch. 79, § 91; 2019, ch. 212, § 220.

**Cross references.** — For requirement that persons be registered voters to vote in bond elections, see 22-18-4 NMSA 1978.

**The 2019 amendment**, effective April 3, 2019, provided that the timing of a bond election shall not conflict

with the provisions of the Special Election Act; in Subsection B, after "provisions of Section", deleted "1-12-71" and added "1-24-1".

**The 2018 amendment**, effective July 1, 2018, provided that elections on the question of creating a debt by issuing general obligation bonds shall be held pursuant to the Local Election Act, restricted the timing of the bond election so it will not conflict with other provisions of law, and made



technical and conforming changes; in Subsection A, after "electors of the school district", deleted "owning real estate in the school district"; and in Subsection B, after "shall be held", deleted "at the same time as a regular school district election or at any special school district election which is not within ninety days after a regular school district election" and added "pursuant to the provisions of the Local Election Act", after "submitted to a vote at", deleted "general or special school", after "qualified electors of the school district", deleted "having paid a property tax on property in the school district for the preceding year, according to the latest completed tax rolls", after "call for a bond election at", deleted "a" and added "the next", after "regular", added "local", after "special", deleted "school district", and added "provided that the timing of the election does not conflict with the provisions of Section 1-12-71 NMSA 1978".

**The 2001 amendment**, effective June 15, 2001, substituted "filed with it" for "filed with them" at the end of Subsection B.

#### ANNOTATIONS

**Constitutionality of section.** — New Mexico Const., art. IX, § 11 violates the equal protection clause of the U.S.

### 22-18-3. Repealed.

**Repeals.** — Laws 2001, ch. 61, § 3 repealed 22-18-3 NMSA 1978, as enacted by Laws 1967, ch. 16, § 230, relating to giving the public notice of bond elections and

Const. by restricting the right to vote in school district bond elections to real estate owners, and likewise, this section, which implements N.M. Const., art. IX, § 11, conflicts with the equal protection clause of the U.S. Const. insofar as it restricts the franchise in school district bond elections to real estate owners or to those who have paid a property tax on property in the school district for the preceding year. *Prince v. Board of Educ.*, 1975-NMSC-068, 88 N.M. 548, 543 P.2d 1176.

**Provision means that a voter in a school bond election must be a resident of the district**, an owner of real estate within the same, but it is not necessary to have paid taxes on said real estate in order to vote in the school bond election. 1957-58 Op. Att'y Gen. No. 58-128. See *Prince v. Board of Educ.*, 1975-NMSC-068, 88 N.M. 548, 543 P.2d 1176.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Power of school district or school authorities to rescind or modify vote or resolution for bond issue, 68 A.L.R.2d 1041.

79 C.J.S. Schools and School Districts § 366.

### 22-18-4. Bond elections; conduct.

- A. A person is required to be a qualified elector to vote in a bond election in a school district.
- B. Bond elections in a school district shall be conducted pursuant to the Local Election Act [Chapter 1, Article 22 NMSA 1978].

**History:** 1953 Comp., § 77-15-4, enacted by Laws 1967, ch. 16, § 231; 1970, ch. 6, § 7; 2001, ch. 61, § 2; 2018, ch. 79, § 92; 2019, ch. 212, § 221.

**The 2019 amendment**, effective April 3, 2019, in Subsection A, deleted "registered" preceding "qualified elector".

**The 2018 amendment**, effective July 1, 2018, required bond elections in a school district to be conducted pursuant to the Local Election Act, and made technical and conforming changes; in Subsection A, after "registered", deleted "voter" and added "qualified elector"; and

in Subsection B, after "pursuant to the", deleted "Election Code, except as otherwise provided in Sections 22-18-1 through 22-18-12 NMSA 1978, the School Election Law and the Bond" and added "Local".

**Temporary provisions.** — Laws 2018, ch. 79, § 174 provided that references in law to the Municipal Election Code and to the School Election Law shall be deemed to be references to the Local Election Act.

**The 2001 amendment**, effective June 15, 2001, updated the code section references in Subsection B.

### 22-18-5. Bond elections; ballots.

A. The question on the ballot of creating a debt by issuing general obligation bonds shall state the purpose or purposes for which the bonds are to be issued and the amount of the bond issue. Two or more separate questions may be submitted to the voters at a bond election, in which case, the vote on each question shall be separately counted, canvassed and certified.

B. Bond election ballots shall contain a place for a vote "For the school district bonds" and "Against the school district bonds" for each bond issue.

C. If paper ballots are used at a bond election, all questions to be voted on at the bond election shall be listed on one ballot.

**History:** 1953 Comp., § 77-15-5, enacted by Laws 1967, ch. 16, § 232.

#### ANNOTATIONS

**Use of the language "for school purposes," with no other qualification, on a school bond issue was too**

broad, because such language did not sufficiently apprise the voter of the exact purpose for which the election was held. *Board of Educ. v. Hartley*, 1964-NMSC-204, 74 N.M. 469, 394 P.2d 985 (decided under prior law).

## 22-18-6. Repealed.

**Repeals.** — Laws 2001, ch. 61, § 3 repealed 22-18-6 NMSA 1978, as enacted by Laws 1967, ch. 16, § 233, regarding the authority of local school boards to issue bonds,

effective June 15, 2001. For provisions of former section, see the 2000 NMSA 1978 on *NMOneSource.com*.

## 22-18-7. Authority to issue bonds.

If a majority of those persons voting on a question submitted to the voters in a bond election vote for creating a debt by issuing general obligation bonds, the local school board may, subject to the approval of the attorney general, proceed to issue the bonds.

**History:** 1953 Comp., § 77-15-7, enacted by Laws 1967, ch. 16, § 234.

## 22-18-8. Restriction on bond elections.

In the event a majority of those persons voting on a question submitted to the voters in a bond election votes against creating a debt by issuing general obligation bonds, no bond election shall be held on the same question for a period of two years from the date of the bond election.

**History:** 1953 Comp., § 77-15-8, enacted by Laws 1967, ch. 16, § 235; 2018, ch. 79, § 93.

The 2018 amendment, effective July 1, 2018, removed an exception to the provision prohibiting a bond election within two years of a bond election in which a majority of voters voted against creating a debt by issuing general obligation bonds; and after "the date of the bond election", deleted the remainder of the subsection, which related to the presentation of a petition calling for a bond election.

### ANNOTATIONS

**Bond elections on the "same question".** — Alamosogordo school district's proposed February, 1989 bond question, which differed materially in amount of bonded indebtedness and in purpose, was not the "same question" that the voters defeated in May, 1987, and therefore did not violate this section. 1988 Op. Att'y Gen. No. 88-53.

## 22-18-9. Approval of bond issue by attorney general.

No issue of bonds shall be valid or binding on any school district unless prior to the issuance of the bonds the attorney general approves the bond issue as to form and legality. The written approval of the attorney general shall be made a part of the transcript of the proceedings in connection with each bond issue. The local school board of each school district proposing to issue bonds shall provide the attorney general with all information necessary for this consideration of the form and legality of the bond issue.

**History:** 1953 Comp., § 77-15-9, enacted by Laws 1967, ch. 16, § 236.

**Cross references.** — For preparation and disposition of transcripts of proceedings relating to bond issues, see 6-15-2 NMSA 1978.

## 22-18-10. Bond election contests.

No action concerning any question placed on the ballot at a bond election shall be maintained in the district court unless the action is filed within ten days after the publication of the certificate of results of the bond election by the superintendent of schools.

**History:** 1953 Comp., § 77-15-10, enacted by Laws 1967, ch. 16, § 237.

## 22-18-11. General obligation bonds; issuance; sale.

A. General obligation bonds of a school district shall be issued and sold pursuant to the provisions of Sections 6-15-3 through 6-15-10 NMSA 1978.



B. Except as is otherwise provided by law, general obligation bonds issued by a school district shall be of the denomination or denominations, shall be payable at the place or places within or without the state or both, shall be in such form and shall bear such terms and conditions as the local school board of the school district determines.

C. General obligation bonds issued by a school district shall be signed by the president and attested by the secretary of the local school board, unless the bonds are issued in book entry or similar form without the delivery of physical securities. Any coupons appertaining to the bonds shall be signed by the president of the local school board either manually or by facsimile signature.

D. The general obligation bonds issued by a school district may be executed in the manner provided by the provisions of the Uniform Facsimile Signature of Public Officials Act [6-9-1 through 6-9-6 NMSA 1978].

**History:** 1953 Comp., § 77-15-11, enacted by Laws 1967, ch. 16, § 238; 1983, ch. 265, § 47.

## 22-18-12. Budgetary provisions; payment of principal and interest.

A. A local school board shall establish adequate budgetary provisions, approved by the public school finance division [secretary], to promptly pay, as it becomes due, all principal and interest on general obligation bonds issued by the school district.

B. The full faith and credit of a school district shall be pledged to the payment of the principal and interest on general obligation bonds issued by the school district.

C. The board of county commissioners shall levy and collect upon all taxable property within a school district in the county such tax as is necessary to pay the interest and principal on general obligation bonds issued by the school district as the interest and principal become due, without limitation as to rate or amount.

**History:** 1953 Comp., § 77-15-12, enacted by Laws 1967, ch. 16, § 239.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1977, ch. 246, § 69 abolished the public school finance division of the department of finance and administration.

**Cross references.** — For the transfer of powers of the former public school finance division, see 9-6-3.1 NMSA 1978.

For the transfer of powers of the former state superintendent to the secretary of public education, see 9-24-15 NMSA 1978.

## 22-18-13. Timely payment of school district obligations.

A. Whenever a paying agent has not received payment of principal or interest on school district general obligation bonds on the business day immediately prior to the date on which the payment is due, the paying agent shall so notify the department of finance and administration, the department and the school district by telephone, facsimile or other similar communication, followed by written verification, of the payment status. The department of finance and administration shall immediately contact the school district and determine whether the school district will make the payment by the date on which it is due.

B. Except as provided in Subsection C of this section, if the school district indicates that it will not make the payment by the date on which it is due, the department of finance and administration shall forward the amount in immediately available funds necessary to make the payment due on the bonds to the paying agent and shall withhold an equal amount from the next succeeding payment of the state equalization guarantee distribution. If the amount of the next succeeding payment is insufficient to pay the amount due, the department of finance and administration shall withhold amounts from each succeeding payment of the state equalization guarantee distribution, including payments to be made in succeeding fiscal years but not more than twelve consecutive months of payments, until the total payment of principal and interest due has been withheld.

C. For a payment due on a bond issued on or after the effective date of this 2007 act, if the school district indicates that it will not make the payment by the date on which it is due, the department of finance and administration shall forward the amount in immediately available funds

necessary to make the payment due on the bonds to the paying agent from the current fiscal year's undistributed state equalization guarantee distribution to that school district and, if not otherwise repaid by the school district from other legally available funds, withhold the distributions from the school district until the amount has been recouped by the department of finance and administration, provided that, if the amount of the undistributed state equalization guarantee distribution in the current fiscal year is less than the payment due on the bond, the department of finance and administration shall:

(1) forward in immediately available funds to the paying agent an amount equal to the total amount of the school district's undistributed state equalization guarantee distribution and, if not otherwise repaid by the school district from other legally available funds, withhold all distributions to the school district for the remainder of the fiscal year; and

(2) on July 1 of the following fiscal year, forward in immediately available funds an amount equal to the remaining amount due to the paying agent from that year's state equalization guarantee distribution and, if not otherwise repaid by the school district from other legally available funds, withhold an equal amount from the distribution to the school district until the amount paid has been recouped in full.

D. The amounts forwarded to the paying agent by the department of finance and administration shall be applied by the paying agent solely to the payment of the principal or interest due on the general obligation bonds of the school district. The department of finance and administration shall notify the department, the chief financial officer of the school district, the department of finance and administration, the legislative finance committee and the legislative education study committee of amounts withheld and payments made pursuant to this section.

E. Upon the issuance of general obligation bonds by a school district, the school district shall file with the department of finance and administration a copy of the resolution that authorizes the issuance of the bonds, a copy of the official statement or other offering document for the bonds, the agreement, if any, with the paying agent for the bonds and the name, address and telephone number of the paying agent; provided, however, that the failure of a school district to file the information shall not affect the obligation of the department of finance and administration to withhold the state equalization guarantee distribution pursuant to this section.

F. The state hereby covenants with the purchasers and holders of general obligation bonds issued by school districts that it will not repeal, revoke or rescind the provisions of this section or modify or amend the same so as to limit or impair the rights and remedies granted by this section; provided that nothing in this subsection shall be deemed or construed to require the state to continue the payment of a state equalization guarantee distribution to any school district or to limit or prohibit the state from repealing, amending or modifying any law relating to the amount of state equalization guarantee distributions to school districts or the manner of payment or the timing thereof. Nothing in this section shall be deemed or construed to create a debt of the state with respect to the bonds within the meaning of any state constitutional provision or to create any liability except to the extent provided in this section.

G. Whenever the department of finance and administration is required by this section to make a payment of principal or interest on bonds on behalf of a school district, the department shall initiate an audit of the school district to determine the reason for the nonpayment and to assist the school district, if necessary, in developing and implementing measures to ensure that future payments will be made when due.

H. Whenever the department of finance and administration makes a payment of principal and interest on bonds or other obligations of a school district and withholds amounts from the state equalization guarantee distribution pursuant to this section because of the failure to collect property taxes, the school district may transfer delinquent property taxes later collected out of the school district's bond redemption fund and into its general fund.

I. This section applies to general obligation bonds issued by a school district on or after July 1, 2003.

**History:** Laws 2003, ch. 46, § 1; 2007, ch. 102, § 1.

**Compiler's notes.** — The phrase "the effective date of this 2007 act" in Subsection C, is March 30, 2007, the effective date of Laws 2007, ch. 102, § 1.



**Cross references.** — For transfer of powers and duties of the former department of education, *see* 9-24-15 NMSA.

For the legislative finance committee, *see* 2-5-1 NMSA 1978.

For the legislative education study committee, *see* 2-10-1 NMSA 1978.

The 2007 amendment, effective March 30, 2007, added a new Subsection C, which required the department

of finance and administration to pay a payment due on a bond from a school district's undistributed state equalization guarantee distribution if the school district indicates that it will not make the payment by the due date and to withhold the distribution until the amount has been recouped by the department.

## ARTICLE 18A

### School District Loans

Sec.

22-18A-1. Short title.

22-18A-2. Purpose.

22-18A-3. Fund created; administration.

Sec.

22-18A-4. Loan program; duties of the state department of public education.

22-18A-5. Temporary transfer of funds.

#### 22-18A-1. Short title.

Sections 1 through 4 [22-18A-1 through 22-18A-4 NMSA 1978] of this act may be cited as the "School District Loan Act".

**History:** Laws 1989, ch. 134, § 1.

#### 22-18A-2. Purpose.

The purpose of the School District Loan Act is to provide school districts with financial assistance to make payment of principal and interest due on outstanding school district general obligation indebtedness.

**History:** Laws 1989, ch. 134, § 2.

#### 22-18A-3. Fund created; administration.

A. There is created in the state treasury a revolving loan fund to be known as the "public school district general obligation bonds loan fund". The fund is established as an additional source for payments of principal and interest due on public school district general obligation indebtedness already incurred or incurred in the future or for payments of any other obligations arising in connection with that indebtedness. The fund shall be drawn upon only in the event ad valorem taxes or other revenues of the public school district available for the described payments are either insufficient or are not received by the public school district at the time due or anticipated. The state department of public education [public education department] shall administer the fund and may make loans from the fund in accordance with the School District Loan Act. Money remaining in the fund at the end of any fiscal year shall not revert to the general fund.

B. The state department of public education [public education department] shall deposit in the fund all receipts from the repayment of loans made pursuant to the School District Loan Act.

C. Each July 1, balances in the public school district general obligation bonds loan fund in excess of one million dollars (\$1,000,000) shall be transferred to the state-support reserve fund.

**History:** Laws 1989, ch. 134, § 3.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed

references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## 22-18A-4. Loan program; duties of the state department of public education.

A. The state department of public education [public education department] shall adopt regulations to govern the application procedure and requirements for making loans under the School District Loan Act.

B. The state department of public education [public education department] may make a loan to a school district if the local school district board certifies to the state department of public education that there are insufficient ad valorem taxes or other school district revenues to meet a payment of principal or interest, or both, due on the school district's general obligation indebtedness or to meet any other obligation arising in connection with that indebtedness lawfully payable from ad valorem taxes, or that the receipt of ad valorem taxes to make any such payment will be delayed and not be available to make the payment when due.

C. A loan shall be made for a period of time not to exceed five years with an annual interest rate to be the lesser of five percent or the rate of interest determined by the state department of public education [public education department], so that the interest rate shall comply with federal arbitrage requirements. A loan shall be repaid in annual installments as determined by the state board [department] of public education. Loans shall be made by the state department of public education [public education department] pursuant to this section only, with the prior approval of the state board of finance.

**History:** Laws 1989, ch. 134, § 4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all

references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Cross references.** — For the state board of finance, *see* 6-1-1 NMSA 1978.

## 22-18A-5. Temporary transfer of funds.

If it is determined by the state department of public education [public education department] and the department of finance and administration that there are insufficient ad valorem taxes or other public school district revenues to meet a payment of principal or interest due on public school district general obligation indebtedness or to meet any other obligation arising in connection with that indebtedness lawfully payable from ad valorem taxes, or that the receipt of ad valorem taxes or other revenues to be used to make any such payment will be delayed and not be available to make the payment when due, the state department of public education [public education department] and the department of finance and administration may request the state board of finance to direct a temporary transfer of a sufficient amount of money from the state-support reserve fund or the general fund operating reserve to the public school district general obligation bonds loan fund so that the payment becoming due may be made and a default avoided. In determining the order of transfer, money in the state-support reserve fund shall be transferred first, and if that amount is insufficient then the general fund operating reserve shall be used. If such a transfer is directed by the state board of finance, the state department of public education [public education department] shall use the amount transferred to the state public school district general obligation bonds loan fund to make the payment.

**History:** Laws 1989, ch. 134, § 5.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be

deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.



## ARTICLE 18B

### Qualified School Bonds

Sec. 22-18B-1. Short title.	Sec. 22-18B-4. Qualified school bonds; designation; terms; sale.
22-18B-2. Findings and purpose.	22-18B-5. Public school capital outlay council; allocation.
22-18B-3. Definitions.	

#### 22-18B-1. Short title.

Sections 1 through 5 [22-18B-1 to 22-18B-5 NMSA 1978] of this act may be cited as the "Qualified School Bonds Act".

**History:** Laws 1999, ch. 225, § 1.

#### 22-18B-2. Findings and purpose.

A. The legislature finds that:

- (1) the condition of public school facilities has a direct effect on the safety of teachers and students and on the ability of students to learn;
- (2) public schools in rapidly growing urban areas of New Mexico and public schools in sparsely populated rural areas are unable to meet the capital needs for modernization of existing school facilities to meet the growing school-age population in New Mexico under present funding authorizations;
- (3) additional funding options are necessary to meet the needs for teacher training to improve student achievement levels and to meet the needs of the work place by providing sufficient student training in the use of advanced technology;
- (4) encouraging active community participation and private sector contributions to the public schools will enhance learning opportunities for New Mexico students;
- (5) authorizing additional forms of financing for school modernization and construction will permit eligible taxpayers to take advantage of tax credits not currently available to bondholders and will increase the market options for state and local bonds;
- (6) encouraging active community participation in the development of resources to build and modernize schools, to enhance educational technology and to enhance teacher training is essential to the success of students in the twenty-first century; and
- (7) authorizing additional alternative procedures for the sale of bonds will allow New Mexico public schools and eligible taxpayers to participate in available tax credits and to leverage additional funds for the improvement of public school facilities.

B. The purpose of the Qualified School Bonds Act is to implement a state program that allows eligible taxpayers to take advantage of available tax credits by expanding the incentives to purchase and hold bonds and thereby increasing the financing alternatives for modernization and rehabilitation of public school facilities and enhancing teacher training.

**History:** Laws 1999, ch. 225, § 2.

#### 22-18B-3. Definitions.

As used in the Qualified School Bonds Act:

- A. "allocation" means New Mexico's allocation of the national zone academy bond limitation pursuant to Section 1397E(e)(2) of the Internal Revenue Code of 1986;
- B. "council" means the public school capital outlay council;

C. "eligible taxpayer" means an entity that qualifies as an eligible taxpayer under Section 1397E(d)(6) of the Internal Revenue Code of 1986 and includes a bank, insurance company or corporation actively engaged in the business of lending money;

D. "qualified contribution" means a contribution meeting the requirements of Section 1397E(d)(2) of the Internal Revenue Code of 1986, from a private entity to the qualifying school and includes:

(1) equipment for use in the qualifying school, including state-of-the-art technology and vocational equipment;

(2) technical assistance in developing curriculum or in training teachers in order to promote appropriate market-driven technology in the classroom;

(3) services of employees as volunteer mentors;

(4) internships, field trips or other educational opportunities outside the qualifying school for students; and

(5) any other property or service specified by the governing body of the qualifying school;

E. "qualified school bond" means a bond issued by the state or a political subdivision of the state that meets all of the requirements of Section 4 [22-18B-4 NMSA 1978] of the Qualified School Bonds Act and the requirements for a qualified zone academy bond pursuant to Section 1397E(d)(1) of the Internal Revenue Code of 1986;

F. "qualified purpose" means a purpose of a bond issue that meets the requirements of Section 1397E(d)(5) of the Internal Revenue Code of 1986 and Article 9, Section 11 of the constitution of New Mexico; and

G. "qualifying school" means a public school, a New Mexico state educational institution providing education or training below the post-secondary level or a program within such a public school or educational institution and which school, institution or program meets the requirements for a qualified zone academy pursuant to Section 1397E(d)(4) of the Internal Revenue Code of 1986.

**History:** Laws 1999, ch. 225, § 3.

**Cross references.** — For Section 1397E of the Internal Revenue Code, see 26 U.S.C. § 1397E.

## 22-18B-4. Qualified school bonds; designation; terms; sale.

A. The state or a political subdivision of the state that has been authorized to issue bonds may designate all or any part of the bonds as qualified school bonds if:

(1) at least ninety-five percent of the proceeds from the sale of the proposed qualified school bonds are to be used for a qualified purpose at a qualifying school within the jurisdiction of the state or political subdivision;

(2) the state or the political subdivision has the written approval of the governing body of the qualifying school to issue the proposed qualified school bonds;

(3) the governing body of the qualifying school has written commitments from private entities for qualified contributions having a present value of not less than ten percent of the value of the proceeds from the sale of the proposed qualified school bonds; and

(4) the council has reserved to the qualifying school an amount of the allocation equal to the proceeds from the sale of the proposed qualified school bonds.

B. Notwithstanding any law requiring bonds to be sold at a public sale, qualified school bonds may be sold at a private sale to eligible taxpayers.

C. In addition to any other requirement of law applicable to the term of the bonds, qualified school bonds shall not be issued for a term longer than the term fixed pursuant to Section 1397E(d)(3) of the Internal Revenue Code of 1986 for qualified zone academy bonds issued during the month that the qualified school bonds are issued.

D. Qualified school bonds shall not bear interest.

**History:** Laws 1999, ch. 225, § 4.

**Cross references.** — For Section 1397E of the Internal Revenue Code, see 26 U.S.C. § 1397E.



## 22-18B-5. Public school capital outlay council; allocation.

A. The aggregate face amount of all qualified school bonds issued in a calendar year shall not exceed the allocation for that year.

B. The council is designated the state education agency pursuant to Section 1397E(e)(2) of the Internal Revenue Code of 1986 and is responsible for ensuring compliance with the limitation of Subsection A of this section.

C. If the state or a political subdivision desires to designate bonds as qualified school bonds, it shall, by July 1 of the calendar year in which the bonds are to be issued, submit an application for reservation of an allocation to the council. The application shall include evidence that the requirements of Paragraphs (1), (2) and (3) of Subsection A of Section 4 [22-18B-4 NMSA 1978] of the Qualified School Bonds Act have been satisfied.

D. If, for a calendar year, the allocation for that year exceeds the amount of qualified school bonds designated and issued in that year, the excess shall be carried forward and included in the allocation for the subsequent year.

E. In the event the face amount of all proposed qualified school bonds for a calendar year exceeds the allocation, the council shall ratably apportion the allocation among the state and political subdivisions that have timely filed valid applications for that year.

**History:** Laws 1999, ch. 225, § 5.

**Cross references.** — For Section 1397E of the Internal Revenue Code, see 26 U.S.C. § 1397E.

## ARTICLE 18C

### Qualified School Construction Bonds Act

Sec. 22-18C-1. Short title.

22-18C-2. Definitions.

22-18C-3. Qualified school construction bonds; designation; terms; sale.

Sec. 22-18C-4. Allocation.

22-18C-4. Allocation.

#### 22-18C-1. Short title.

Chapter 22, Article 18C NMSA 1978 may be cited as the "Qualified School Construction Bonds Act".

**History:** Laws 2009, ch. 154, § 1; 2010, ch. 56, § 1.

**The 2010 amendment**, effective March 8, 2010, deleted "Sections 1 through 4 of this act" and added "Chapter 22, Article 18C NMSA 1978".

#### 22-18C-2. Definitions.

As used in the Qualified School Construction Bonds Act:

A. "allocation" means New Mexico's allocation of the national qualified school construction bond limitation pursuant to Section 1521 of the federal American Recovery and Reinvestment Act of 2009;

B. "council" means the public school capital outlay council;

C. "qualified school construction bond" means a bond issued by the state or a school district that meets all of the requirements of Section 22-18C-3 NMSA 1978 and the requirements for a qualified school construction bond pursuant to Section 1521 of the federal American Recovery and Reinvestment Act of 2009; and

D. "qualifying school" means a public school, a New Mexico state educational institution providing education or training below the post-secondary level or a program within such a public school or educational institution and which school, institution or program meets the requirements of Section 1521 of the federal American Recovery and Reinvestment Act of 2009.

**History:** Laws 2009, ch. 154, § 2; 2010, ch. 56, § 2.

**The 2010 amendment**, effective March 8, 2010, deleted former Subsection C, which defined "eligible taxpayer" as an entity that qualifies as an eligible taxpayer

under the Internal Revenue Code; and in Subsection C, deleted "3 of the Qualified School Construction Bonds Act" and added "22-18C-3 NMSA 1978".

### **22-18C-3. Qualified school construction bonds; designation; terms; sale.**

A. The state or a school district that has been authorized to issue bonds may designate all or any part of the bonds as qualified school construction bonds if:

(1) one hundred percent of the available project proceeds from the issuance of the bonds are to be used for:

(a) the construction, rehabilitation or repair of a qualifying school facility;

(b) the acquisition of land on which such a facility is to be constructed with part of the proceeds; or

(c) the acquisition of equipment to be used in the portion of the qualifying school facility that is being constructed, rehabilitated or repaired with the proceeds;

(2) the bonds are issued by the state or a school district within the jurisdiction of which the qualifying school is located; and

(3) the issuer is:

(a) a school district to which a direct allocation is made pursuant to Section 1521 of the federal American Recovery and Reinvestment Act of 2009 and the amount of the bonds designated as qualified school construction bonds does not exceed the direct allocation; or

(b) the state or a school district that has received an allocation distribution from the council pursuant to Section 22-18C-4 NMSA 1978.

B. Notwithstanding any law requiring bonds to be sold at a public sale or at not less than par, qualified school construction bonds may be sold at a public or private sale to the state, the New Mexico finance authority or any other purchaser and may be sold at par, or at less than or greater than par.

C. In addition to any other requirement of law applicable to the term of the bonds, qualified school construction bonds shall not be issued for a term longer than the term fixed pursuant to the Internal Revenue Code of 1986, as amended, and applicable state law.

**History:** Laws 2009, ch. 154, § 3; 2010, ch. 56, § 3.

**Cross references.** — For the Internal Revenue Code of 1986, see 26 U.S.C.

**The 2010 amendment**, effective March 8, 2010, in Subsection A(1)(a), after "school facility", deleted "or for"; added Subsection A(1)(c); in Subsection A(3), deleted

"designates the bonds as qualified school construction bonds" and added "is"; added Subparagraphs (a) and (b) of Subsection A(3); and in Subsection B, after "sold at a public sale", added "or at not less than par" and after "public or private sale to", deleted "eligible taxpayers" and added the remainder of the sentence.

### **22-18C-4. Allocation.**

A. The aggregate face amount of all qualified school construction bonds issued in a calendar year shall not exceed the available allocation, including any carry-forward allocation, for that year.

B. Except for the portion of the allocation required by Section 1521 of the federal American Recovery and Reinvestment Act of 2009 to be made to particular school districts, the council is designated the state education agency responsible for ensuring compliance with the limitation of Subsection A of this section.

C. If the state or a school district that has been authorized to issue bonds, or is in the process of obtaining authorization to issue bonds, desires to designate all or any portion of the bonds as qualified school construction bonds, it shall submit an application to the council for an allocation distribution. For bonds to be issued in calendar year 2010, the application shall be submitted no later than the last day of the third month following the month in which this 2010 act is first effective; and, for bonds to be issued in any subsequent year in which an allocation exists, the application shall be submitted no later than March 1 of that year. The application shall include evidence that the requirements of Paragraphs (1) and (2) of Subsection A of Section 22-18C-3 NMSA 1978 have been satisfied; provided, however, that any school district to which a direct allocation is made



pursuant to Section 1521 of the federal American Recovery and Reinvestment Act of 2009 shall be exempt from the application requirement to the extent that the amount of qualified school construction bonds to be issued by that district does not exceed the direct allocation.

D. If, for a calendar year, the allocation for that year exceeds the amount of qualified school construction bonds designated and issued in that year, the excess shall revert to the council and shall be carried forward and included in the allocation for the subsequent year as follows:

(1) any excess attributable to the portion of the allocation required by Section 1521 of the federal American Recovery and Reinvestment Act of 2009 to be made to a particular school district shall be allocated to that school district in the subsequent year; and

(2) any excess not allocated pursuant to Paragraph (1) of this subsection shall revert to the council and be distributed pursuant to Subsection C of this section in the subsequent year.

E. In the event that the face amount of all proposed qualified school construction bonds for a calendar year exceeds the allocation remaining after deducting the direct allocations made to particular school districts pursuant to Section 1521 of the federal American Recovery and Reinvestment Act of 2009, the council shall, after considering the factors listed in Subsection F of this section, decide how the remaining allocation shall be distributed to applicants that have timely filed valid applications for that year; provided, however, that the distribution shall not reduce the direct allocation to any particular school district pursuant to Section 1521 of the federal American Recovery and Reinvestment Act of 2009.

F. In deciding how the remaining allocation shall be distributed to applicants pursuant to Subsection E of this section, the council shall consider:

(1) the dates anticipated for the initial expenditure of bond proceeds and for completion of the project;

(2) the percent of the bond proceeds that are likely to be expended within three years of the date of the issuance of the bonds;

(3) whether the bond proceeds, together with all other money available for the project, are sufficient to complete the project; and

(4) the priority ranking of the project, as determined by applying the deviation from the statewide adequacy standards pursuant to Section 22-24-5 NMSA 1978.

**History: Laws 2009, ch. 154, § 4; 2010, ch. 56, § 4.**

**The 2010 amendment**, effective March 8, 2010, in Subsection A, after "shall not exceed the", added "available", and after "available allocation", added "including any carry-forward allocation"; in Subsection C, in the first sentence, after "school district", added "that has been authorized to issue bonds, or is in the process of obtaining authorization to issue bonds"; after "desires to designate", added "all or any portion of the"; after "construction bonds, it shall", deleted "by July 1 of the calendar year in which the bonds are to be issued"; after "submit an application", deleted "for reservation of an allocation"; and after "to the council", added "for an allocation distribution"; added the second sentence; and in the third

sentence; after "Paragraphs (1) and (2)", deleted "and (3)" and after "Subsection A of Section", deleted "3 of the Qualified School Construction Bonds Act" and added "22-18C-3 NMSA 1978"; in Subsection D, after "year, the excess", added "shall revert to the council and" and after "subsequent year", added "as follows"; added Paragraphs "(1) and (2) of Subsection D; in Subsection E, after "the council shall", deleted "ratably apportion" and added "after considering the factors listed in Subsection F of this section, decide how"; after "the remaining allocation", deleted "among the state and school districts" and added "shall be distributed to applicants"; and after "however, that the", deleted "apportionment" and added "distribution"; and added Subsection F.

## ARTICLE 19

### School Revenue Bonds

**Sec.**

22-19-1. Short title.

22-19-2. Definitions.

22-19-3. Income projects.

22-19-4. Bonds; mortgages.

22-19-5. Determination by local school board.

22-19-6. Report to state board [department].

22-19-7. State board [department] approval; determination by state board.

22-19-8. Records; restriction on use of income.

**Sec.**

22-19-9. Bonds; pledge of income; satisfaction of indebtedness.

22-19-10. Proceeds of bond sales; retirement fund.

22-19-11. Bonds; form; requirements.

22-19-12. Pledge of additional revenue.

22-19-13. Refunding bonds.

22-19-14. Refunding bonds; issuance; sale; proceeds.

22-19-15. Exchange of bonds.

22-19-16. Tax exemption; no charge against state.

## 22-19-1. Short title.

Sections 22-19-1 through 22-19-16 NMSA 1978 may be cited as the "School Revenue Bond Act".

**History:** 1953 Comp., § 77-16-1, enacted by Laws 1967, ch. 16, § 240.

**Cross references.** — For public school finances generally, see 22-8-1 NMSA 1978 et seq.  
For general obligation bonds of school districts, see 22-18-1 NMSA 1978 et seq.

For public school emergency capital outlays, see 22-24-1 NMSA 1978 et seq.

For public school capital improvements, see 22-25-1 NMSA 1978 et seq.

For constitutional provision relating to school district indebtedness, see N.M. Const., art. IX, § 11.

For issuance and sale of bonds by school districts generally, see 6-15-3 to 6-15-10 NMSA 1978.

For issuance of refunding bonds by school districts generally, see 6-15-11 to 6-15-22 NMSA 1978.

For bond elections generally, see 6-15-23 to 6-15-28 NMSA 1978.

## 22-19-2. Definitions.

As used in the School Revenue Bond Act:

A. "income project" means purchasing, erecting, improving, repairing or furnishing a building, improvement or facility, including the land upon which it is situated, which will produce an income to the school district;

B. "net income from the income project" means all income derived from an income project, including the income pledged pursuant to the School Revenue Bond Act, less the operating costs of the income project; and

C. "operating costs" means expenses of operating, maintaining and keeping in repair an income project, including the cost of heating, electricity, insurance, service employees and equipment replacement.

**History:** 1953 Comp., § 77-16-2, enacted by Laws 1967, ch. 16, § 241.

## 22-19-3. Income projects.

A local school board may borrow money to finance income projects of the school district pursuant to the School Revenue Bond Act.

**History:** 1953 Comp., § 77-16-3, enacted by Laws 1967, ch. 16, § 242.

## 22-19-4. Bonds; mortgages.

A. A local school board may issue bonds or other special obligations to finance the repayment of all money borrowed for an income project pursuant to the School Revenue Bond Act.

B. A local school board may execute a mortgage, deed of trust or a security agreement upon the income project to secure payment of any bonds or other special obligations issued pursuant to the School Revenue Bond Act.

**History:** 1953 Comp., § 77-16-4, enacted by Laws 1967, ch. 16, § 243.

## 22-19-5. Determination by local school board.

Prior to borrowing money and issuing evidences of indebtedness to finance an income project, a local school board shall make a determination that the income project is necessary and that sufficient income will be produced by the income project to repay all money borrowed and to discharge any bonds or other special obligations issued for the repayment of the money borrowed.

**History:** 1953 Comp., § 77-16-5, enacted by Laws 1967, ch. 16, § 244.



## 22-19-6. Report to state board [department].

Prior to borrowing any money to finance an income project, a local school board shall furnish to the state board [department] the following information:

- A. a detailed description of the income project;
- B. an explanation of the necessity for the income project;
- C. an estimate of the total cost of the income project;
- D. an estimate of the amount of income anticipated from the income project;
- E. an estimate of the amount of income from existing buildings, improvements or facilities that will be pledged to pay for the income project;
- F. an estimate of the yearly operating cost of the income project; and
- G. an estimate of the anticipated yearly net income from the income project.

**History:** 1953 Comp., § 77-16-6, enacted by Laws 1967, ch. 16, § 245.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be

deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## 22-19-7. State board [department] approval; determination by state board.

A. A local school board shall obtain written approval of the state board [department] before it borrows money, issues bonds or other special obligations, or executes mortgages, deeds of trust or security agreements for financing an income project pursuant to the School Revenue Bond Act.

B. Prior to giving written approval to an income project, the state board [department] shall determine that the income project is necessary and that sufficient income will be produced by the income project to repay all money borrowed and to discharge any bonds or other special obligations issued for the repayment of the money borrowed.

**History:** 1953 Comp., § 77-16-7, enacted by Laws 1967, ch. 16, § 246.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be

deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## 22-19-8. Records; restriction on use of income.

- A. A local school board shall retain complete and accurate records of:
  - (1) the net income from the income project; and
  - (2) the operating costs of the income project.
- B. All income from the income project shall be used solely for the following purposes:
  - (1) to pay the principal, interest and service charges on any bonds or other special obligations issued pursuant to the School Revenue Bond Act; and
  - (2) to pay the operating costs of the income project.

**History:** 1953 Comp., § 77-16-8, enacted by Laws 1967, ch. 16, § 247.

## 22-19-9. Bonds; pledge of income; satisfaction of indebtedness.

A. Bonds or other special obligations issued pursuant to the School Revenue Bond Act shall irrevocably pledge, for the prompt payment of the principal, interest and service charges thereof, the net income from the income project for which the bonds or other special obligations were issued.

The bonds or other special obligations shall be equally and ratably secured, without priority, by this pledge of the net income from the income project.

B. A local school board shall operate the income project so as to insure a sufficient income to promptly pay the principal, interest and service charges, as they become due, on the bonds or other special obligations issued, after the payment of operating costs of the income project. A local school board shall establish a reserve fund not exceeding ten thousand dollars (\$10,000) to be used for the repayment of any money borrowed.

C. Satisfaction of any indebtedness created by any bonds or other special obligations issued pursuant to the School Revenue Bond Act shall be limited solely to foreclosure of the income project upon which a mortgage, deed of trust or security agreement was executed, without the right to a deficiency judgment.

**History:** 1953 Comp., § 77-16-9, enacted by Laws 1967, ch. 16, § 248.

**Cross references.** — For pledge of additional revenue, see 22-19-12 NMSA 1978.

## 22-19-10. Proceeds of bond sales; retirement fund.

A. Proceeds from the sale of bonds or other special obligations issued by a local school board pursuant to the School Revenue Bond Act shall be deposited into a separate account to be used solely for the specific purposes for which the money was borrowed. All costs incident to issuing and selling bonds or other special obligations may be paid out of the proceeds of this account.

B. A local school board, at the time of issuing any bonds or other special obligations, shall establish a fund to be known as the "retirement fund". All net income from the income project and all proceeds remaining after completion of the income project shall be deposited into the retirement fund. All proceeds in the retirement fund shall be used solely for the purpose of repaying the principal, interest and service charges on any bonds or other special obligations issued for the income project.

**History:** 1953 Comp., § 77-16-10, enacted by Laws 1967, ch. 16, § 249.

## 22-19-11. Bonds; form; requirements.

All bonds or other special obligations issued pursuant to the School Revenue Bond Act shall:

A. be fully negotiable within the provisions of the Uniform Commercial Code [Chapter 55 NMSA 1978];

B. have a duration of time not to exceed forty years from their date of issuance;

C. bear interest at a rate not to exceed a net of six percent a year, interest payable semiannually;

D. be sold at a price which does not result in an actual net interest cost to maturity, computed on the basis of standard tables of bond values, in excess of six percent a year;

E. have the principal thereof paid in yearly amounts beginning not later than two years from their date of issuance; and

F. be sold at public or private sale, with or without a discount as provided by Subsection D of this section.

**History:** 1953 Comp., § 77-16-11, enacted by Laws 1967, ch. 16, § 250.

## 22-19-12. Pledge of additional revenue.

A local school board may pledge, as security for the payment of the principal and interest on any bonds or other special obligations issued pursuant to the School Revenue Bond Act, a part or the whole amount of income derived from an existing building, improvement or other facility subject to the control of the local school board. A local school board may pledge this income whether or



not the existing building, improvement or facility is to be improved, repaired or furnished by the proceeds of the bonds or other special obligations.

**History:** 1953 Comp., § 77-16-12, enacted by Laws 1967, ch. 16, § 251.

### 22-19-13. Refunding bonds.

A. A local school board may issue refunding bonds for the purpose of refunding, for not less than the principal amount thereof, bonds issued pursuant to the provisions of the School Revenue Bond Act or any act repealed thereby, or for the purpose of providing additional funds for any income project for which bonds have been authorized by a local school board, or for both purposes.

B. Except as otherwise provided in the School Revenue Bond Act, refunding bonds shall conform to the provisions of the School Revenue Bond Act which provide for the issuance of other revenue bonds by a local school board.

C. A refunding bond issued by a local school board may have the same security or source of payment as was pledged for the payment of the bond being refunded but no source of payment shall be pledged which is not authorized by the School Revenue Bond Act.

D. A refunding bond may be delivered in exchange for a bond authorized to be refunded, sold at a public or private sale for not less than the par value of the bond or sold in part and exchanged in part. If the refunding bond is sold, the proceeds shall be immediately applied to the retirement of the bond to be refunded, or the proceeds or the obligations in which the proceeds are permitted by law to be invested shall be placed in trust to be held and applied to payment of the bond to be refunded.

**History:** 1953 Comp., § 77-16-13, enacted by Laws 1967, ch. 16, § 252.

**Cross references.** — For exchange of bonds, *see* 22-19-15 NMSA 1978.

### 22-19-14. Refunding bonds; issuance; sale; proceeds.

A. No bond shall be refunded pursuant to the School Revenue Bond Act unless it matures or is callable for prior redemption under its terms within fifteen years from the date of issuance of the refunding bond, or unless the holder of the bond voluntarily surrenders it for exchange or payment.

B. Outstanding bonds of more than one issue may be refunded by refunding bonds of one or more issue. Refunding bonds and any other bonds authorized pursuant to the School Revenue Bond Act may be issued separately or in combinations of one or more series.

C. If any officer whose signature or facsimile signature appears on any bond or coupon authorized by the School Revenue Bond Act ceases to hold office before delivery of the bond, the signature or facsimile signature shall be valid for all purposes as if he had remained in office until delivery.

D. When a refunding bond is sold, the net proceeds may, in the discretion of the local school board, be invested in obligations of the federal government or any agency of the federal government or in obligations fully guaranteed by the federal government, but the obligations purchased must have a maturity and bear a rate of interest payable at times to ensure the existence of sufficient money to pay the bond to be refunded when it becomes due or redeemable pursuant to a call for redemption, together with interest and redemption premiums, if any.

E. All obligations purchased with the net proceeds from refunding bonds shall be deposited in trust with a bank doing business in the state and which is a member of the federal deposit insurance corporation. The obligations shall be held, liquidated and the proceeds of the liquidation paid out for payment of the principal, interest and redemption premium of the bonds to be refunded as the bonds to be refunded become due, or where the bonds are subject to redemption under a call for redemption previously made, or where there is a voluntary surrender with the approval of the local school board.

F. The determination of the local school board issuing refunding bonds that the issuance has been in compliance with the School Revenue Bond Act is conclusively presumed correct in the absence of fraud or arbitrary and gross abuse of discretion.

G. As used in this section, "net proceeds" means the gross proceeds of the refunding bonds after deducting all accrued interest and expenses incurred in connection with the authorization and issuance of the refunding bonds and the refunding of outstanding bonds, including fiscal agent fees, commissions and all discounts incurred in the resale of the refunding bonds to the original purchaser.

**History:** 1953 Comp., § 77-16-14, enacted by Laws 1967, ch. 16, § 253.

## 22-19-15. Exchange of bonds.

In authorizing any bonds pursuant to the School Revenue Bond Act, a local school board, in its authorization resolution, may provide for exchange of any bonds issued for refunding bonds of larger or smaller denominations. Refunding bonds in the changed denominations shall be exchanged for the original bonds in the same aggregate principal amounts so that there is no overlapping of interest paid. Refunding bonds in changed denominations shall bear interest at the same rates, mature on the same dates, be in the same form and be identical with the original bonds surrendered for exchange in all respects except as to denominations, serial numbers and a recital as to the exchange. Where any exchange of bonds is made pursuant to the School Revenue Bond Act, the bonds surrendered by the holders at the time of exchange shall be cancelled [canceled]. The exchange shall be made only at the request of the holder of the bond to be surrendered, and the local school board may require the holder of the bond to pay all expenses incurred in connection with the exchange, including those of authorization and issuance of the refunding bonds.

**History:** 1953 Comp., § 77-16-15, enacted by Laws 1967, ch. 16, § 254.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 22-19-16. Tax exemption; no charge against state.

A. Bonds or other special obligations issued pursuant to the School Revenue Bond Act are exempt from taxation by the state or any of its political subdivisions.

B. No obligation created pursuant to the School Revenue Bond Act shall be a charge against or a debt of the state or any of its political subdivisions.

**History:** 1953 Comp., § 77-16-16, enacted by Laws 1967, ch. 16, § 255.

# ARTICLE 19A

## Teacher Housing Revenue Bond

Sec. 22-19A-1. Short title.	Sec. 22-19A-7. Bonds; pledge of income.
22-19A-2. Definitions.	22-19A-8. Proceeds of bond sales; retirement fund; reserve fund.
22-19A-3. Bonds not general obligations of school district or state.	22-19A-9. Bonds; form; requirements.
22-19A-4. Determination by local school board; federal payments.	22-19A-10. Refunding bonds.
22-19A-5. Report to state board [department]; state board approval.	22-19A-11. Refunding bonds; issuance; sale; proceeds.
22-19A-6. Records; restriction on use of income.	22-19A-12. Tax exemption; no charge against state.

### 22-19A-1. Short title.

This act [22-19A-1 to 22-19A-12 NMSA 1978] may be cited as the "Teacher Housing Revenue Bond Act".

**History:** Laws 2002, ch. 22, § 1.



## 22-19A-2. Definitions.

As used in the Teacher Housing Revenue Bond Act:

- A. "bonds" means teacher housing revenue bonds;
- B. "federal payment" means a payment, grant, subsidy, contribution or other money from the United States or any of its agencies or instrumentalities that is not otherwise restricted as to use and that the federal government allows to be pledged or used to pay debt service on bonds; provided that for federal forest reserve or P.L. 874 funds, "federal payment" means that portion of the funds for which the state does not take credit for the state equalization guarantee pursuant to Section 22-8-25 NMSA 1978;
- C. "housing project" means a residential housing facility for teachers, including land and land improvements;
- D. "net income from the housing project" means all income derived from a housing project less the operating costs of the housing project;
- E. "operating costs" means expenses of operating, maintaining and keeping in repair a housing project, including the cost of utilities, insurance, service employees and equipment replacement; and
- F. "pledgeable revenue" means net income from the housing project and federal payments.

**History:** Laws 2002, ch. 22, § 2.

For PL 874 funds, see 20 USCS § 7701 et seq.

**Cross references.** — For receipt and distribution of federal forest reserve funds, see 6-11-2 and 6-11-3 NMSA 1978.

## 22-19A-3. Bonds not general obligations of school district or state.

A. A local school board may issue bonds to finance the purchase, construction, renovation, equipping and furnishing of a housing project and may irrevocably pledge any or all pledgeable revenue to the payment of those bonds and to the debt service reserve fund if one is established for the bonds.

B. Bonds shall be payable solely from pledgeable revenue and shall not constitute an indebtedness or general obligation of the school district, the state or other political subdivisions of the state.

**History:** Laws 2002, ch. 22, § 3.

## 22-19A-4. Determination by local school board; federal payments.

A. Prior to issuing bonds to finance the purchase, construction, renovation, equipping or furnishing of a housing project, a local school board shall make a determination that the housing project is necessary and that estimated pledgeable revenue pledged to the bonds is sufficient to repay the bonds.

B. Revenue from federal payments may be pledged even if the federal payments are subject to annual appropriation. Federal payments shall not be pledged unless such use is allowed by federal law. The local school board shall include in its determination a statement as to the legality of pledging the federal payments and what other revenue will be available to make bond payments if federal payments are not appropriated.

**History:** Laws 2002, ch. 22, § 4.

## 22-19A-5. Report to state board [department]; state board approval.

A. Prior to issuing bonds to finance a housing project, a local school board shall furnish to the state board [department] the following information:

- (1) a detailed description of the housing project;
- (2) an explanation of the necessity for the housing project;
- (3) an estimate of the total cost of the housing project;

(4) an estimate of the net income from the housing project and other revenues that will be pledged to pay for the housing project; and

(5) an estimate of the yearly operating cost of the housing project.

B. A local school board shall obtain written approval of the state board [department] before it issues bonds to finance a housing project pursuant to the Teacher Housing Revenue Bond Act.

C. Prior to giving written approval to a housing project, the state board [department] shall determine that the housing project is necessary and that estimated pledgeable revenue pledged to the bonds is sufficient to repay the bonds.

**History:** Laws 2002, ch. 22, § 5.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be

deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

## 22-19A-6. Records; restriction on use of income.

A. A local school board shall retain complete and accurate records of:

- (1) the net income from the housing project;
- (2) receipt and amount of federal payments pledged to the repayment of the bonds; and
- (3) the operating costs of the housing project.

B. Pledgeable revenue that is pledged to the repayment of bonds shall first be used to pay the principal, interest and service charges on the bonds issued pursuant to the Teacher Housing Revenue Bond Act and to fund a debt service reserve fund, if applicable.

**History:** Laws 2002, ch. 22, § 6.

## 22-19A-7. Bonds; pledge of income.

A. Bonds shall be payable solely from any or all pledgeable revenue, and the local school board shall irrevocably pledge that revenue to the prompt payment of the principal, interest and service charges on the bonds. The bonds shall be equally and ratably secured, without priority, by this pledge of pledgeable revenue.

B. If the bonds are payable solely from the net income of the housing project being financed, the local school board shall operate the housing project so as to ensure a sufficient income to promptly pay the principal, interest and service charges as they become due on the bonds.

C. The state pledges and agrees with the holders of bonds issued by a local school board and payable from pledgeable revenue that the state will not limit or alter the rights of the local school board to receive, collect and account for pledgeable revenue and to fulfill the terms of any agreement made with the bondholders or in any way impair the rights and remedies of the bondholders until the bonds, together with the interest on the bonds, with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceedings by or on behalf of those bondholders, are fully paid and discharged.

**History:** Laws 2002, ch. 22, § 7; 2003, ch. 158, § 1.

**The 2003 amendment**, effective April 4, 2003, added Subsection C.

## 22-19A-8. Proceeds of bond sales; retirement fund; reserve fund.

A. Proceeds from the sale of bonds shall be deposited into a separate account to be used solely for the specific purposes for which the bonds were issued, including a debt service reserve fund. All costs incident to issuing and selling the bonds may be paid out of the proceeds of the bonds.

B. The local school board shall establish a "debt service fund" to be used solely for the payment of principal, interest and service charges on the bonds. Sufficient amounts from the pledged revenue shall be deposited in the debt service fund at least annually so that timely payments of



principal, interest and service charges may be made. All proceeds remaining after completion of the housing project shall be deposited into the debt service fund.

C. The local school board may establish a "debt service reserve fund" to be used to pay bond payments in case the pledged revenue is insufficient.

**History:** Laws 2002, ch. 22, § 8.

## **22-19A-9. Bonds; form; requirements.**

All bonds issued pursuant to the Teacher Housing Revenue Bond Act shall:

A. be fully negotiable within the provisions of the Uniform Commercial Code [Chapter 55 NMSA 1978];

B. have a duration of time not to exceed forty years from their date of issuance;

C. have interest, appreciated principal value or any part thereof payable at intervals or at maturity as determined by the local school board;

D. be sold at a price that does not result in a net effective interest rate in excess of twelve percent a year unless a higher rate of interest is approved by the state board of finance pursuant to the Public Securities Act [6-14-1 through 6-14-3 NMSA 1978];

E. have a principal maturity schedule as determined by the local school board; and

F. be sold at public or private sale at, above or below par.

**History:** Laws 2002, ch. 22, § 9.

## **22-19A-10. Refunding bonds.**

A. A local school board may issue refunding bonds to refund outstanding bonds.

B. Except as otherwise provided in the Teacher Housing Revenue Bond Act, refunding bonds shall conform to the provisions of that act that provide for the issuance of teacher housing revenue bonds by a local school board.

C. A refunding bond issued by a local school board may have the same security or source of payment as was pledged for the payment of the bond being refunded, but no source of payment shall be pledged that is not authorized by the Teacher Housing Revenue Bond Act.

D. A refunding bond may be delivered in exchange for a bond authorized to be refunded, sold at a public or private sale or sold in part and exchanged in part as provided in the Supplemental Public Securities Act [6-14-8 through 6-14-11 NMSA 1978]. If the refunding bond is sold, the proceeds shall be immediately applied to the retirement of the bond to be refunded or the proceeds shall be placed in trust to be held and applied to payment of the bonds to be refunded.

**History:** Laws 2002, ch. 22, § 10.

## **22-19A-11. Refunding bonds; issuance; sale; proceeds.**

A. A bond shall not be refunded unless it matures or is callable for prior redemption under its terms within fifteen years from the date of issuance of the refunding bond or unless the holder of the bond voluntarily surrenders it for exchange or payment.

B. Outstanding bonds of more than one issue may be refunded by refunding bonds of one or more issue. Bonds and refunding bonds may be issued separately or in combinations of one or more series.

C. When a refunding bond is sold, the net proceeds may, in the discretion of the local school board, be invested in obligations of the federal government or an agency of the federal government or in obligations fully guaranteed by the federal government, but the obligations purchased shall have a maturity and bear a rate of interest payable at times to ensure the existence of sufficient money to pay the bond to be refunded when it becomes due or redeemable pursuant to a call for redemption, together with interest and redemption premiums, if any.

D. All obligations purchased with the net proceeds from refunding bonds shall be deposited in trust with a bank that has trust powers and that is a member of the federal deposit insurance corporation. The obligations shall be held, liquidated and the proceeds of the liquidation paid out for payment of the principal, interest and redemption premium of the bonds to be refunded as the bonds to be refunded become due or where the bonds are subject to redemption under a call for redemption previously made or where there is a voluntary surrender with the approval of the local school board.

E. The determination of the local school board issuing refunding bonds that the issuance has been in compliance with the Teacher Housing Revenue Bond Act is conclusively presumed correct in the absence of fraud or arbitrary and gross abuse of discretion.

F. As used in this section, "net proceeds" means the gross proceeds of the refunding bonds after deducting all accrued interest and expenses incurred in connection with the authorization and issuance of the refunding bonds and the refunding of outstanding bonds, including fiscal agent fees, commissions and all discounts incurred in the resale of the refunding bonds to the original purchaser.

**History:** Laws 2002, ch. 22, § 11.

## **22-19A-12. Tax exemption; no charge against state.**

Bonds are exempt from taxation by the state or any of its political subdivisions. No obligation created pursuant to the Teacher Housing Revenue Bond Act shall be a charge against or a debt of the state or any of its political subdivisions.

**History:** Laws 2002, ch. 22, § 12.

# **ARTICLE 19B**

## **School District Bond Anticipation Notes**

Sec.		Sec.	
22-19B-1.	Short title.	22-19B-7.	Publication of notice; validation; limitation of action.
22-19B-2.	Purpose.	22-19B-8.	Cumulative and complete authority.
22-19B-3.	Definitions.	22-19B-9.	Liberal interpretation.
22-19B-4.	Issuance of bond anticipation notes.		
22-19B-5.	Bond anticipation note details.		
22-19B-6.	Limitations on issuance of bond anticipation notes.		

### **22-19B-1. Short title.**

This act [22-19B-1 to 22-19B-9 NMSA 1978] may be cited as the "School District Bond Anticipation Notes Act".

**History:** Laws 2002, ch. 54, § 1. **Emergency clauses.** — Laws 2002, ch. 54, § 11 contained an emergency clause and was approved March 4, 2002.

### **22-19B-2. Purpose.**

The purpose of the School District Bond Anticipation Notes Act is to provide a mechanism for school districts to obtain short-term financing for capital projects that are needed by the school district to meet the educational needs of students in the school district and to promote the health, safety, security and general welfare of the students in the school district.

**History:** Laws 2002, ch. 54, § 2. **Emergency clauses.** — Laws 2002, ch. 54, § 11 contained an emergency clause and was approved March 4, 2002.



### 22-19B-3. Definitions.

As used in the School District Bond Anticipation Notes Act:

A. "bond anticipation note" means a security evidencing an obligation of the school district that precedes the issuance of general obligation bonds; and

B. "general obligation bond" means indebtedness issued by a school district that constitutes a debt for the purpose of Article 9, Section 11 of the constitution of New Mexico.

**History:** Laws 2002, ch. 54, § 3.

**Emergency clauses.** — Laws 2002, ch. 54, § 11 contained an emergency clause and was approved March 4, 2002.

### 22-19B-4. Issuance of bond anticipation notes.

A. A school district may issue bond anticipation notes for any purpose for which general obligation bonds are authorized to be issued.

B. The principal amount of bond anticipation notes shall be payable solely from the proceeds of the general obligation bonds for which the bond anticipation notes are issued and shall not be considered debt of the school district for purposes of Article 9, Section 11 of the constitution of New Mexico.

**History:** Laws 2002, ch. 54, § 4.

**Emergency clauses.** — Laws 2002, ch. 54, § 11 contained an emergency clause and was approved March 4, 2002.

### 22-19B-5. Bond anticipation note details.

A. Bond anticipation notes shall be authorized by resolution of the local school board and may be issued in such denominations as determined by the local school board.

B. Bond anticipation notes shall mature no later than one year from the date of issuance. The local school board shall covenant in the resolution authorizing the issuance of the bond anticipation notes to issue general obligation bonds in an amount necessary to retire the bond anticipation notes.

C. The annual interest rate and yield on the bond anticipation notes shall be stated in the resolution that authorizes the issuance of the bond anticipation notes; provided that the maximum net effective interest rate on bond anticipation notes shall not exceed ten percent a year.

D. Bond anticipation notes may be sold at, above or below par at a public sale, in a negotiated sale or to the New Mexico finance authority.

**History:** Laws 2002, ch. 54, § 5.

**Cross references.** — For the New Mexico finance authority, see 6-21-4 NMSA 1978.

**Emergency clauses.** — Laws 2002, ch. 54, § 11 contained an emergency clause and was approved March 4, 2002.

### 22-19B-6. Limitations on issuance of bond anticipation notes.

Bond anticipation notes shall not be issued:

A. unless the general obligation bonds for which bond anticipation notes are contemplated have been authorized at an election as required by Article 9, Section 11 of the constitution of New Mexico;

B. in a principal amount in excess of the amount of the general obligation bonds authorized to be issued at an election or, if some portion of the bonds authorized at that election have been issued, in a principal amount in excess of the amount of the authorized but unissued general obligation bonds;

C. in a principal amount in excess of the amount of outstanding general obligation bonds of the school district maturing within one year of the date of issuance of the bond anticipation notes; and

D. unless the proceeds of the bond anticipation notes are to be used for the same purpose for which the general obligation bonds are authorized.

**History:** Laws 2002, ch. 54, § 6.

**Emergency clauses.** — Laws 2002, ch. 54, § 11 contained an emergency clause and was approved March 4, 2002.

## 22-19B-7. Publication of notice; validation; limitation of action.

After adoption of a resolution authorizing issuance of bond anticipation notes, the local school board shall publish notice of the adoption of the resolution once in a newspaper of general circulation in the school district. After thirty days from the date of publication, any action attacking the validity of the proceedings had or taken by the local school board preliminary to and in the authorization and issuance of the bond anticipation notes described in the notice is perpetually barred.

**History:** Laws 2002, ch. 54, § 7.

**Emergency clauses.** — Laws 2002, ch. 54, § 11 contained an emergency clause and was approved March 4, 2002.

## 22-19B-8. Cumulative and complete authority.

The School District Bond Anticipation Notes Act is an additional and alternative method for obtaining funding for capital projects by a school district and constitutes full authority for the exercise of powers granted to a local school board by that act. Powers conferred by the School District Bond Anticipation Notes Act are supplemental and additional to powers conferred by other laws of the state, without reference to such other laws of the state.

**History:** Laws 2002, ch. 54, § 8.

**Emergency clauses.** — Laws 2002, ch. 54, § 11 contained an emergency clause and was approved March 4, 2002.

## 22-19B-9. Liberal interpretation.

The School District Bond Anticipation Notes Act shall be liberally construed to effect the purposes of the act.

**History:** Laws 2002, ch. 54, § 9.

**Emergency clauses.** — Laws 2002, ch. 54, § 11 contained an emergency clause and was approved March 4, 2002.

**Severability.** — Laws 2002, ch. 54, § 10 provided for the severability of the act if any part or application thereof is held invalid.

# ARTICLE 20

## School Construction

Sec. 22-20-1. School construction; lease-purchase agreements; lease payment grant applications; approval of the public school facilities authority; compliance with statewide adequacy standards; state construction and fire standards applicable.

22-20-1. School construction; lease-purchase agreements; lease payment grant applications; approval of the public school facilities authority; compliance with statewide adequacy standards; state construction and fire standards applicable.

Sec.

22-20-2. School building construction; distance from highways.

22-20-3. Repealed.

22-20-4. Applicability.



**22-20-1. School construction; lease-purchase agreements; lease payment grant applications; approval of the public school facilities authority; compliance with statewide adequacy standards; state construction and fire standards applicable.**

A. Except as provided in Subsection F of this section, each local school board or governing body of a charter school shall secure the approval of the director of the public school facilities authority or the director's designee prior to:

- (1) the construction or letting of contracts for construction of any school building or related school structure;
- (2) entering into a lease-purchase agreement for a building to be used as a school building or a related school structure; or
- (3) reopening an existing structure that was not used as a school building during the previous year.

B. A written application shall be submitted to the director requesting approval of the construction, lease-purchase agreement or reopening, and, upon receipt, the director shall forward a copy of the application to the secretary. The director shall prescribe the form of the application, which shall include the following:

- (1) a statement of need;
- (2) the anticipated number of students affected;
- (3) the estimated cost;
- (4) for approval of construction, a description of the proposed construction project;
- (5) for approval of a lease-purchase agreement or a reopening of an existing structure, a description of the structure to be leased or reopened, including its location, square footage, interior layout and facilities, such as bathrooms, kitchens and handicap access, a description of the prior use of the structure and a description of how the facility and supplemental shared facilities and resources will fulfill the functions necessary to support the educational programs of the school district or charter school;
- (6) a map of the area showing existing school attendance centers within a five-mile radius and any obstructions to attending the attendance centers, such as railroad tracks, rivers and limited-access highways; and
- (7) other information as may be required by the director.

C. With respect to an application for the approval of construction, the director or the director's designee shall give approval to an application if the director or designee reasonably determines that:

- (1) the construction will not cause an unnecessary proliferation of school construction;
- (2) the construction is needed in the school district or by the charter school;
- (3) the construction is feasible;
- (4) the cost of the construction is reasonable;
- (5) the school district or charter school has submitted a five-year facilities plan that includes:
  - (a) enrollment projections;
  - (b) a current preventive maintenance plan;
  - (c) the capital needs of charter schools chartered by the school district, if applicable, or the capital needs of the charter school if it is state-chartered; and
  - (d) projections for the facilities needed in order to maintain a full-day kindergarten program;
- (6) the construction project:
  - (a) is in compliance with the statewide adequacy standards adopted pursuant to the Public School Capital Outlay Act [Chapter 22, Article 24 NMSA 1978]; and
  - (b) is appropriately integrated into the school district or charter school five-year facilities plan;
- (7) the school district or charter school is financially able to pay for the construction; and

(8) the secretary has certified that the construction will support the educational program of the school district or charter school.

D. With respect to an application for the approval of a lease-purchase agreement or for the reopening of an existing structure, the director or the director's designee shall give approval to an application if the director or designee reasonably determines that:

(1) the buildings to be reopened or leased for purchase meet the applicable statewide adequacy standards adopted pursuant to the Public School Capital Outlay Act or the buildings can be brought into compliance with those standards within a reasonable time and at a reasonable cost and that money or other resources will be available to the school district or charter school to bring the buildings up to those standards; and

(2) the buildings to be reopened or leased for purchase have, as measured by the New Mexico condition index, a condition rating equal to or better than the average condition for all New Mexico public schools for that year.

E. Within thirty days after the receipt of an application filed pursuant to this section, the director or the director's designee shall in writing notify the local school board or governing body of a charter school making the application and the department of approval or disapproval of the application.

F. By rule, the public school capital outlay council may:

(1) exempt classes or types of construction from the application and approval requirements of this section; or

(2) exempt classes or types of construction from the requirement of approval but, if the council determines that information concerning the construction is necessary for the maintenance of the facilities assessment database, require a description of the proposed construction project and related information to be submitted to the public school facilities authority.

G. A charter school shall not apply for a lease payment grant pursuant to Subsection I of Section 22-24-4 NMSA 1978 unless the lease-purchase agreement has been approved pursuant to this section.

H. A local school board or governing body of a charter school shall not enter into a contract for the construction of a public school facility, including contracts funded with insurance proceeds, unless the contract contains provisions requiring the construction to be in compliance with the statewide adequacy standards adopted pursuant to the Public School Capital Outlay Act, provided that, for a contract funded in whole or in part with insurance proceeds:

(1) the cost of settlement of any insurance claim shall not be increased by inclusion of the insurance proceeds in the construction contract; and

(2) insurance claims settlements shall continue to be governed by insurance policies, memoranda of coverage and rules related to them.

I. Public school facilities shall be constructed pursuant to state standards or codes promulgated pursuant to the Construction Industries Licensing Act [Chapter 60, Article 13 NMSA 1978] and rules adopted pursuant to Section 59A-52-15 NMSA 1978 for the prevention and control of fires in public occupancies. Building standards or codes adopted by a municipality or county do not apply to the construction of public school facilities, except those structures constructed as a part of an educational program of a school district or charter school.

J. The provisions of Subsection I of this section relating to fire protection shall not be effective until the public regulation commission has adopted the International Fire Code and all standards related to that code.

K. As used in this section, "construction" means any project for which the construction industries division of the regulation and licensing department requires permitting and for which the estimated total cost exceeds two hundred thousand dollars (\$200,000).

**History:** 1953 Comp., § 77-18-1, enacted by Laws 1967, ch. 16, § 270; 1988, ch. 64, § 41; 2003, ch. 147, § 2; 2005, ch. 274, § 4; 2006, ch. 94, § 54; 2006, ch. 95, § 1; 2007, ch. 366, § 1; 2011, ch. 69, § 4.

**Cross references.** — For public works generally, see 13-4-1 NMSA 1978 et seq.

**The 2011 amendment**, effective July 1, 2011, required the director of the public school facilities authority or the

director's designee to approve lease-purchase agreements for buildings that will be used as school buildings or related school structures and required the director to prescribe an application form for approval of lease-purchase agreements and the reopening of existing structures; specified criteria for approval of applications for lease-purchase agreements and the reopening of existing structures; and prohibited charter schools from applying for



lease payment grants unless the lease-purchase agreement has been approved.

**The 2007 amendment**, effective July 1, 2007, added Subsection D to provide that the public school capital outlay council may exempt classes or types of construction from approval under this section.

**The 2006 amendment**, effective March 6, 2006, added Paragraph (5) of Subsection B to provide for a five-year facilities plan; added Subparagraphs (a) through (d) of Paragraph (5) of Subsection B to provide for the content of a five-year facilities plan; and in Subparagraph (b) of Paragraph (6) formerly Paragraph (5) of Subsection B, changed "master plan" to "five-year facilities plan".

**The 2005 amendment**, effective April 6, 2005, deleted the requirement in Subsection A(4) that the application include a description of the structure to be built; added Subsections B(5)(a) and (b) to provide that the project shall be approved if it is in compliance with statewide adequacy standards and is appropriately integrated into the school district master plan; added Subsection D to provide that a construction contract shall contain provisions requiring the construction to be in compliance with statewide adequacy standards and that for a contract funded by insurance proceeds, the cost of settlement of an insurance claim shall not be increased by inclusion of the proceeds in the contract and the settlement shall be governed by insurance policies, memoranda of coverage and rules related to them; added Subsection E to provide that public school facilities shall be constructed pursuant to

state standards or codes and rules for the prevention and control of fires and that municipal or county standards or codes do not apply the construction of public school facilities except structures constructed as part of a program of a school district; added Subsection F to provide that the provisions of Subsection E relating to fire prevention shall not be effective until the public regulation commission has adopted the International Fire Code and all standards related to that code; and added Subsection G to define "construction".

**The 2003 amendment**, effective July 1, 2003, rewrote this section to the extent that a detailed comparison is impracticable.

**The 1988 amendment**, effective May 18, 1988, substituted "the state superintendent" for "chief" in the catchline and in the second and last sentences in Subsection A; substituted "state superintendent or his designee" for "chief" in the first sentence in Subsection A and in Subsections B and C; added the designations (1) to (5) in Subsection B; and made minor stylistic changes.

#### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Title to buildings when school lands revert for nonuse for school purposes, 28 A.L.R.2d 564.

Use of public school premises for religious purposes during nonschool time, 79 A.L.R.2d 1148.

## 22-20-2. School building construction; distance from highways.

A. No local school board or governing body of a charter school shall construct or cause the construction of any public school building within four hundred feet of any main artery of travel without the prior written approval of the department.

B. The district court may enforce the provisions of this section by any appropriate civil remedy in an action brought by an interested party.

C. As used in this section, "main artery of travel" means any designated state or federal-aid highway used primarily to accommodate transient motor traffic through a municipality and any type of public highway used primarily to accommodate transient motor traffic through a rural community or area.

**History:** 1953 Comp., § 77-18-2, enacted by Laws 1967, ch. 16, § 271; 2006, ch. 94, § 55.

**Cross references.** — For transfer of powers and duties of former state board of education, see 9-24-15 NMSA 1978.

**The 2006 amendment**, effective July 1, 2007, added the governing body of a charter school and changes "state board" to "department" in Subsection A.

## 22-20-3. Repealed.

**Repeals.** — Laws 2003, ch. 147, § 14 repealed 22-20-3 NMSA 1978, as enacted by Laws 1967, ch. 16, § 272, relating to state board approval for school construction,

effective July 1, 2003. For provisions of former section, see the 2002 NMSA 1978 on *NMOneSource.com*.

## 22-20-4. Applicability.

The provisions of Chapter 22, Article 20 NMSA 1978 do not apply to public school capital outlay projects subject to the oversight of the public school capital outlay council pursuant to the Public School Capital Outlay Act [Chapter 22, Article 24 NMSA 1978].

**History:** 1978 Comp., § 22-20-4, enacted by Laws 2001, ch. 338, § 4.

## ARTICLE 21

### Prohibited Sales by Personnel

Sec. 22-21-1. Prohibiting sales to the department, to school districts and to school personnel; exception; penalty.

Sec. 22-21-2. Prohibition on the sale or use of student, faculty and staff lists in direct marketing; remedies.

#### 22-21-1. Prohibiting sales to the department, to school districts and to school personnel; exception; penalty.

A. A member of the commission, a member of a local school board, a member of the governing body of a charter school, the secretary, an employee of the department or a school employee shall not, directly or indirectly, sell or be a party to any transaction to sell any instructional material, furniture, equipment, insurance, school supplies or work under contract to the department, school district or public school with which such person is associated or employed. No such person shall receive any commission or profit from the sale or any transaction to sell any instructional material, furniture, equipment, insurance, school supplies or work under contract to the department, school district or public school with which the person is associated or employed.

B. The provisions of this section shall not apply to a person making a sale in the regular course of business who complies with the provisions of Sections 13-1-21, 13-1-21.2 [repealed] and 13-1-22 NMSA 1978. The provisions of this section shall not apply in cases in which school employees contract to perform special services with the department, school district or public school with which they are associated or employed during time periods wherein service is not required under a contract for instruction, administration or other employment.

C. No member of the commission, member of a local school board, member of the governing body of a charter school, the secretary, employee of the department or school employee shall solicit or sell or be a party to a transaction to solicit or sell insurance or investment securities to any employee of the department or any employee of the school district whom such person supervises. Nothing in this subsection shall prohibit a financial institution from requiring the purchase of insurance in connection with a loan or offering and selling such insurance in accordance with the provisions of the New Mexico Insurance Code [Chapter 59A [except for Articles 30A and 42A] NMSA 1978].

D. No state employee who supervises or exercises control over school districts or charter schools, which supervision or control includes but is not limited to school programs, capital outlay and operating budgets, shall enter into any business relationship with an employee of a local school district or charter school over which the state employee exercises supervision or control.

E. Any person violating any provision of this section is guilty of a fourth degree felony under the Criminal Code [Chapter 30 NMSA 1978]. The department may suspend or revoke the licensure of a licensed school employee for violation of this section.

**History:** 1953 Comp., § 77-19-1, enacted by Laws 1967, ch. 16, § 282; 1971, ch. 74, § 1; 1985, ch. 141, § 1; 2006, ch. 94, § 56.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2011 (1st S.S.), ch. 3, § 8 repealed 13-1-21.2 NMSA 1978, effective October 5, 2011.

**Cross references.** — For Governmental Conduct Act, see Chapter 10, Article 16 NMSA 1978.

For sales to and contracts with schools or educational institutions by boards, officers and employees, see 21-1-35 NMSA 1978.

For sentencing for felonies, see 31-18-15 NMSA 1978.

For transfer of powers and duties of former state board, state superintendent and department of education, see 9-24-15 NMSA 1978.

**The 2006 amendment**, effective July 1, 2007, in Subsection A, changed "state board" to "commission", added

a member of the governing body of a charter school, changed "state superintendent" to "secretary", deleted certified school instructor or certified school administrator and added a school employee to the board; in Subsection B, changed "Section 13-1-1 through 13-1-26 NMSA 1978" to "Sections 13-1-21, 13-1-21.2 and 13-1-22 NMSA 1978", deleted certified school instructor and certified school administrators from application of this section and added school employees, and added contract for other employment; in Subsection C, changed "state board" to "commission", deleted state superintendent, certified school instructor or certified school administrator and added a member of the governing body of a charter school and the secretary; in Subsection D, added charter schools; and in Subsection E, changed "state board of education" to "department" and changed "certification of a certified school administrator or a certified school instructor" to "licensure of a licensed school employee".



### ANNOTATIONS

**Purpose of this section and Section 21-1-35 NMSA 1978,** is to prevent a conflict of interest between school board members and the districts they are connected with. *State ex rel. Martinez v. Padilla*, 1980-NMSC-064, 94 N.M. 431, 612 P.2d 223.

**Practice restricting district bus drivers in location of gas purchase prohibited.** — The practice of requiring certain district bus drivers to buy their gas at a school board member's gas station is exactly the type of improper conflict this section was designed to prohibit, and such activity does not fall within the "regular course of business" exception of Subsection B. *State ex rel. Martinez v. Padilla*, 1980-NMSC-064, 94 N.M. 431, 612 P.2d 223.

**Applicability of Conflict of Interest Act to school district employees.** — The Conflict of Interest Act does

not apply to employees of school districts. 1969 Op. Att'y Gen. No. 69-19, *but see* 1989 Op. Att'y Gen. No. 89-34 and 1988 Op. Att'y Gen. No. 88-20.

**Transfer by board of contract to wife of board member.** — No violation of this section would result where a school board transfers a school bus transportation contract to the wife of a member of the local board making such transfer, as the board member is neither directly nor indirectly working under contract to his school district and the contract is truly between the school board and the wife only, with the husband having no personal interest, pecuniary or otherwise, in the contract. 1971 Op. Att'y Gen. No. 71-36.

**Seeking of assistance from bidders in preparation of specifications.** — The conflict of interest provision of the Public School Code does not prohibit school districts from seeking the assistance of bidders in the preparation of specifications. 1969 Op. Att'y Gen. No. 69-19.

## 22-21-2. Prohibition on the sale or use of student, faculty and staff lists in direct marketing; remedies.

A. No person shall sell or use student, faculty or staff lists with personal identifying information obtained from a public school or a local school district for the purpose of marketing goods or services directly to students, faculty or staff or their families by means of telephone or mail. The provisions of this section shall not apply:

(1) to legitimate educational purposes, which shall be determined by rules and regulations developed by the department of education [public education department]; or

(2) when a parent of a student authorizes the release of the student's personal identifying information in writing to the public school or local school district. For the purposes of this subsection, "personal identifying information" means the names, addresses, telephone numbers, social security numbers and other similar identifying information about students maintained by a public school or local school district.

B. Any person receiving a solicitation may bring an action against any person who violates Subsection A of this section.

C. If a person is found to have violated Subsection A of this section in an action brought under Subsection B of this section, then the person shall be required to pay actual damages or the sum of five hundred dollars (\$500), whichever is greater, and reasonable attorneys' fees to the person receiving the solicitation.

**History:** Laws 1993, ch. 166, § 1; 1978 Comp., § 22-1-8, recompiled as § 22-21-2 by Laws 2003, ch. 153, § 72.

**Bracketed material.** — The bracketed material was added by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be

deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## ARTICLE 22

### Variable School Calendars

Sec.

22-22-1. Short title.

22-22-2. Definition.

22-22-3. Purpose of act.

22-22-4. Variable school calendar.

Sec.

22-22-5. Variable school calendar; action by state board [department].

22-22-6. Variable school calendar; effect.

#### 22-22-1. Short title.

This act [22-22-1 through 22-22-6 NMSA 1978] may be cited as the "Variable School Calendar Act".

**History:** 1953 Comp., § 77-22-1, enacted by Laws 1972, ch. 16, § 1.

## 22-22-2. Definition.

As used in the Variable School Calendar Act, "variable school calendar" means a calendar for school or school district operations extending over a ten, eleven or twelve-month period or portions thereof in excess of nine months, which permits pupil attendance on a staggered schedule.

**History:** 1953 Comp., § 77-22-2, enacted by Laws 1972, ch. 16, § 2.

## 22-22-3. Purpose of act.

The purpose of the Variable School Calendar Act is to create an opportunity for public schools or school districts to operate beyond a nine-month period in any one calendar year in order to achieve optimum and maximum use of school facilities and personnel.

**History:** 1953 Comp., § 77-22-3, enacted by Laws 1972, ch. 16, § 3.

## 22-22-4. Variable school calendar.

The local school board may operate a public school or the school district under a variable school calendar. The state board [department] shall develop criteria for the establishment of a variable school calendar in a school district. Those criteria shall include a requirement that the local school board demonstrate substantial community support for implementation of the variable school calendar.

**History:** 1953 Comp., § 77-22-4, enacted by Laws 1972, ch. 16, § 4; 1993, ch. 24, § 1; 2003, ch. 153, § 61.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**The 2003 amendment**, effective April 4, 2003, deleted "request" from the end of the section heading; deleted

"of any school district" following "school board" near the beginning, deleted "adopt by resolution a request to the state board for approval to" following "may" near the beginning, inserted "a public school or the school district" following "operate" near the middle, and deleted the last sentence.

**The 1993 amendment**, effective June 18, 1993, substituted "board" for "department of education" in two places in the first sentence; added the second and third sentences; and made a minor stylistic change.

## 22-22-5. Variable school calendar; action by state board [department].

The state board [department] may suspend or modify existing rules pertaining to school district operations upon recommendation of the state superintendent [secretary] when those rules prevent or impede the implementation of the Variable School Calendar Act.

**History:** 1953 Comp., § 77-22-5, enacted by Laws 1972, ch. 16, § 5; 1993, ch. 24, § 2; 1993, ch. 226, § 49; 2003, ch. 153, § 62.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**The 2003 amendment**, effective April 4, 2003, substituted "state" for "department and" preceding "board" in the catchline; deleted Subsection A; deleted the "B." subsection designation; and deleted "and regulations" following "rules" twice in the section.

**The 1993 amendment**, effective July 1, 1993, substituted "state board" and "board" for "department" and "department of education" in Subsection A; deleted "of education" following "state board" in Subsection B; and made minor stylistic changes.

## 22-22-6. Variable school calendar; effect.

The variable school calendar for a public school or school district shall be in lieu of any other school calendar provided by law, and all requirements for reporting or operating under existing school calendars shall be suspended for the public school or school district upon the initiation of



operations under a variable school calendar. The public school or school district shall continue to operate under the approved variable school calendar until the local school board discontinues the variable school calendar.

**History:** 1953 Comp., § 77-22-6, enacted by Laws 1972, ch. 16, § 6; 1993, ch. 24, § 3; 2003, ch. 153, § 63.

The 2003 amendment, effective April 4, 2003, deleted "of approval of request" at the end of the section heading; substituted "The variable school" for "Upon approval of the state board of the request of a local school board for operation under a variable school calendar, such" at the beginning of the section; deleted "and the rules and regulations made pursuant thereto" at the end of the first

sentence; inserted "public" preceding "school" near the beginning of the second sentence; substituted "discontinues" for "requests the state board by resolution for approval of the discontinuance of" following "local school board" in the second sentence; and deleted "and the request is approved by the state board" at the end of the section.

The 1993 amendment, effective June 18, 1993, substituted "state board" for "state department of education" and "department" and made minor stylistic changes.

## ARTICLE 23

### Bilingual Multicultural Education

Sec.

- 22-23-1. Short title.
- 22-23-1.1. Legislative findings.
- 22-23-2. Definitions.
- 22-23-3. Repealed.
- 22-23-4. Department; powers; duties.

Sec.

- 22-23-5. Bilingual multicultural education program plan; evaluation.
- 22-23-6. Bilingual multicultural education programs; eligibility for state financial support.
- 22-23-6. Bilingual multicultural education advisory council; created; membership; duties.

#### 22-23-1. Short title.

Chapter 22, Article 23 NMSA 1978 may be cited as the "Bilingual Multicultural Education Act".

**History:** 1953 Comp., § 77-23-1, enacted by Laws 1973, ch. 285, § 1; 2004, ch. 32, § 1.

**Cross references.** — For courses of instruction generally, see 22-13-1 NMSA 1978 et seq.

For constitutional provision requiring legislature to provide for training of teachers in English and Spanish languages and to provide means and methods to facilitate teaching of English language to Spanish-speaking students, see N.M. Const., art. XII, § 8.

For constitutional provision relating to educational rights of children of Spanish descent, see N.M. Const., art. XII, § 10.

The 2004 amendment, effective May 19, 2004, revised the short title to include all of Chapter 22, Article 23 NMSA 1978.

#### ANNOTATIONS

**Law reviews.** — For comment, "Education and the Spanish-Speaking - An Attorney General's Opinion on Article XII, Section 8 of the New Mexico Constitution," see 3 N.M.L. Rev. 364 (1973).

For note, "Bilingual Education: Serna v. Portales Municipal Schools," see 5 N.M.L. Rev. 321 (1975).

#### 22-23-1.1. Legislative findings.

The legislature finds that:

A. while state and federal combined funding for New Mexico's bilingual multicultural education programs was forty-one million dollars (\$41,000,000) in 2003, the funds do not directly support bilingual multicultural education program instruction;

B. the state's bilingual multicultural education program goals are for all students, including English language learners, to:

(1) become bilingual and biliterate in English and a second language, including Spanish, a Native American language, where a written form exists and there is tribal approval, or another language; and

(2) meet state academic content standards and benchmarks in all subject areas;

C. districts do not fully understand how to properly assess, place and monitor students in bilingual multicultural education programs so that the students may become academically successful;

D. because inaccurate reporting on student participation in bilingual multicultural education programs has a direct impact on state and federal funding, accountability measures are necessary to track bilingual multicultural education program funds;

E. the federal No Child Left Behind Act of 2001 does not preclude using state funds for bilingual multicultural education programs;

F. Article 12, Section 8 of the constitution of New Mexico recognizes the value of bilingualism as an educational tool;

G. professional development is needed for district employees, including teachers, teacher assistants, principals, bilingual directors or coordinators, associate superintendents, superintendents and financial officers in the areas of:

(1) research-based bilingual multicultural education programs and implications for instruction;

(2) best practices of English as a second language, English language development and bilingual multicultural education programs; and

(3) classroom assessments that support academic and language development;

H. parents in conjunction with teachers and other district employees shall be empowered to decide what type of bilingual multicultural education program works best for their children and their community. Districts shall also provide parents with appropriate training in English or in the home or heritage language to help their children succeed in school;

I. because research has shown that it takes five to seven years to acquire academic proficiency in a second language, priority should be given to programs that adequately support a child's linguistic development. The state shall, therefore, fund bilingual multicultural education programs for students in grades kindergarten through three before funding bilingual multicultural education programs at higher grade levels;

J. a standardized curriculum, including instructional materials with scope and sequence, is necessary to ensure that the bilingual multicultural education program is consistent and building on the language skills the students have previously learned. The instructional materials for Native American bilingual multicultural education programs shall be written, when permitted by the Indian nation, tribe or pueblo, and if written materials are not available, an oral standardized curriculum shall be implemented;

K. equitable and culturally relevant learning environments, educational opportunities and culturally relevant instructional materials for all students participating in the program. For Native American students enrolled in public schools, equitable and culturally relevant learning environments, educational opportunities and culturally relevant instructional materials are required to satisfy a goal of the Indian Education Act [Chapter 22, Article 23A NMSA 1978]; and

L. the Bilingual Multicultural Education Act will ensure equal education opportunities for students in New Mexico. Cognitive and affective development of the students is encouraged by:

(1) using the cultural and linguistic backgrounds of the students in a bilingual multicultural education program;

(2) providing students with opportunities to expand their conceptual and linguistic abilities and potentials in a successful and positive manner; and

(3) teaching students to appreciate the value and beauty of different languages and cultures.

**History:** Laws 2004, ch. 32, § 2.

**Cross references.** — For the federal No Child Left Behind Act, see 20 U.S.C., § 6301.

## 22-23-2. Definitions.

As used in the Bilingual Multicultural Education Act:

A. "bilingual learner" means a student whose bilingualism is emerging through the development of English and a language other than English;

B. "bilingual multicultural education program" means a program using two languages, including English and the home or heritage language, as a medium of instruction in the teaching and learning process;

C. "culturally and linguistically different" means students who are of a different cultural background than mainstream United States culture and whose home or heritage language, inherited from the student's family, tribe or country of origin, is a language other than English;



D. "district" means a public school or any combination of public schools in a district;

E. "English language learner" means a student whose first or heritage language is not English and who is unable to read, write, speak or understand English at a level comparable to grade level English proficient peers and native English speakers;

F. "heritage language" means a language other than English that is inherited from a family, tribe, community or country of origin;

G. "home language" means a language other than English that is the primary or heritage language spoken at home or in the community; and

H. "standardized curriculum" means a district curriculum that is aligned with the state academic content standards, benchmarks and performance standards.

**History:** 1953 Comp., § 77-23-2, enacted by Laws 1973, ch. 285, § 2; 2004, ch. 32, § 3; 2006, ch. 94, § 57; 2015, ch. 108, § 14; 2021, ch. 12, § 2.

**The 2021 amendment**, effective June 18, 2021, defined "bilingual learner" as used in the Bilingual Multicultural Education Act; and added a new Subsection A and redesignated the succeeding subsections accordingly.

**The 2015 amendment**, effective July 1, 2015, amended and removed certain definitions from the Bilingual Multicultural Education Act; deleted Subsection C, which defined "department", and redesignated former Subsections D through G as Subsections C through F, respectively; and

deleted Subsection H, which defined "school board" and redesignated former Subsection I as Subsection G.

**The 2006 amendment**, effective July 1, 2007, added charter school in Subsection D and added governing body of a state-chartered charter school in Subsection H.

**The 2004 amendment**, effective May 19, 2004, in Subsection A, revised the definition of "bilingual multicultural education"; deleted Subsection B; redesignated Subsection C as Subsection B and changed the definition of "culturally and linguistically different", changed the definition of "department" to the public education department and revised the definition of "district"; and added new Subsections E through G and I.

### 22-23-3. Repealed.

**Repeals.** — Laws 2004, ch. 31, § 7 repealed 22-23-3 NMSA 1978, as enacted by Laws 1973, ch. 285, § 3, relating to purpose of act, effective May 19, 2004. For

provisions of former section, see the 2003 NMSA 1978 on *NMOneSource.com*.

### 22-23-4. Department; powers; duties.

A. The department shall issue rules for the development and implementation of bilingual multicultural education programs.

B. The department shall administer and enforce the provisions of the Bilingual Multicultural Education Act.

C. The department shall assist school boards in developing and evaluating bilingual multicultural education programs.

D. In the development, implementation and administration of the bilingual multicultural education programs, the department shall give preference to New Mexico residents who have received specialized training in bilingual education when hiring personnel.

**History:** 1953 Comp., § 77-23-4, enacted by Laws 1973, ch. 285, § 4; 2004, ch. 32, § 4.

**The 2004 amendment**, effective May 19, 2004, in Subsection A, changed "state board" to "department"; and in

Subsections A, C and D, inserted "bilingual multicultural education".

### 22-23-5. Bilingual multicultural education program plan; evaluation.

A. A school board or, for charter schools, a governing body of a charter school may prepare and submit to the department a bilingual multicultural education program plan in accordance with rules issued by the department.

B. At regular intervals, the school board or governing body of a charter school and a parent advisory committee from the district or charter school shall review the goals and priorities of the plan and make appropriate recommendations to the department.

C. Bilingual multicultural education programs shall be delivered as part of the regular academic program. Involvement of students in a bilingual multicultural education program shall not have the effect of segregating students by ethnic group, color or national origin.

D. Each district or charter school shall maintain academic achievement and language proficiency data and update the data annually to evaluate bilingual multicultural education program effectiveness and use of funds. The department shall annually compile and report these data to the appropriate interim legislative committee.

E. Districts and charter schools shall provide professional development to employees, including teachers, teacher assistants, principals, bilingual directors or coordinators, associate superintendents, superintendents and financial officers in the areas of:

- (1) research-based bilingual multicultural education programs and implications for instruction;
- (2) best practices of English as a second language, English language development and bilingual multicultural education programs; and
- (3) classroom assessments that support academic and language development.

F. Bilingual multicultural education programs shall be part of the district's or charter school's professional development plan. Bilingual educators, including teachers, teacher assistants, instructional support personnel, principals and program administrators, shall participate in professional development and training.

**History:** 1953 Comp., § 77-23-5, enacted by Laws 1973, ch. 285, § 5; 1988, ch. 64, § 42; 2004, ch. 32, § 5; 2015, ch. 108, § 15.

The 2015 amendment, effective July 1, 2015, authorized the governing body of a charter school to prepare a bilingual multicultural education program and provided for the process by which the governing body should implement the bilingual multicultural education program; in Subsection A, deleted "The" and added "A", after "school board", added "or, for charter schools, a governing body of a charter school"; in Subsection B, after "school board", added "or governing body of a charter school", and after "district", added "or charter school"; in Subsection C, "after programs shall be", deleted "located in the district and";

in Subsection D, after "Each district", added "or charter school", and after "compile and report", deleted "this" and added "these"; in the introductory sentence of Subsection E, after "Districts", added "and charter schools", and after "development to", deleted "district"; and in Subsection F, after "district's", added "or charter school's".

The 2004 amendment, effective May 19, 2004, inserted "bilingual multicultural education" in Subsections A and C, changed "state board" to "department" and added new Subsections D through F.

The 1988 amendment, effective May 18, 1988, deleted "the state superintendent of public instruction or his representative and the chief" following "to the department" in Subsection A.

## 22-23-6. Bilingual multicultural education programs; eligibility for state financial support.

A. To be eligible for state financial support, each bilingual multicultural education program shall:

- (1) provide for the educational needs of linguistically and culturally different students, including Native American children and other students who may wish to participate, in grades kindergarten through twelve, with priority to be given to programs in grades kindergarten through three, in a district;
- (2) fund programs for culturally and linguistically different students in the state in grades kindergarten through three for which there is an identifiable need to improve the language capabilities of both English and the home language of these students before funding programs at higher grade levels;
- (3) use two languages as mediums of instruction for any part or all of the curriculum of the grade levels within the program;
- (4) use teachers who have specialized in elementary or secondary education and who have received specialized training in bilingual education conducted through the use of two languages. These teachers or other trained personnel shall administer language proficiency assessments in both English and in the home language until proficiency in each language is achieved;
- (5) emphasize the history and cultures associated with the students' home or heritage language;
- (6) establish a parent advisory committee, representative of the language and culture of the students, to assist and advise in the development, implementation and evaluation of the bilingual multicultural education program; and
- (7) provide procedures to ensure that parental notification is given annually prior to bilingual multicultural education program placement.



B. Each bilingual multicultural education program shall meet each requirement of Subsection A of this section and be approved by the department to be eligible for state financial support.

**History:** 1953 Comp., § 77-23-6, enacted by Laws 1973, ch. 285, § 6; 1987, ch. 211, § 1; 2004, ch. 32, § 6.

The 2004 amendment, effective May 19, 2004, inserted "bilingual multicultural education" in Subsections A and B, added "both English and the home language" to Paragraph (2) of Subsection A, added to Subsection A the last sentence of Paragraph (4), "home or heritage language" to Paragraph (5) and added new Subparagraphs (6) and (7) and made other minor amendments.

**deficiencies because the state did not provide additional funding** for bilingual multicultural programs at each grade level. Neither *Lau v. Nichols*, 414 U.S. 563, 94 S. Ct. 786, 39 L. Ed. 2d 1 (1974), nor *Serna v. Portales Mun. Schs.*, 499 F.2d 1147 (10th Cir. 1974) even suggests that the state is responsible for providing any such additional funds. 1976 Op. Att'y Gen. No. 76-03.

**Law reviews.**— For note, "Bilingual Education: *Serna v. Portales Municipal Schools*," see 5 N.M.L. Rev. 321 (1975).

#### ANNOTATIONS

School district would not be justified in failing to take affirmative steps to rectify language

### 22-23-7. Bilingual multicultural education advisory council; created; membership; duties.

A. The "bilingual multicultural education advisory council" is created and shall advise the secretary and department staff on the effective implementation of the Bilingual Multicultural Education Act and the support of all bilingual multicultural education students, including bilingual learners and English language learners, to have equitable access to instruction and learning as required by state and federal education and civil rights laws. The secretary and department staff shall provide biannual reports to the council regarding progress on yearly advisements.

B. The bilingual multicultural education advisory council consists of fifteen members who have technical knowledge of and expertise in bilingual multicultural education and teaching English to English language learners as follows:

(1) five members appointed or designated by the Indian nations, tribes and pueblos to include one member each from the Navajo Nation, the Mescalero Apache Tribe, the Jicarilla Apache Nation, the southern pueblos and the northern pueblos;

(2) eight members who represent pre-kindergarten through twelfth grade teachers, principals, superintendents, other education administrators and higher education faculty who are from different geographical areas of the state and at least one of whom has a special education background; and

(3) two parents whose students are enrolled in bilingual multicultural education programs.

C. The department shall appoint the council members noted in Paragraphs (2) and (3) of Subsection B of this section from a list generated and approved by both the department and the existing ad hoc bilingual multicultural education advisory council co-chairs that is representative of various stakeholder groups.

D. The bilingual multicultural education advisory council shall elect two members to serve as co-chairs of the council. The co-chairs shall assist with the selection of new members for the council.

E. New members of the council shall begin to serve their appointments on July 1, 2021 for a term of three years. Members who are currently serving their appointments prior to the effective date of this 2021 act shall continue to serve through the remainder of their appointed term. All council members may serve two consecutive terms, and co-chairs may serve one additional year to assist with transition.

F. The council shall:

(1) study issues of bilingual multicultural education for all students, including the needs of bilingual learners and English language learners; and

(2) provide advice to the department in the areas of curriculum, instruction, assessment, teacher preparation, teacher evaluation, professional development, licensure and student and family services to:

(a) strengthen the quality and effectiveness of bilingual multicultural education programs;

- (b) promote rigorous culturally and linguistically responsive instruction in bilingual multicultural education programs;
- (c) support effective classroom teaching for participating bilingual multicultural education program students, including bilingual learners and English language learners who may or may not be part of standalone federal language acquisition programs;
- (d) recruit, develop and train effective bilingual multicultural education teachers and teachers of bilingual learners and English language learners;
- (e) identify professional development best suited and appropriate for the languages being taught to support teachers, educational assistants and other licensed employees to work effectively with bilingual multicultural education program students, including bilingual learners and English language learners;
- (f) promote professional development opportunities to build the capacity of public education administrators to effectively lead bilingual multicultural education programs and become knowledgeable regarding second language acquisition research, theory and pedagogy, including culturally and linguistically responsive teaching practices, biliteracy and assessments in English and the home or heritage language;
- (g) develop solutions for streamlining and strengthening program management, implementation and monitoring of bilingual multicultural education programs at the state, district and school site levels;
- (h) develop family and community partnerships representative of the languages and cultures of all students in the bilingual multicultural education program, to assist and advise in the development, implementation and evaluation of the program; and
- (i) support bilingual learners and English language learners to achieve programmatic goals, including academic achievement in two languages and bilingual biliteracy growth as demonstrated and measured by language and literacy assessments in English and the home or heritage language, and with regard to tribal languages, language-appropriate programmatic goals with progress determined in accordance with tribal priorities and sovereignty.

G. Members of the council may receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

**History:** Laws 2021, ch. 12, § 1.

IV, § 23, was effective June 18, 2021, 90 days after ad-

**Effective dates.** — Laws 2021, ch. 12 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

## ARTICLE 23A

### Indian Education

Sec. 22-23A-1. Short title.

22-23A-2. Purpose of act.

22-23A-3. Definitions.

22-23A-4. Rulemaking.

22-23A-4.1. Post-secondary education.

22-23A-5. Indian education division; created; assistant secretary; duties.

22-23A-6. Advisory council.

Sec. 22-23A-7. Report.

22-23A-8. Fund created.

22-23A-9. Indian education; school district responsibilities; needs assessments; use of data; prioritizing budgets; reports.

22-23A-10. Systemic framework for improving educational outcomes for Indian students.

22-23A-11. Systemic framework elements.

#### 22-23A-1. Short title.

Chapter 22, Article 23A NMSA 1978 may be cited as the "Indian Education Act".

**History:** Laws 2003, ch. 151, § 1; 2005, ch. 299, § 1.

**The 2005 amendment,** effective June 17, 2005, added the statutory reference to the act.



## 22-23A-2. Purpose of act.

The purpose of the Indian Education Act is to:

- A. ensure equitable and culturally relevant learning environments, educational opportunities and culturally relevant instructional materials for American Indian students enrolled in public schools;
- B. ensure maintenance of native languages;
- C. provide for the study, development and implementation of educational systems that positively affect the educational success of American Indian students;
- D. ensure that the department of education [public education department] partners with tribes to increase tribal involvement and control over schools and the education of students located in tribal communities;
- E. encourage cooperation among the educational leadership of Arizona, Utah, New Mexico and the Navajo Nation to address the unique issues of educating students in Navajo communities that arise due to the location of the Navajo Nation in those states;
- F. provide the means for a formal government-to-government relationship between the state and New Mexico tribes and the development of relationships with the education division of the bureau of Indian affairs and other entities that serve American Indian students;
- G. provide the means for a relationship between the state and urban American Indian community members to participate in initiatives and educational decisions related to American Indian students residing in urban areas;
- H. ensure that parents; tribal departments of education; community-based organizations; the department of education [public education department]; universities; and tribal, state and local policymakers work together to find ways to improve educational opportunities for American Indian students;
- I. ensure that tribes are notified of all curricula development for their approval and support;
- J. encourage an agreement regarding the alignment of the bureau of Indian affairs and state assessment programs so that comparable information is provided to parents and tribes; and
- K. encourage and foster parental involvement in the education of Indian students.

**History:** Laws 2003, ch. 151, § 2.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed

references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

## 22-23A-3. Definitions.

As used in the Indian Education Act:

- A. "assistant secretary" means the assistant secretary for Indian education;
- B. "government-to-government" means the relationship between a New Mexico tribe and a state government;
- C. "indigenous" means native or tribal groups of the Americas that maintain a cultural identity separate from the surrounding dominant cultures;
- D. "tribal" means pertaining to urban Indians who are residents of New Mexico or to an Indian nation, tribe or pueblo located within New Mexico;
- E. "New Mexico tribe" means an Indian nation, tribe or pueblo located within New Mexico; and
- F. "urban Indian" means a member of a federally recognized tribe or an Alaskan native who lives in an off-reservation urban area and is a New Mexico resident.

**History:** Laws 2003, ch. 151, § 3; 2007, ch. 295, § 2; 2007, ch. 296, § 2.

The 2007 amendment, effective June 15, 2007, added Subsections A through D and F. Laws 2007, ch. 295, § 2

and Laws 2007, ch. 296, § 2 enacted identical amendments to this section. The section was set out, as amended by Laws 2007, ch. 296, § 2. See 12-1-8 NMSA 1978.

## 22-23A-4. Rulemaking.

A. The secretary shall ensure that the duties prescribed in the Indian Education Act are carried out and that each division within the department is collaborating to fulfill its responsibilities to tribal students.

B. The secretary shall consult on proposed rules implementing the Indian Education Act with the Indian education advisory council and shall present rules for review and comment at the next semiannual government-to-government meeting pursuant to Section 22-23A-5 NMSA 1978.

**History:** Laws 2003, ch. 151, § 4; 2007, ch. 295, § 3; 2007, ch. 296, § 3.

The 2007 amendment, effective June 15, 2007, rewrote this section. Laws 2007, ch. 295, § 3 and Laws 2007,

ch. 296, § 3 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 296, § 3. See 12-1-8 NMSA 1978.

### 22-23A-4.1. Post-secondary education.

The department shall collaborate and coordinate efforts with the higher education department and institutions of higher education, including tribal colleges and teacher education institutions and tribal education departments, to facilitate the successful and seamless transition of American Indian students into post-secondary education and training.

**History:** Laws 2007, ch. 295, § 1; 2007, ch. 296, § 1.

**Compiler's note.** — Laws 2007, ch. 295, § 1 and Laws 2007, ch. 296, § 1 enacted identical sections, effective June 15, 2007.

**Cross references.** — For the department referred to in the section, see the public education department, 22-2-1 NMSA 1978.

## 22-23A-5. Indian education division; created; assistant secretary; duties.

A. The "Indian education division" is created within the department. The secretary shall appoint an assistant secretary for Indian education, who shall direct the activities of the division and advise the secretary on development of policy regarding the education of tribal students. The assistant secretary shall also coordinate transition efforts for tribal students in public schools with the higher education department and work to expand appropriate Indian education for tribal students in preschool through grade twenty.

B. The assistant secretary shall coordinate with appropriate administrators and divisions to ensure that department administrators make implementation of the Indian Education Act a priority.

C. The secretary and the assistant secretary, in cooperation with the Indian education advisory council, shall collaborate with state and federal departments and agencies and tribal governments to identify ways such entities can assist the department in the implementation of the Indian Education Act.

D. The secretary and assistant secretary shall convene semiannual government-to-government meetings for the express purpose of receiving input on education of tribal students.

E. In accordance with the rules of the department and after consulting with the Indian education advisory council and determining the resources available within the department, the assistant secretary shall:

(1) provide assistance, including advice on allocation of resources, to school districts and tribes to improve services to meet the educational needs of tribal students based on current published indigenous best practices in education;

(2) provide assistance to school districts and New Mexico tribes in the planning, development, implementation and evaluation of curricula in native languages, culture and history designed for tribal and nontribal students as approved by New Mexico tribes;

(3) develop or select for implementation a challenging, sequential, culturally relevant curriculum to provide instruction to tribal students in pre-kindergarten through sixth grade to



prepare them for pre-advanced placement and advanced placement coursework in grades seven through twelve;

(4) provide assistance to school districts, public post-secondary schools and New Mexico tribes to develop curricula and instructional materials in native languages, culture and history in conjunction and by contract with native language practitioners and tribal elders, unless the use of written language is expressly prohibited by the tribe;

(5) conduct indigenous research and evaluation for effective curricula for tribal students;

(6) collaborate with the department to provide distance learning for tribal students in public schools to the maximum limits of the department's abilities;

(7) establish, support and maintain an Indian education advisory council;

(8) enter into agreements with each New Mexico tribe or its authorized educational entity to share programmatic information and to coordinate technical assistance for public schools that serve tribal students;

(9) seek funds to establish and maintain an Indian education office in the northwest corner of the state or other geographical location to implement agreements with each New Mexico tribe or its authorized educational entity, monitor the progress of tribal students and coordinate technical assistance at the public pre-kindergarten to post-secondary schools that serve tribal students;

(10) require school districts to obtain a signature of approval by the New Mexico tribal governments or their government designees residing within school district boundaries, verifying that the New Mexico tribes agree to Indian education policies and procedures pursuant to federal requirements;

(11) seek funds to establish, develop and implement culturally relevant support services for the purposes of increasing the number of tribal teachers, administrators and principals and providing continued professional development for educational assistants, teachers and principals serving tribal students, in conjunction with the Indian education advisory council:

(a) recruitment and retention of highly qualified teachers and administrators;

(b) academic transition programs;

(c) academic financial support;

(d) teacher preparation;

(e) teacher induction; and

(f) professional development;

(12) develop curricula to provide instruction in tribal history and government and develop plans to implement these subjects into history and government courses in school districts throughout the state;

(13) ensure that native language bilingual programs are part of a school district's professional development plan, as provided in Section 22-10A-19.1 NMSA 1978; and

(14) develop a plan to establish a post-secondary investment system for tribal students to which parents, tribes and the state may contribute.

**History:** Laws 2003, ch. 151, § 5; 2005, ch. 299, § 2; 2007, ch. 295, § 4; 2007, ch. 296, § 4.

The 2007 amendment, effective June 15, 2007, required the assistant secretary to advise the secretary on policy regarding education of tribal students and to coordinate transition efforts for tribal students in public schools with the higher education department and to

work to expand Indian education for tribal students in preschool through grade twenty; and added Subsections B through D and Paragraphs (5) and (6) of Subsection E. Laws 2007, ch. 295, § 4 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 296, § 4. See 12-1-8 NMSA 1978.

## 22-23A-6. Advisory council.

A. The "Indian education advisory council" is created and shall advise the secretaries of early childhood education and care and public education and the assistant secretaries for Native American early childhood education and care and for Indian education on implementation of the provisions of the Indian Education Act. The council consists of sixteen members as follows:

(1) four representatives from the Navajo Nation;

(2) two representatives, one from the Mescalero Apache Tribe and one from the Jicarilla Apache Nation;

(3) four representatives, two from the southern pueblos and two from the northern pueblos;  
 (4) three urban Indians representing urban areas, including Albuquerque, Gallup and Farmington; and

(5) three at-large representatives, one from the federal bureau of Indian affairs, one from a head start organization and one from the general public, at least one of whom shall be nontribal, but all of whom shall have knowledge of and involvement in the education of tribal students.

B. Members shall be appointed by the secretary with input from New Mexico tribes and organizations involved in the education of tribal students for staggered terms so that the terms of the at-large members and of one-half of each of the tribal representatives end on December 31, 2009 and the terms of the remaining members end on December 31, 2011. Thereafter, appointments shall be for terms of four years. The terms of existing members shall expire on June 15, 2007.

C. A majority of the members of the Indian education advisory council constitutes a quorum. The advisory council shall elect a chair from its membership.

D. On a semiannual basis, representatives from all New Mexico tribes, members of the commission, the office of the governor, the Indian affairs department, the legislature, the secretary, the assistant secretary and the Indian education advisory council shall meet to assist in evaluating, consolidating and coordinating all activities relating to the education of tribal students.

E. Members of the Indian education advisory council may receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978].

**History:** Laws 2003, ch. 151, § 6; 2007, ch. 295, § 5; 2007, ch. 296, § 5; 2019, ch. 48, § 15.

The 2019 amendment, effective July 1, 2020, required the Indian education advisory council to advise the secretaries of early childhood education and care and public education and the assistant secretaries for Native American early childhood education and care and for Indian education on the implementation of the provisions of the Indian Education Act; and in Subsection A, after "shall advise the", deleted "secretary" and added "secretaries of early childhood education and care and public education", and after "assistant", deleted "secretary" and added

"secretaries for Native American early childhood education and care and for Indian education".

The 2007 amendment, effective June 15, 2007, required the council to advise the secretary and assistant secretary on implementation of the Indian Education Act; changed the number of members of the council to sixteen members; changed the number of urban Indian members to three; provided for three at-large representatives; and added Subsections B and C. Laws 2007, ch. 295, § 5 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 296, § 5. See 12-1-8 NMSA 1978.

## 22-23A-7. Report.

A. The Indian education division in collaboration with the education division of the federal bureau of Indian affairs and other entities that serve tribal students shall submit an annual statewide tribal education status report no later than November 15 to all New Mexico tribes. The division shall submit the report whether or not entities outside state government collaborate as requested.

B. A school district with tribal lands located within its boundaries shall provide a district-wide tribal education status report to all New Mexico tribes represented within the school district boundaries.

C. The status reports shall be written in a brief format and shall include the following information, through which public school performance is measured and reported to the tribes and disseminated at the semiannual government-to-government meetings held pursuant to Section 22-23A-5 NMSA 1978:

- (1) student achievement as measured by a statewide test approved by the department, with results disaggregated by ethnicity;
- (2) school safety;
- (3) the graduation rate;
- (4) attendance;
- (5) parent and community involvement;
- (6) educational programs targeting tribal students;
- (7) financial reports;
- (8) current status of federal Indian education policies and procedures;



- (9) school district initiatives to decrease the number of student dropouts and increase attendance;
- (10) public school use of variable school calendars;
- (11) school district consultations with district Indian education committees, school-site parent advisory councils and tribal, municipal and Indian organizations; and
- (12) indigenous research and evaluation measures and results for effective curricula for tribal students.

**History:** Laws 2003, ch. 151, § 7; 2007, ch. 295, § 6; 2007, ch. 296, § 6.

The 2007 amendment, effective June 15, 2007, required submission of the report no later than November 15 and that the report include information about consultations with district Indian education committees, school-site parent advisory councils and tribal, municipal

and Indian organizations and information about indigenous research and evaluation measures and results of effective curricula for tribal students. Laws 2007, ch. 295, § 6 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 296, § 6. See 12-1-8 NMSA 1978.

## 22-23A-8. Fund created.

A. The "Indian education fund" is created in the state treasury. The fund consists of appropriations, gifts, grants and donations and income from investment of the fund. Money in the fund shall not revert. The fund shall be administered by the department, and money in the fund is appropriated to the department to distribute awards to support the Indian Education Act.

B. The department shall ensure that funds appropriated from the Indian education fund shall be used for the purposes stated in the Indian Education Act and shall not be used to correct for previous reductions of program services.

C. The department shall develop procedures and rules for the award of money from the fund. Disbursement of the fund shall be made by warrant of the department of finance and administration pursuant to vouchers signed by the secretary of public education.

**History:** Laws 2003, ch. 151, § 8; 2007, ch. 295, § 7; 2007, ch. 296, § 7.

The 2007 amendment, effective June 15, 2007, added Subsection B. Laws 2007, ch. 295, § 7 enacted identical

amendments to this section. The section was set out as amended by Laws 2007, ch. 296, § 7. See 12-1-8 NMSA 1978.

## 22-23A-9. Indian education; school district responsibilities; needs assessments; use of data; prioritizing budgets; reports.

A. As used in Sections 1 through 3 [22-23A-9 through 22-23A-11 NMSA 1978] of this 2019 act, "school district" includes charter schools.

B. Historically defined Indian impacted school districts are required to conduct a needs assessment to determine what supports are needed in public school, at home and in the community to help Indian students succeed in school, graduate with a diploma of excellence and be prepared to enter post-secondary education or the workplace.

C. After the needs assessment, the school district shall meet with the local tribes to prioritize the needs to be addressed. The school district shall make meeting the needs of Indian students and closing the achievement gap between Indian students and all other student groups a priority in the school district budget, including applying state and federal funding for Indian students, disadvantaged students, at-risk students, students in poverty and other categories of state and federal funding to help disadvantaged students.

D. The school district shall apply for appropriate state, federal and private grants to help it carry out the provisions of Sections 1 through 3 of this 2019 act. When approving budgets, the department shall consider whether a school district's budget accomplishes the prioritized needs from the Indian students needs assessment.

E. The school district shall develop an accountability tool that measures public school efforts pursuant to the systemic framework provided for in Sections 2 and 3 of this 2019 act and the success or failure of those efforts.

F. The school district shall hold a public meeting with members of the Indian students' tribal leaders, parents and the Indian education division at least twice in the school year to report on the needs assessment and the school district's evaluation of progress.

**History:** Laws 2019, ch. 16, § 1.

**Effective dates.** — Laws 2019, ch. 16 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## **22-23A-10. Systemic framework for improving educational outcomes for Indian students.**

Historically defined Indian impacted school districts shall develop and publish a systemic framework for improving educational outcomes for Indian students. The school district shall develop the framework in collaboration with school employees, tribal leaders, Indian students and families, social service providers and community and civic organizations. The Indian education division shall assist the school district as required during the development and implementation of the framework. The school district may request assistance from schools of education at state educational institutions to identify best practices in collecting and using student-centered data to inform teaching strategies and schoolwide efforts to close the achievement gap between Indian students and all other student demographic groups.

**History:** Laws 2019, ch. 16, § 2.

**Effective dates.** — Laws 2019, ch. 16 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## **22-23A-11. Systemic framework elements.**

A. The systemic framework shall include programs, services, culturally relevant activities and professional development that need to be provided to improve Indian education in the state. Based on the priorities developed through the needs assessment and the priorities set in the budget for the school year, the systemic framework may include some or all of the elements provided in this section.

B. Academic and other programs may include, within the context of the Indian education division's development or selection of culturally relevant curricula and instructional materials as provided in Subsection E of Section 22-23A-5 NMSA 1978:

- (1) innovative programs designed to meet the educational needs of educationally disadvantaged Indian students;
- (2) high-quality professional development for teaching professionals and paraprofessionals;
- (3) the identification of early childhood, pre-kindergarten and family programs in the school district that emphasize school readiness and that are effective in preparing young children to make sufficient academic growth by the end of grade three, including family-based early childhood programs that provide screening and referral and provide services to Indian children with developmental delays or disabilities;
- (4) educational programs that are not usually available in sufficient quantity or quality, including remedial instruction, to raise the achievement of Indian students in one or more of the subjects of English, mathematics, science, foreign languages, art, history and geography;
- (5) bilingual and bicultural programs and projects;
- (6) enrichment programs that focus on problem solving and cognitive skills development and directly support the attainment of challenging state academic standards;
- (7) programs designed to encourage and assist Indian students to work toward, and gain entrance into, institutions of higher education;
- (8) special compensatory and other programs and projects that are designed to assist and encourage Indian students to enter, remain in or reenter school and to increase the rate of high school graduation for Indian students;



(9) career preparation activities that enable Indian students to participate in programs such as the programs supported by the federal Carl D. Perkins Career and Technical Education Act of 2006, including programs for technology preparatory education, mentoring and apprenticeship;

(10) partnership projects between public schools and local businesses for career preparation programs designed to provide Indian students with the knowledge and skills needed to make an effective transition from school to a high-skill career; and

(11) rigorous and meaningful curricula and educational opportunities that will lead to lifelong success for all students.

**C. Culturally related activities may include:**

(1) culturally related activities that support the academic program of the public school;

(2) activities that support Indian language programs and Indian language restoration programs that may be taught by traditional leaders and that qualify for the state seal of bilingualism-biliteracy on a student's diploma of excellence as provided in Section 22-1-9.1 NMSA 1978;

(3) activities that promote the incorporation of culturally responsive teaching and learning strategies into the public school's educational program; and

(4) activities to educate students about the prevention of violence, suicide and substance abuse.

**D. Services to be provided may include:**

(1) early interventions to help struggling students, such as after-school programs, tutoring and mentoring and school and community interventions to prevent truancy and reduce dropout rates;

(2) comprehensive guidance and counseling services;

(3) integrated educational services in combination with other programs that meet the needs of Indian students and their families, including programs that promote parental involvement in school activities and increase student achievement;

(4) special health- and nutrition-related services and other related activities that address the special health, social and psychological problems of Indian students and their families; and

(5) family literacy services, including New Mexico even start and adult basic education programs.

**History:** Laws 2019, ch. 16, § 3.

**Effective dates.** — Laws 2019, ch. 16 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

**Cross reference.** — For provisions of the federal Carl D. Perkins Career and Technical Education Act of 2006, see P.L. 109-270.

## ARTICLE 23B

### Hispanic Education

Sec.

22-23B-1. Short title.

22-23B-2. Purpose.

22-23B-3. Definition.

Sec.

22-23B-4. Hispanic education liaison; created; duties.

22-23B-5. Hispanic education advisory council.

22-23B-6. Statewide status report.

#### 22-23B-1. Short title.

This act [Chapter 22, Article 23B NMSA 1978] may be cited as the "Hispanic Education Act".

**History:** Laws 2010, ch. 108, § 1 and Laws 2010, ch. 114, § 1.

**Compiler's notes.** — Laws 2010, ch. 108, § 1 and Laws 2010, ch. 114, § 1 enacted identical sections, both effective

July 1, 2010. The section was set out as enacted by Laws 2010, ch. 114, § 1. See 12-1-8 NMSA 1978.

## 22-23B-2. Purpose.

The purpose of the Hispanic Education Act is to:

A. provide for the study, development and implementation of educational systems that affect the educational success of Hispanic students to close the achievement gap and increase graduation rates;

B. encourage and foster parental involvement in the education of their children; and

C. provide mechanisms for parents, community and business organizations, public schools, school districts, charter schools, public post-secondary educational institutions, the department and state and local policymakers to work together to improve educational opportunities for Hispanic students for the purpose of closing the achievement gap, increasing graduation rates and increasing post-secondary enrollment, retention and completion.

**History:** Laws 2010, ch. 108, § 2 and Laws 2010, ch. 114, § 2.

July 1, 2010. The section was set out as enacted by Laws 2010, ch. 114, § 2. See 12-1-8 NMSA 1978.

**Compiler's notes.** — Laws 2010, ch. 108, § 2 and Laws 2010, ch. 114, § 2 enacted identical sections, both effective

## 22-23B-3. Definition.

As used in the Hispanic Education Act, "liaison" means the Hispanic education liaison."

**History:** Laws 2010, ch. 108, § 3 and Laws 2010, ch. 114, § 3.

July 1, 2010. The section was set out as enacted by Laws 2010, ch. 114, § 3. See 12-1-8 NMSA 1978.

**Compiler's notes.** — Laws 2010, ch. 108, § 3 and Laws 2010, ch. 114, § 3 enacted identical sections, both effective

## 22-23B-4. Hispanic education liaison; created; duties.

A. The "Hispanic education liaison" is created in the department.

B. The liaison shall:

(1) focus on issues related to Hispanic education and advise the secretary on the development and implementation of policy regarding the education of Hispanic students;

(2) advise the department and the commission on the development and implementation of the five-year strategic plan for public elementary and secondary education in the state as the plan relates to Hispanic student education;

(3) assist and be assisted by other staff in the department to improve elementary, secondary and post-secondary educational outcomes for Hispanic students;

(4) serve as a resource to enable school districts and charter schools to provide equitable and culturally relevant learning environments, educational opportunities and culturally relevant instructional materials for Hispanic students enrolled in public schools;

(5) support and consult with the Hispanic education advisory council; and

(6) support school districts and charter schools to recruit parents on site-based and school district committees that represent the ethnic diversity of the community.

**History:** Laws 2010, ch. 108, § 4 and Laws 2010, ch. 114, § 4.

**Compiler's notes.** — Laws 2010, ch. 108, § 4 and Laws 2010, ch. 114, § 4 enacted different sections, both effective July 1, 2010. The section was set out as enacted by Laws 2010, ch. 114, § 4. See 12-1-8 NMSA 1978.

Laws 2010, ch. 108, § 4 provided:

"A. The "Hispanic education liaison" is created in the department.

B. The liaison shall:

(1) focus on issues related and implementations to Hispanic education and advise the secretary on the development and implementation of policy regarding the education of Hispanic students;

(2) advise the department and the commission on the development and implementation of the five-year strategic plan for public elementary and secondary education in the state as the plan relates to Hispanic student education;

(3) assist and be assisted by other staff in the department to improve elementary, secondary and post-secondary educational outcomes for Hispanic students;

(4) serve as a resource to enable school districts and charter schools to provide equitable and culturally relevant learning environments, educational opportunities and culturally relevant instructional materials for Hispanic students enrolled in public schools;



(5) support and consult with the Hispanic education advisory council; and

(6) support school districts and charter schools to recruit parents on site-based and school district committees that represent the ethnic diversity of the community."

## 22-23B-5. Hispanic education advisory council.

A. The "Hispanic education advisory council" is created as an advisory council to the secretary. The council shall advise the secretary on matters related to improving public school education for Hispanic students, increasing parent involvement and community engagement in the education of Hispanic students and increasing the number of Hispanic high school graduates who succeed in post-secondary academic, professional or vocational education.

B. The secretary shall appoint no more than twenty-three members to the council who are knowledgeable about and interested in the education of Hispanic students, including representatives of public schools; post-secondary education and teacher preparation programs; parents; Hispanic cultural, community and business organizations; other community and business organizations; and other interested persons. The secretary shall give due regard to geographic representation. Members shall serve at the pleasure of the secretary.

C. The council shall elect a chairperson and such other officers as it deems necessary.

D. The council shall meet as necessary, but at least twice each year.

E. The council shall advise the secretary on matters related to Hispanic education in New Mexico.

F. Members of the council shall not receive per diem and mileage or other compensation for their services.

**History:** Laws 2010, ch. 108, § 5 and Laws 2010, ch. 114, § 5.

July 1, 2010. The section was set out as enacted by Laws 2010, ch. 114, § 5. See 12-1-8 NMSA 1978.

**Compiler's notes.** — Laws 2010, ch. 108, § 5 and Laws 2010, ch. 114, § 5 enacted identical sections, both effective

## 22-23B-6. Statewide status report.

A. The department, in collaboration with the higher education department, shall submit an annual preschool through post-secondary statewide Hispanic education status report no later than November 15 to the governor and the legislature through the legislative education study committee. A copy shall be provided to the legislative library in the legislative council service.

B. The status report shall include the following information, by school district, by charter school and statewide, which may be compiled from data otherwise required to be submitted to the department:

- (1) Hispanic student achievement at all grades;
- (2) attendance for all grades;
- (3) the graduation rates for Hispanic students; and
- (4) the number and type of bilingual and multicultural programs in each school district and charter school.

C. The status report shall include the following information, by post-secondary educational institution, which may be compiled from data otherwise required to be submitted to the higher education department:

- (1) Hispanic student enrollment;
- (2) Hispanic student retention; and
- (3) Hispanic student completion rates.

**History:** Laws 2010, ch. 108, § 6; 2010, ch. 114, § 6; 2015, ch. 58, § 14.

The 2015 amendment, effective June 19, 2015, removed a provision requiring adequate yearly progress information to be included in Hispanic education status

reports; in Subsection B, Paragraph (3), after the semicolon, added "and"; and deleted Paragraph (4) of Subsection B, relating to information on Hispanic students in schools that make adequate yearly progress, and redesignated the succeeding paragraph accordingly.

## ARTICLE 23C

### Black Education

Sec.

22-23C-1. Short title.

22-23C-2. Definitions.

22-23C-3. Black education advisory council appointed.

22-23C-4. Council duties.

Sec.

22-23C-5. Black education liaison created; duties.

22-23C-6. Additional duties of liaison and council; report to secretary and others.

22-23C-7. Black education statewide status report.

#### 22-23C-1. Short title.

Sections 1 through 7 [22-23C-1 to 22-23C-7 NMSA 1978] of this act may be cited as the "Black Education Act".

**History:** Laws 2021, ch. 51, § 1.

**Effective dates.** — Laws 2021, ch. 51 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

#### 22-23C-2. Definitions.

As used in the Black Education Act:

- A. "council" means the Black education advisory council; and
- B. "liaison" means the Black education liaison.

**History:** Laws 2021, ch. 51, § 2.

**Effective dates.** — Laws 2021, ch. 51 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

#### 22-23C-3. Black education advisory council appointed.

A. The "Black education advisory council" is created as an advisory council to the secretary. The secretary shall appoint no more than twenty-three members to the council who are knowledgeable about and interested in the education of Black students, including:

- (1) three current teachers or school administrators of public schools;
- (2) three current teachers or school administrators of charter schools;
- (3) two representatives of post-secondary education, including one representative of teacher preparation programs, appointed in collaboration with the higher education department;
- (4) three parents of currently enrolled students in public schools, appointed in collaboration with the office on African American affairs;
- (5) three students currently attending a public secondary school, appointed in collaboration with the office on African American affairs;
- (6) one representative of the higher education department;
- (7) one representative of the office on African American affairs;
- (8) one representative of the developmental disabilities planning council; and
- (9) representatives of Black cultural, community and business organizations, other community and business organizations and other interested persons.

B. The secretary shall give due regard to geographic representation. Members shall serve at the pleasure of the secretary.

C. The council shall elect a chair and such other officers as it deems necessary.

D. The council shall meet as necessary, but at least twice each year.

E. Members of the council who are not paid with public money are entitled to receive per diem and mileage but shall receive no other compensation, perquisite or allowance for their service on the council.



**History:** Laws 2021, ch. 51, § 3. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

**Effective dates.** — Laws 2021, ch. 51 contained no effective date provision, but, pursuant to N.M. Const., art.

## 22-23C-4. Council duties.

The council shall advise the secretary, school districts and charter schools on matters related to improving public school education for Black students, increasing parent involvement and community engagement in the education of Black students and increasing the number of Black high school graduates who succeed in post-secondary academic, professional or vocational education.

**History:** Laws 2021, ch. 51, § 4. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

**Effective dates.** — Laws 2021, ch. 51 contained no effective date provision, but, pursuant to N.M. Const., art.

## 22-23C-5. Black education liaison created; duties.

- A. The "Black education liaison" is created in the department.
- B. The liaison shall:
  - (1) focus on issues related to Black education and advise the secretary and the council on the development and implementation of public policy regarding the education of Black students;
  - (2) advise the department and the council on the development and implementation of the five-year strategic plan for public elementary and secondary education in the state as the plan relates to Black student education;
  - (3) assist and be assisted by other staff in the department and in the higher education department to improve elementary, secondary and post-secondary educational outcomes for Black students;
  - (4) maintain and update information on the department's website or a separate website that includes:
    - (a) subject to funding, links to a statewide hotline for reporting racially charged incidents;
    - (b) links to the department's Black education white papers as well as other pertinent research; and
    - (c) information on and links to historically Black colleges and universities;
  - (5) serve as a resource to enable school districts and charter schools to provide equitable and culturally relevant learning environments, educational opportunities and culturally relevant instructional materials for Black students enrolled in public schools;
  - (6) support and consult with the council;
  - (7) support school districts and charter schools to recruit parents on site-based and school district committees that represent the ethnic diversity of the community; and
  - (8) implement activities that are recommended and prioritized by the council within available funding."

**History:** Laws 2021, ch. 51, § 5. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

**Effective dates.** — Laws 2021, ch. 51 contained no effective date provision, but, pursuant to N.M. Const., art.

## 22-23C-6. Additional duties of liaison and council; report to secretary and others.

- A. As part of their duties pursuant to the Black Education Act, the liaison and the council shall study and prepare white papers on current research on methods and practices that will improve educational outcomes and school experiences for Black students by:
  - (1) identifying best practices for strengthening educational outcomes for Black students;

(2) addressing the Black student achievement gap in a holistic and systemic manner that includes clearly articulated measures to improve public education for Black students that result in substantially improved graduation rates, college or career readiness and higher education completion rates at the undergraduate and graduate levels;

(3) combating discrimination and racism in the public school system, including creating and sustaining equitable and culturally responsive learning environments;

(4) recommending curricula and instructional materials that include the history and culture of Black people in New Mexico, America and the world; and

(5) providing mechanisms for parents, community and business organizations, public schools, public post-secondary educational institutions and state and local policymakers to work together to improve educational opportunities for Black students.

B. The liaison and advisory council shall develop or recommend anti-racism and cultural sensitivity training and professional development programs for all school personnel.

C. The department, through the liaison and advisory council, shall establish a formal cooperative relationship with the higher education department and public post-secondary educational institutions in the state to help:

(1) improve the education of Black students in the kindergarten through sixteen educational system in New Mexico, including the recruitment and retention of Black teachers, educational support providers, faculty and educational and administrative leaders in the system; and

(2) improve teacher preparation programs by recruiting Black students and including curricula that demonstrate cultural awareness and sensitivity to matters of race and promote anti-racism.

D. White papers shall be submitted to the secretary, the council, the governor, the legislature, school districts, charter schools, the higher education department, public post-secondary educational institutions and interested persons.

**History:** Laws 2021, ch. 51, § 6.

**Effective dates.** — Laws 2021, ch. 51 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

## **22-23C-7. Black education statewide status report.**

A. The department, in collaboration with the higher education department, shall submit an annual preschool through post-secondary statewide Black education status report no later than November 15 to the governor and the legislature through the legislative education study committee. A copy shall be provided to the legislative library in the legislative council service.

B. In addition to the data required pursuant to Section 22-2C-11 NMSA 1978, the status report for public schools shall highlight Black student data and include:

(1) ethnicity by grade by school;

(2) the number and type of bilingual and multicultural programs in each school district and charter school;

(3) student achievement by ethnicity at all grades measured by a statewide test or other measure of proficiency approved by the department;

(4) attendance and truancy for all grades by ethnicity;

(5) diploma seals and distinctions earned by ethnicity; and

(6) licensed school employees by ethnicity by school.

C. The status report shall include the following information, by public post-secondary educational institution, which may be compiled from data otherwise required to be submitted to the higher education department, and which is disaggregated by ethnicity and highlights Black student or faculty data:

(1) enrollment by institution and by main or branch campus, if applicable;

(2) student retention by class;

(3) student completion rates;

(4) degrees or certificates earned by ethnicity;

(5) faculty hired in tenure-track positions by ethnicity;



- (6) adjunct faculty hired by ethnicity;
- (7) number of tenured faculty by ethnicity; and
- (8) faculty or administration leadership positions by ethnicity.

**History:** Laws 2021, ch. 51, § 7.

**Effective dates.** — Laws 2021, ch. 51 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

## ARTICLE 24

### Public School Capital Outlay

Sec.

22-24-1. Short title.

22-24-2. Purpose of act.

22-24-3. Definitions.

22-24-4. Public school capital outlay fund created; use.

22-24-4.1. Outstanding deficiencies; assessment; correction.

22-24-4.2. Repealed.

22-24-4.3. Roof repair and replacement initiative.

22-24-4.4. Repealed.

22-24-4.5. Education technology infrastructure deficiency corrections.

22-24-4.6. Building system repair, renovation or replacement.

22-24-4.7. School security system projects.

22-24-5. Public school capital outlay projects; application; grant assistance.

22-24-5.1. Council assistance and oversight.

22-24-5.2. Repealed.

22-24-5.3. Preventive maintenance plans; guidelines; approval.

22-24-5.4. Recalcitrant school districts; court action to enforce constitutional compliance; imposition of property tax.

Sec.

22-24-5.5. Preventive maintenance plans; participation in facility information management system.

22-24-5.6. Outstanding deficiencies at certain state educational institutions.

22-24-5.7. Local match provisions for qualified high priority projects.

22-24-5.8. Adequacy standards; constitutional special schools.

22-24-6. Council created; organization; duties.

22-24-6.1. Procedures for a state-chartered charter school.

22-24-6.2. Repealed.

22-24-7. Public school capital outlay oversight task force; creation; staff.

22-24-8. Public school capital outlay oversight task force; duties.

22-24-9. Public school facilities authority; creation; powers and duties.

22-24-10. Public facilities to be used by charter schools; assessment.

22-24-11. Recompiled.

22-24-12. Pre-kindergarten classroom facilities initiative.

#### 22-24-1. Short title.

Chapter 22, Article 24 NMSA 1978 may be cited as the "Public School Capital Outlay Act".

**History:** 1953 Comp., § 77-24-9, enacted by Laws 1975, ch. 235, § 1; 1978, ch. 152, § 1; 2000 (2nd S.S.), ch. 19, § 1.

**Cross references.** — For public school finances generally, see 22-8-1 NMSA 1978 et seq.

For public school capital improvements, see 22-25-1 NMSA 1978 et seq.

**The 2000 amendment,** effective April 12, 2000, substituted "Chapter 22, Article 24 NMSA 1978" for "Sections 22-24-1 through 22-24-6 NMSA 1978".

#### ANNOTATIONS

For article, "No Cake For Zuni: The Constitutionality of New Mexico's Public School Capital Finance System," see 37 N.M.L. Rev. 307 (2007).

#### 22-24-2. Purpose of act.

The purpose of the Public School Capital Outlay Act is to ensure that, through a standards-based process for all school districts, the physical condition and capacity, educational suitability and technology infrastructure of all public school facilities in New Mexico meet an adequate level statewide and the design, construction and maintenance of school sites and facilities encourage, promote and maximize safe, functional and durable learning environments in order for the state to meet its educational responsibilities and for New Mexico's students to have the opportunity to achieve success.

**History:** 1953 Comp., § 77-24-10, enacted by Laws 1975, ch. 235, § 2; 1978, ch. 152, § 2; 1994, ch. 88, § 1; 2004, ch. 125, § 6.

**The 2004 amendment,** effective May 19, 2004, replaced the previous purpose to "meet critical school district capital outlay which cannot be met by the school district

after it has exhausted available resources" with the purpose that follows "is to" at the beginning of the section.

**The 1994 amendment**, effective May 18, 1994 deleted "all" preceding "available" near the end of the section.

## 22-24-3. Definitions.

As used in the Public School Capital Outlay Act:

- A. "authority" means the public school facilities authority;
- B. "building system" means a set of interacting parts that makes up a single, nonportable or fixed component of a facility and that, together with other building systems, makes up an entire integrated facility or property, including roofing, electrical distribution, electronic communication, plumbing, lighting, mechanical, fire prevention, facility shell, interior finishes, heating, ventilation and air conditioning systems and school security systems, as defined by the council;
- C. "constitutional special schools" means the New Mexico school for the blind and visually impaired and the New Mexico school for the deaf;
- D. "constitutional special schools support spaces" means all facilities necessary to support the constitutional special schools' educational mission that are not included in the constitutional special schools' educational adequacy standards, including performing arts centers, facilities for athletic competition, school district administration and facility and vehicle maintenance;
- E. "council" means the public school capital outlay council;
- F. "education technology infrastructure" means the physical hardware and services used to interconnect students, teachers, school districts and school buildings necessary to support broadband connectivity and remote learning as determined by the council;
- G. "fund" means the public school capital outlay fund;
- H. "maximum allowable gross square foot per student" means a determination made by applying the established maximum allowable square foot guidelines for educational facilities based on type of school and number of students in the current published New Mexico public school adequacy planning guide to the department's current year certified first reporting date membership;
- I. "replacement cost per square foot" means the statewide cost per square foot as established by the council;
- J. "school district" includes state-chartered charter schools and the constitutional special schools;
- K. "school district population density" means the population density on a per square mile basis of a school district as estimated by the authority based on the most current tract level population estimates published by the United States census bureau; and
- L. "school district population density factor" means zero when the school district population density is greater than fifty people per square mile, six-hundredths when the school district population density is greater than fifteen but less than fifty-one persons per square mile and twelve-hundredths when the school district population density is less than sixteen persons per square mile.

**History:** 1953 Comp., § 77-24-11, enacted by Laws 1975, ch. 235, § 3; 1978, ch. 152, § 3; 2006, ch. 94, § 58; 2012, ch. 53, § 1; 2014, ch. 28, § 1; 2015, ch. 93, § 1; 2018, ch. 66, § 1; 2018, ch. 71, § 2; 2021, ch. 49, § 1.

**The 2021 amendment**, effective April 5, 2021, amended the definition of "education technology infrastructure" as used in the Public School Capital Outlay Act to include the interconnection between students and teachers to support remote learning; in Subsection F, after "physical hardware", deleted "used to interconnect education technology equipment for school districts and school buildings necessary to support broadband connectivity as determined by the council" and added "and services used to interconnect students, teachers, school districts and school buildings necessary to support broadband connectivity and remote learning as determined by the council".

**2018 Amendments.** — Laws 2018, ch. 71, § 2, effective May 16, 2018, added "school security system" to the definition of "building system"; in Subsection A (now Subsection

B), after "air conditioning systems", added "and school security systems", and made minor stylistic changes.

Laws 2018, ch. 66, § 1, effective May 16, 2018, defined "authority", "maximum allowable gross square foot per student", "replacement cost per square foot", "school district population density", and "school district population density factor" as used in the Public School Capital Outlay Act; added a new Subsection A and redesignated former Subsections A through F as Subsections B through G, respectively; and added Subsections H through L, and made minor stylistic changes.

**The 2015 amendment**, effective July 1, 2015, defined "building system" in the Public School Capital Outlay Act; and added Subsection A and redesignated the succeeding subsections accordingly.

**The 2014 amendment**, effective March 6, 2014, added a definition of "education technology infrastructure" to provide for allocations from the public school capital



outlay fund for education technology infrastructure; and added Subsection D.

**The 2012 amendment**, effective May 16, 2012, made the school for the blind and visually impaired and the school for the deaf, including all facilities that are necessary for their educational missions, eligible for public

school capital outlay funding; added Subsections A and B; and in Subsection E, after "charter schools", added "and the constitutional special schools".

**The 2006 amendment**, effective May 17, 2006, added Subsection C to define school district.

## 22-24-4. Public school capital outlay fund created; use.

A. The "public school capital outlay fund" is created. Balances remaining in the fund at the end of each fiscal year shall not revert.

B. Except as provided in Subsections G and I through Q of this section, money in the fund may be used only for capital expenditures deemed necessary by the council for an adequate educational program.

C. The council may authorize the purchase by the authority of portable classrooms to be loaned to school districts to meet a temporary requirement. Payment for these purchases shall be made from the fund. Title to and custody of the portable classrooms shall rest in the authority. The council shall authorize the lending of the portable classrooms to school districts upon request and upon finding that sufficient need exists. Application for use or return of state-owned portable classroom buildings shall be submitted by school districts to the council. Expenses of maintenance of the portable classrooms while in the custody of the authority shall be paid from the fund; expenses of maintenance and insurance of the portable classrooms while in the custody of a school district shall be the responsibility of the school district. The council may authorize the permanent disposition of the portable classrooms by the authority with prior approval of the state board of finance.

D. Applications for assistance from the fund shall be made by school districts to the council in accordance with requirements of the council. Except as provided in Subsection K of this section, the council shall require as a condition of application that a school district have a current five-year facilities plan that shall include a current preventive maintenance plan to which the school adheres for each public school in the school district.

E. The council shall review all requests for assistance from the fund and shall allocate funds only for those capital outlay projects that meet the criteria of the Public School Capital Outlay Act.

F. Money in the fund shall be disbursed by warrant of the department of finance and administration on vouchers signed by the secretary of finance and administration following certification by the council that an application has been approved or an expenditure has been ordered by a court pursuant to Section 22-24-5.4 NMSA 1978. At the discretion of the council, money for a project shall be distributed as follows:

(1) up to ten percent of the portion of the project cost funded with distributions from the fund or five percent of the total project cost, whichever is greater, may be paid to the school district before work commences with the balance of the grant award made on a cost-reimbursement basis; or

(2) the council may authorize payments directly to the contractor.

G. Balances in the fund may be annually appropriated for the core administrative functions of the authority pursuant to the Public School Capital Outlay Act, and, in addition, balances in the fund may be expended by the authority, upon approval of the council, for project management expenses; provided that:

(1) the total annual expenditures from the fund for the core administrative functions pursuant to this subsection shall not exceed five percent of the average annual grant assistance authorized from the fund during the three previous fiscal years; and

(2) any unexpended or unencumbered balance remaining at the end of a fiscal year from the expenditures authorized in this subsection shall revert to the fund.

H. The fund may be expended by the council for building system repair, renovation or replacement initiatives with projects to be identified by the council pursuant to Section 22-24-4.6 NMSA 1978; provided that money allocated pursuant to this subsection shall be expended within three years of the allocation.

I. The fund may be expended annually by the council for grants to school districts for the purpose of making lease payments for facilities, including facilities leased by charter schools. The grants shall be made upon application by the school districts and pursuant to rules adopted by the council; provided that an application on behalf of a charter school shall be made by the school district, but, if the school district fails to make an application on behalf of a charter school, the charter school may submit its own application. The following criteria shall apply to the grants:

- (1) the amount of a grant to a school district or charter school shall not exceed:
  - (a) the actual annual lease payments owed for leasing a facility; or
  - (b) seven hundred dollars (\$700) multiplied by the MEM using the leased facilities; provided that in fiscal year 2009 and in each subsequent fiscal year, this amount shall be adjusted by the percentage change between the penultimate calendar year and the immediately preceding calendar year of the consumer price index for the United States, all items, as published by the United States department of labor;
- (2) a grant received for the lease payments of a charter school may be used by that charter school as a state match necessary to obtain federal grants pursuant to the federal Every Student Succeeds Act;
- (3) at the end of each fiscal year, any unexpended or unencumbered balance of the grant shall revert to the fund;
- (4) no grant shall be made for lease payments due pursuant to a financing agreement under which the facilities may be purchased for a price that is reduced according to the lease payments made unless:
  - (a) the agreement has been approved pursuant to the provisions of the Public School Lease Purchase Act [Chapter 22, Article 26A NMSA 1978]; and
  - (b) the facilities are leased by a charter school;
- (5) if the lease payments are made pursuant to a financing agreement under which the facilities may be purchased for a price that is reduced according to the lease payments made, neither a grant nor any provision of the Public School Capital Outlay Act creates a legal obligation for the school district or charter school to continue the lease from year to year or to purchase the facilities nor does it create a legal obligation for the state to make subsequent grants pursuant to the provisions of this subsection; and
- (6) as used in this subsection:
  - (a) "MEM" means: 1) the average full-time-equivalent enrollment using leased facilities on the second and third reporting dates of the prior school year; or 2) in the case of an approved charter school that has not commenced classroom instruction, the estimated full-time-equivalent enrollment that will use leased facilities in the first year of instruction, as shown in the approved charter school application; provided that, after the second reporting date of the current school year, the MEM shall be adjusted to reflect the full-time-equivalent enrollment on that date; and
  - (b) "facilities" includes the space needed for school activities;

J. In addition to other authorized expenditures from the fund, up to one percent of the average grant assistance authorized from the fund during the three previous fiscal years may be expended in each fiscal year by the authority to pay the state fire marshal, the construction industries division of the regulation and licensing department and local jurisdictions having authority from the state to permit and inspect projects for expenditures made to permit and inspect projects funded in whole or in part under the Public School Capital Outlay Act. The authority may enter into contracts with the state fire marshal, the construction industries division or the appropriate local authorities to carry out the provisions of this subsection. Such a contract may provide for initial estimated payments from the fund prior to the expenditures if the contract also provides for additional payments from the fund if the actual expenditures exceed the initial payments and for repayments back to the fund if the initial payments exceed the actual expenditures. Money distributed from the fund to the state fire marshal or the construction industries division pursuant to this subsection shall be used to supplement, rather than supplant, appropriations to those entities.



K. Pursuant to guidelines established by the council, allocations from the fund may be made to assist school districts in developing and updating five-year facilities plans required by the Public School Capital Outlay Act; provided that:

(1) no allocation shall be made unless the council determines that the school district is willing and able to pay the portion of the total cost of developing or updating the plan that is not funded with the allocation from the fund. Except as provided in Paragraph (2) of this subsection, the portion of the total cost to be paid with the allocation from the fund shall be determined pursuant to the methodology in Subsection B of Section 22-24-5 NMSA 1978; or

(2) the allocation from the fund may be used to pay the total cost of developing or updating the plan if:

(a) the school district has fewer than an average of six hundred full-time-equivalent students on the second and third reporting dates of the prior school year; or

(b) the school district meets all of the following requirements: 1) the school district has fewer than an average of one thousand full-time-equivalent students on the second and third reporting dates of the prior school year; 2) the school district has at least seventy percent of its students eligible for free or reduced-fee lunch; 3) the state share of the total cost, if calculated pursuant to the methodology in Subsection B of Section 22-24-5 NMSA 1978, would be less than fifty percent; and 4) for all educational purposes, the school district has a residential property tax rate of at least seven dollars (\$7.00) on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds.

L. Upon application by a school district, allocations from the fund may be made by the council for the purpose of demolishing abandoned school district facilities; provided that:

(1) the costs of continuing to insure an abandoned facility outweigh any potential benefit when and if a new facility is needed by the school district;

(2) there is no practical use for the abandoned facility without the expenditure of substantial renovation costs; and

(3) the council may enter into an agreement with the school district to fully fund the demolition of the abandoned school district facility if Paragraphs (1) and (2) of this subsection are satisfied.

M. Up to ten million dollars (\$10,000,000) of the fund may be expended each year for an education technology infrastructure deficiency corrections initiative pursuant to Section 22-24-4.5 NMSA 1978; provided that funding allocated pursuant to this section shall be expended within three years of its allocation.

N. For each fiscal year from 2018 through 2022, twenty-five million dollars (\$25,000,000) of the fund is reserved for appropriation by the legislature to the instructional material fund or to the transportation distribution of the public school fund. The secretary shall certify the need for the issuance of supplemental severance tax bonds to meet an appropriation from the public school capital outlay fund to the instructional material fund or to the transportation distribution of the public school fund. Any portion of an amount of the public school capital outlay fund that is reserved for appropriation by the legislature for a fiscal year, but that is not appropriated before the first day of that fiscal year, may be expended by the council as provided in this section.

O. Up to ten million dollars (\$10,000,000) of the fund may be expended in each of fiscal years 2019 through 2022 for school security system project grants made in accordance with Section 22-24-4.7 NMSA 1978.

P. The fund may be expended in each of fiscal years 2020 through 2024 for a pre-kindergarten classroom facilities initiative in accordance with Section 22-24-12 NMSA 1978.

Q. The council may fund pre-kindergarten classrooms with a qualifying, awarded standards-based project; provided that pre-kindergarten classroom space shall not be included in the project prioritization calculation adopted by the council pursuant to Section 22-24-5 NMSA 1978. The council shall develop pre-kindergarten classroom standards to use when funding pre-kindergarten space.



**History:** 1953 Comp., § 77-24-12, enacted by Laws 1975, ch. 235, § 4; 1978, ch. 152, § 4; 1983, ch. 301, § 70; 1993, ch. 226, § 50; 1994, ch. 88, § 2; 2001, ch. 338, § 5; 2001, ch. 339, § 1; 2002, ch. 65, § 1; 2003, ch. 147, § 3; 2004, ch. 125, § 7; 2005, ch. 274, § 5; 2006, ch. 95, § 4; 2007, ch. 366, § 3; 2008, ch. 90, § 1; 2009, ch. 258, § 2; 2010, ch. 104, § 1; 2014, ch. 28, § 2; 2015, ch. 93, § 2; 2016 (2nd S.S.), ch. 2, § 2; 2017, ch. 142, § 1; 2018, ch. 71, § 3; 2019, ch. 179, § 2; 2019, ch. 180, § 1; 2021, ch. 27, § 1; 2022, ch. 19, § 3.

**Cross references.** — For the federal No Child Left Behind Act of 2001, see 20 U.S.C. § 6301.

For the public school facilities authority, see 22-24-9 NMSA 1978.

**The 2022 amendment**, effective 18, 2022, modified the terms applicable to grants from the public school capital outlay fund for lease facilities; in Subsection I, in the introductory paragraph, after "making lease payments for", deleted "classroom", in Paragraph I(1), after "school district", added "or charter school", in Subparagraph I(1) (a), after "owed for leasing", deleted "classroom space for schools, including charter schools, in the school district" and added "a facility", in Subparagraph I(1)(b), after "using the leased", deleted "classroom", in Paragraph I(3), after "unencumbered balance of the", deleted "appropriation" and added "grant", in Subparagraph I(6)(a), after "enrollment using leased", deleted "classrooms", after "will use leased", deleted "classroom", and after "reporting date of the", added "current", and in Subparagraph I(6)(b), deleted "classroom", after "facilities", deleted "or classroom space", after "the space needed", deleted "as determined by the minimum required under the statewide adequacy standards", and after the next occurrence of "for", deleted "the direct administration of".

**The 2021 amendment**, effective June 18, 2021, authorized allocations from the public school capital outlay fund to fully fund the demolition of abandoned school district facilities; in Subsection L, Paragraph L(3), after the first occurrence of "school district", deleted "under which an amount equal to the savings to the district in lower insurance premiums are used to reimburse the fund fully or partially for the demolition costs allocated to the district" and added "to fully fund the demolition of the abandoned school district facility if Paragraphs (1) and (2) of this subsection are satisfied"; and in Subsection P, after "Section", changed "1 of this 2019 act" to "22-24-12 NMSA 1978".

**2019 Amendments.** — Laws 2019, ch. 180, § 1, effective July 1, 2019, provided that a grant received for the lease payments of a charter school may be used by that charter school as a state match necessary to obtain federal grants pursuant to the federal Every Student Succeeds Act, and made certain technical amendments; deleted "public school facilities" preceding "authority" throughout the section; in Subsection I, Paragraph I(2), after "pursuant to the federal", deleted "No Child Left Behind Act of 2001" and added "Every Student Succeeds Act", and in Subparagraph I(6)(a), after "after the", deleted "eighteenth day" and added "second reporting date"; and in Subsection K, Paragraph K(1), after "methodology in", deleted "Paragraph (5) of", and in Subparagraph K(2)(b), after "methodology in", deleted "Paragraph (5) of".

Laws 2019, ch. 179, § 2, effective June 14, 2019, provided that the public school capital outlay fund may be expended for a pre-kindergarten classroom facilities initiative, provided that the council may fund pre-kindergarten classrooms, and made certain technical amendments; deleted "public school facilities" preceding "authority" throughout; in Subsection I, Paragraph I(2), after "federal grants", deleted "pursuant to the federal No Child Left Behind Act of 2001" and added "if required",

and in Subparagraph I(6)(a), after "after the", deleted "eighteenth day" and added "second reporting date"; in Subsection K, Paragraph K(1), after "methodology in", deleted "Paragraph (5) of", and in Subparagraph K(2)(b), after "methodology in", deleted "Paragraph (5) of"; and added Subsections P and Q.

**The 2018 amendment**, effective May 16, 2018, authorized up to \$10,000,000 of the public school capital outlay fund to be expended in each of fiscal years 2019 through 2022 for school security system project grants and made technical changes; deleted three occurrences of "eightieth and one hundred twentieth days" and added "second and third reporting dates"; in Subsection B, after "through", deleted "N" and added "O"; in Subsection I, Subparagraph I(1)(b), after "multiplied by the", deleted "number of"; in Subsection M, after "expended", added "in", and after "each", deleted "year in" and added "of"; and added Subsection O.

**Compiler's notes.** — Laws 2018, ch. 71, § 4 provided that if acts making amendments to Section 22-24-4 NMSA 1978 are enacted by the first and second sessions of the fifty-third legislature, the provisions of those acts shall be reconciled and compiled in accordance with the provisions of Section 12-1-8 NMSA 1978, notwithstanding that the amendments were not made in the same session of the legislature. This section includes language enacted by Laws 2017, ch. 142, § 1, which was given force of law by the New Mexico Supreme Court in *State ex rel. New Mexico Legislative Council v. Honorable Susana Martinez*, Governor of the State of New Mexico et al., S.Ct. Order No. S-1-SC-36731, which held that Article IV, Section 22 of the New Mexico Constitution requires that objections must accompany a returned bill, and has been reconciled with Laws 2018, ch. 71, § 3.

**The 2017 amendment**, effective June 16, 2017, removed the time period which limited the use of the public school capital outlay fund for an education technology infrastructure deficiency corrections initiative; and in Subsection M, after "expended each year", deleted "in fiscal years 2014 through 2019".

**The 2016 (2nd S.S.) amendment**, effective October 7, 2016, removed the four-year fifteen million dollar (\$15,000,000) cap on expenditures from the public school capital outlay fund for building system repairs, renovation or replacement initiatives, and reserved certain amounts from the public school capital outlay fund for appropriation by the legislature to the instructional material fund or the transportation distribution of the public school fund; in Subsection B, after "G and I through", deleted "M" and added "N"; in Subsection H, deleted "Up to fifteen million dollars (\$15,000,000) of", after "may be expended", deleted "annually", after "by the council for", deleted "expenditure in fiscal years 2016 through 2020 for a", after "renovation or replacement", changed "initiative" to "initiatives", and after "pursuant to Section", deleted "3 of this 2015 act" and added "22-24-4.6 NMSA 1978"; in Subparagraph I(1)(a), after "schools, in the", added "school"; and added new Subsection N.

**Compiler's notes.** — Laws 2016 (2nd S.S.), ch. 2, § 3, effective October 7, 2016, appropriated twelve million five hundred thousand dollars (\$12,500,000) from the public school capital outlay fund to the instructional material fund for expenditure in fiscal year 2017 and subsequent fiscal years for the purchase of instructional material pursuant to the Instructional Material Law; provided that the secretary of public education certifies the need for the issuance of supplemental severance tax bonds to meet that appropriation. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the public school capital outlay fund.

**The 2015 amendment**, effective July 1, 2015, authorized the expenditure of fifteen million dollars (\$15,000,000) from the public school capital outlay fund



to be used in fiscal years 2016 through 2020 for a building system repair; in Subsection H, after "Up to", deleted "ten million dollars (\$10,000,000) of the fund may be allocated annually by the council for expenditure in fiscal years 2010 through 2015 for a roof repair and replacement initiative with projects to be identified by the council pursuant to Section 22-24-4.3 NMSA 1978; provided that money allocated pursuant to this subsection shall be expended within two years of the allocation" and added the remainder of the subsection; and in Subsection M, after "pursuant to this Section", deleted "4 of this 2014 act" and added "22-24-4.5 NMSA 1978".

**The 2014 amendment**, effective March 6, 2014, established an education technology infrastructure deficiency corrections initiative; in Subsection J, in the second sentence, added "public school facilities"; and added Subsection M.

**The 2010 amendment**, effective March 9, 2010, in Subsection C, in the third sentence, after "Title", added "to" and after "custody" deleted "to"; in Subsection H, after "fund may be allocated", added "annually" and after "fiscal years 2010 through", changed "2012" to "2015"; and in Subsection J, in the second sentence, after "The authority", changed "shall" to "may"; and added the last sentence.

**The 2009 amendment**, effective April 8, 2009, in Subsection B, added the reference to Subsection I; in Paragraph (1) of Subsection G, after "expenditures from the fund", added "for the core administrative functions"; in Subsection H, after "Up to", deleted "thirty million dollars (\$30,000,000)" and added "ten million dollars (\$10,000,000)"; after "allocated", deleted "annually"; after "by the council", changed "in fiscal years 2006 and 2007" to "for expenditure in fiscal years 2010 through 2012"; and after "subsection shall be expended", deleted "prior to September 1, 2008" and added "within two years of the allocation"; in Subsection I, after "annually by the council", deleted "in fiscal years 2006 through 2020"; in Subparagraph (b) of Paragraph (1) of Subsection I, after "percentage", deleted "increase" and added "change"; and after "department of labor", deleted the remainder of the sentence, which provided for a rate if the total grants awarded exceed the total annual amount available; added Paragraph (4) of Subsection I; deleted former Subparagraph (a) of Paragraph (5) of Subsection I, which provided that a grant shall not be made unless the facilities met the statewide adequacy standards; and deleted former Paragraph (5) of Subsection I, which provided limitations on the amounts expended from the fund.

**The 2008 amendment**, effective May 14, 2008, in Subsection J, provided that the contract may provide for initial estimated payments from the fund prior to the expenditures if the contract provides for additional payments from the fund if the actual expenditures exceed the initial payments and for repayments to the fund if the initial payments exceed the actual expenditures.

**The 2007 amendment**, effective July 1, 2007, provided that, except as permitted in 22-24-5.8 NMSA 1978, money in the fund shall be used for capital expenditures for an adequate educational program; eliminated the \$7,500,000 limitation on expenditures for lease payments; increased the maximum amount of a grant to a school district to \$700,000,000; provided a formula for adjustment of the maximum amount of grants; added Paragraphs (4) and (5) of Subsection I; and added Subparagraph (b) of Paragraph (6) of Subsection I.

**The 2006 amendment**, effective March 6, 2006, added the qualification "except as provided in Subsection K" in Subsection D; deleted former Subsection H, which provided for expenditure of balances in the fund in fiscal years 2003 and 2004; in Subsection I (formerly Subsection J), changed four million dollars to seven million five hundred thousand dollars, changed "2005" to "2006" and changed "2009" to "2010"; in Subparagraph

(b) of Paragraph (1) of Subsection I (formerly Subsection J), deleted three hundred dollars for fiscal year 2005 and deleted fiscal years 2006 through 2006 after six hundred dollars; in Subparagraph (b) of Paragraph (4) of Subsection I (formerly Subsection J), changed "fortieth" to "eightieth"; added a new Subsection K to provide for allocations for five-year facilities plans; added Paragraphs (1) and (2) of Subsection K to provide criteria for allocations for five-year facilities plans; added Subsection L to provide for allocations for demolishing abandoned school district facilities; and added Paragraphs (1) through (3) of Subsection L to provide criteria for allocations for demolishing abandoned school district facilities.

**The 2005 amendment**, effective April 6, 2005, changed the statutory reference in Subsection F from Section 22-24-5.5 NMSA 1978 to Section 22-24-5.4 NMSA 1978; deleted former Subsection I, which provided an appropriation to the council for core administrative functions of the deficiencies corrections program; deleted former Subsection J, which provided for the expenditures by the council for the core administrative functions of the public school facilities authority; provided in Subsection I for the allocation of funds for a roof repair and replacement initiative; provided in Subsection J that an application on behalf of a charter school shall be made by the school district, but if the school district fails to make an application, the charter school may submit its own application; provided in Subsection J(1)(b) that the amount of the grant shall not exceed \$300 for fiscal year 2005 and \$600 for fiscal years 2006 through 2009; changed "total" to "average" and "final funded prior school year" to "fortieth, eightieth and one hundred twentieth days of the prior school year" in Subsection J(4)(a); added Subsection J(4)(b) to define "MEM" in the case of a charter school that has not commenced classroom instruction; and added Subsection K to provide, for the reimbursement of the state fire marshal, the constriction industries division and local jurisdiction of costs incurred to permit and inspect projects.

**The 2004 amendment**, effective May 19, 2004, amended Subsection B to substitute "through K" for "and H"; Subsection C to substitute in three places "public school facilities authority" for "property control division of the general services department" and to change in three places "property" to "portable classrooms"; Subsection F to insert after "approved" "or an expenditure has been ordered by a court pursuant to Section 22-24-5.5 NMSA 1978" and Paragraph (2) to change "make" to "authorize"; Subsection G to delete the present subsection and add new Subsection G; amended Subsection I to change "fiscal year 2004" to "fiscal years 2004 through 2007"; and added new Subsection K.

**The 2003 amendment**, effective April 4, 2003, in Subsection F, inserted the second sentence and added Paragraphs F(1) and (2); rewrote Subsections G and H pertaining to distribution of money for projects; and added Subsections I and J.

**The 2002 amendment**, effective May 15, 2002, inserted the exception clause in Subsection B; and added Subsections G and H.

**The 2001 amendment**, effective July 1, 2001, added the last sentence of Subsection D; deleted "that cannot be financed by the school district from other sources and" following "capital outlay projects" in Subsection E; and added Subsection F.

**The 1994 amendment**, effective May 18, 1994, deleted "and the capital expenditures are limited to the purchase or construction of temporary or permanent classrooms" following "educational program" in Subsection B, and deleted "public" preceding "school" near the end of the fifth sentence of Subsection C.

**The 1993 amendment**, effective July 1, 1993, deleted "Annual" from the beginning of the fourth sentence of Subsection C.

### ANNOTATIONS

**Disposal of portable classrooms not limited to sale.** — The discretion of the council to authorize the disposal of portable classrooms purchased by the fund is not limited to sale for consideration or exchange. 1980 Op. Att'y Gen. No. 80-05.

**When gratis transfer of classrooms proper.** — A gratis transfer by the public school capital outlay council of portable classrooms to local school boards does not

violate N.M. Const., art. IX, § 14, since the prohibition there does not apply as between the state and one of its subordinate agencies. 1980 Op. Att'y Gen. No. 80-05.

**Veto power over gratis transfer.** — Section 13-6-2C NMSA 1978 (now Section 13-6-2D NMSA 1978) gives the secretary of finance and administration or the state board of finance (now the state budget division) veto power over any gratis transfer of school property. 1980 Op. Att'y Gen. No. 80-05.

## 22-24-4.1. Outstanding deficiencies; assessment; correction.

A. No later than September 1, 2001, the council shall define and develop guidelines, consistent with the codes adopted by the construction industries commission pursuant to the Construction Industries Licensing Act [Chapter 60, Article 13 NMSA 1978 NMSA 1978], for school districts to use to identify outstanding serious deficiencies in public school buildings and grounds, including buildings and grounds of charter schools, that may adversely affect the health or safety of students and school personnel.

B. A school district shall use these guidelines to complete a self-assessment of the outstanding health or safety deficiencies within the school district and provide cost projections to correct the outstanding deficiencies.

C. The council shall develop a methodology for prioritizing projects that will correct the deficiencies.

D. After a public hearing and to the extent that money is available in the fund for such purposes, the council shall approve allocations from the fund on the established priority basis and, working with the school district and pursuant to the Procurement Code [13-1-28 through 13-1-199 NMSA 1978], enter into construction contracts with contractors to correct the deficiencies.

E. In entering into construction contracts to correct deficiencies pursuant to this section, the council shall include such terms and conditions as necessary to ensure that the state money is expended in the most prudent manner possible and consistent with the original purpose.

F. Any deficiency that may adversely affect the health or safety of students or school personnel may be corrected pursuant to this section, regardless of the local effort or percentage of indebtedness of the school district.

G. It is the intent of the legislature that all outstanding deficiencies in public schools and grounds that may adversely affect the health or safety of students and school personnel be identified and awards made pursuant to this section no later than June 30, 2005, and that funds be expended no later than June 30, 2007, provided that the council may extend the expenditure period upon a determination that a project requires the additional time because existing buildings need to be demolished or because of other extenuating circumstances.

**History:** 1978 Comp., § 22-24-4.1, enacted by Laws 2001, ch. 338, § 6; 2003, ch. 147, § 4; 2004, ch. 125, § 8; 2007, ch. 366, § 4.

**The 2007 amendment,** effective July 1, 2007, amended Subsection G to authorize the council to extend the expenditure period for a project.

**The 2004 amendment,** effective May 19, 2004, amended Subsection B to add "school" before "district"

and amended Subsection G to change "June 30, 2004" to "June 30, 2005" and "June 30, 2005" to "June 30, 2007".

**The 2003 amendment,** effective April 4, 2003, deleted "local" preceding "school district" in Subsection B; in Subsection G, substituted "awards made" for "funded" and added "and that funds be expended no later than June 30, 2006" at the end of the sentence.

## 22-24-4.2. Repealed.

**Repeals.** — Laws 2003, ch. 147, § 14 repealed 22-24-4.2 NMSA 1978, as enacted by Laws 2001, ch. 338, § 7, regarding the deficiencies correction unit, effective July 1, 2003. For provisions of former section, see the 2002 NMSA

1978 on *NMOneSource.com*. For provisions of present law, see 22-24-9 NMSA 1978.



### 22-24-4.3. Roof repair and replacement initiative.

A. The council shall develop guidelines for a roof repair and replacement initiative pursuant to the provisions of this section.

B. A school district, desiring a grant award pursuant to this section, shall submit an application to the council. The application shall include an assessment of the roofs on district school buildings that, in the opinion of the school district, create a threat of significant property damage.

C. The public school facilities authority shall verify the assessment made by the school district and rank the application with similar applications pursuant to a methodology adopted by the council.

D. After a public hearing and to the extent that money is available in the fund for such purposes, the council shall approve roof repair or replacement projects on the established priority basis; provided that no project shall be approved unless the council determines that the school district is willing and able to pay the portion of the total cost of the project that is not funded with grant assistance from the fund. In order to pay its portion of the total project cost, a school district may use state distributions made to the school district pursuant to the Public School Capital Improvements Act [Chapter 22, Article 25 NMSA 1978] or, if within the scope of the authorizing resolution, proceeds of the property tax imposed pursuant to that act.

E. The state share of the cost of an approved roof repair or replacement project shall be calculated pursuant to the methodology in Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978.

F. A grant made pursuant to this section shall be expended by the school district within two years of the grant allocation.

**History:** Laws 2005, ch. 274, § 6; 2009, ch. 258, § 3.

The 2009 amendment, effective April 8, 2009, in Subsection E, after "cost of an approved", added "roof repair or

replacement"; and in Subsection F, after "school district", deleted "prior to September 1, 2008" and added "within two years of the grant allocation".

### 22-24-4.4. Repealed.

**Repeals.** — Laws 2022, ch. 22, § 4 repealed 22-24-4.4 NMSA 1978, as enacted by Laws 2005, ch. 274, § 7, relating to serious roof deficiencies, correction, effective July 1,

2022. For provisions of former section, see the 2021 NMSA 1978 on *NMOneSource.com*.

### 22-24-4.5. Education technology infrastructure deficiency corrections.

A. No later than September 1, 2014, the council, with the advice of the department and the department of information technology, shall define and develop:

(1) minimum adequacy standards for an education technology infrastructure deficiency corrections initiative to identify and determine reasonable costs for correcting education technology infrastructure deficiencies in or affecting school districts;

(2) a methodology for prioritizing projects to correct education technology infrastructure deficiencies in or affecting school districts; and

(3) a methodology for determining a school district's share of the project costs.

B. The council shall develop guidelines for a statewide education technology infrastructure network that integrates regional hub locations for network services and the installation and maintenance of equipment. The council may fund education technology infrastructure projects or items that the council determines are in accord with the guidelines and necessary to education for:

- (1) students;
- (2) school buses;
- (3) internet connectivity within a school district;
- (4) a multi-district regional education network; and
- (5) a statewide education network.

C. The council may approve allocations from the fund pursuant to Subsection M of Section 22-24-4 NMSA 1978 and this section for projects in or affecting a school district committing to pay its share of the project costs. The council may adjust the school district's share of the project costs in accordance with Paragraph (11) of Subsection B of Section 22-24-5 NMSA 1978 or the methodology for determining the school district's share of the project costs.

**History:** Laws 2014, ch. 28, § 4; 2019, ch. 180, § 2; 2021, ch. 49, § 2.

The 2021 amendment, effective April 5, 2021, required the public school capital outlay council to develop guidelines for a statewide education technology infrastructure network that integrates regional hub locations for network services and the installation and maintenance of equipment, and authorized the council to fund

education technology infrastructure projects or items that the council determines are in accord with guidelines and necessary for education; and added a new Subsection B and redesignated former Subsection B as Subsection C.

The 2019 amendment, effective July 1, 2019, made technical changes to conform with amendments to the Public School Capital Outlay Act; in Subsection B, after "Paragraph", deleted "(9)" and added "(11)".

#### 22-24-4.6. Building system repair, renovation or replacement.

A. The council shall develop guidelines for a building system repair, renovation or replacement initiative pursuant to the provisions of this section.

B. A school district desiring a grant award pursuant to this section shall submit an application to the council. The application shall include an assessment of the building system that, in the opinion of the school district, the repair, renovation or replacement of which would extend the useful life of the building itself.

C. The authority shall verify the assessment made by the school district and rank the application with similar applications pursuant to a methodology adopted by the council.

D. After a public hearing and to the extent that money is available in the fund for such purposes, the council shall approve building system repair, renovation or replacement projects on the established priority basis; provided that no project shall be approved unless the council determines that the school district is willing and able to pay the portion of the total cost of the project that is not funded with grant assistance from the fund.

E. The state share of the cost of an approved building system repair, renovation or replacement project shall be calculated pursuant to the methodology in Subsection B of Section 22-24-5 NMSA 1978.

F. A grant made pursuant to this section shall be expended by the school district within three years of the grant allocation.

**History:** Laws 2015, ch. 93, § 3; 2019, ch. 180, § 3.

The 2019 amendment, effective July 1, 2019, made technical changes to conform with amendments to the

Public School Capital Outlay Act; in Subsection C, deleted "public school facilities" preceding "authority"; and in Subsection E, after "methodology in", deleted "Paragraph (5) of".

#### 22-24-4.7. School security system projects.

A. The council shall develop guidelines for a school security system project grant initiative in accordance with this section.

B. A school district seeking a grant for a school security system project shall apply to the council on a form that includes an assessment of a school's security system and a statement of opinion by the school district that the project would improve the security of the school's buildings, property and occupants.

C. The authority shall verify the assessment made by the school district and rank all applications it receives for school security system project grants according to the methodology adopted by the council for that purpose.

D. After a public hearing, and to the extent that money is available in the fund for the purpose, the council shall make school security system project grants to school districts that the council determines are willing and able to pay for the portion of the total project cost not funded with grant assistance from the fund and according to those applicants' ranking.

E. The state share of the cost of an approved school security system project shall be calculated according to the methodology outlined in Subsection B of Section 22-24-5 NMSA 1978.



F. A school district that receives a grant in accordance with this section shall expend the grant money within three years after the grant allocation. Money not spent in that time shall revert to the fund.

**History:** 1978 Comp., § 22-24-4.7, enacted by Laws 2018, ch. 71, § 1; 2018, ch. 180, § 4.

The 2019 amendment, effective July 1, 2019, made technical changes to conform with amendments to the

Public School Capital Outlay Act; in Subsection C, deleted "public school facilities" preceding "authority"; and in Subsection E, after "methodology outlined in", deleted "Paragraph (5) of".

## **22-24-5. Public school capital outlay projects; application; grant assistance.**

A. Applications for grant assistance, approval of applications, prioritization of projects and grant awards shall be conducted pursuant to the provisions of this section.

B. Except as provided in Sections 22-24-4.3, 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions govern grant assistance from the fund for a public school capital outlay project not wholly funded pursuant to Section 22-24-4.1 NMSA 1978:

(1) all school districts are eligible to apply for funding from the fund, regardless of percentage of indebtedness;

(2) priorities for funding shall be determined by using the statewide adequacy standards developed pursuant to Subsection C of this section; provided that:

(a) the council shall apply the standards to charter schools to the same extent that they are applied to other public schools;

(b) the council may award grants annually to school districts for the purpose of repairing, renovating or replacing public school building systems in existing buildings as identified in Section 22-24-4.6 NMSA 1978;

(c) the council shall adopt and apply adequacy standards appropriate to the unique needs of the constitutional special schools;

(d) the council may award school security system project grants to school districts pursuant to the provisions of Section 22-24-4.7 NMSA 1978; and

(e) in an emergency in which the health or safety of students or school personnel is at immediate risk or in which there is a threat of significant property damage, the council may award grant assistance for a project using criteria other than the statewide adequacy standards;

(3) the council shall establish criteria to be used in public school capital outlay projects that receive grant assistance pursuant to the Public School Capital Outlay Act. In establishing the criteria, the council shall consider:

(a) the feasibility of using design, build and finance arrangements for public school capital outlay projects;

(b) the potential use of more durable construction materials that may reduce long-term operating costs;

(c) concepts that promote efficient but flexible utilization of space; and

(d) any other financing or construction concept that may maximize the dollar effect of the state grant assistance;

(4) no more than ten percent of the combined total of grants in a funding cycle shall be used for retrofitting existing facilities for technology infrastructure;

(5) no later than May 1 of each calendar year, the phase one formula value shall be calculated for each school district in accordance with the following procedure:

(a) the final prior year net taxable value for a school district divided by the MEM for that school district is calculated for each school district;

(b) the final prior year net taxable value for the whole state divided by the MEM for the state is calculated;

(c) excluding any school district for which the result calculated pursuant to Subparagraph (a) of this paragraph is more than twice the result calculated pursuant to Subparagraph (b) of this paragraph, the results calculated pursuant to Subparagraph (a) of this paragraph are listed from highest to lowest;

- (d) the lowest value listed pursuant to Subparagraph (c) of this paragraph is subtracted from the highest value listed pursuant to that subparagraph;
  - (e) the value calculated pursuant to Subparagraph (a) of this paragraph for the subject school district is subtracted from the highest value listed in Subparagraph (c) of this paragraph;
  - (f) the result calculated pursuant to Subparagraph (e) of this paragraph is divided by the result calculated pursuant to Subparagraph (d) of this paragraph;
  - (g) the sum of the property tax mill levies for the prior tax year imposed by each school district on residential property pursuant to Chapter 22, Article 18 NMSA 1978, the Public School Capital Improvements Act [Chapter 22, Article 25 NMSA 1978], the Public School Buildings Act [Chapter 22, Article 26 NMSA 1978], the Education Technology Equipment Act [Chapter 6, Article 15A NMSA 1978] and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978 is calculated for each school district;
  - (h) the lowest value calculated pursuant to Subparagraph (g) of this paragraph is subtracted from the highest value calculated pursuant to that subparagraph;
  - (i) the lowest value calculated pursuant to Subparagraph (g) of this paragraph is subtracted from the value calculated pursuant to that subparagraph for the subject school district;
  - (j) the value calculated pursuant to Subparagraph (i) of this paragraph is divided by the value calculated pursuant to Subparagraph (h) of this paragraph;
  - (k) if the value calculated for a subject school district pursuant to Subparagraph (j) of this paragraph is less than five-tenths, then, except as provided in Subparagraph (n) or (o) of this paragraph, the value for that school district equals the value calculated pursuant to Subparagraph (f) of this paragraph;
  - (l) if the value calculated for a subject school district pursuant to Subparagraph (j) of this paragraph is five-tenths or greater, then that value is multiplied by five-hundredths;
  - (m) if the value calculated for a subject school district pursuant to Subparagraph (j) of this paragraph is five-tenths or greater, then the value calculated pursuant to Subparagraph (l) of this paragraph is added to the value calculated pursuant to Subparagraph (f) of this paragraph. Except as provided in Subparagraph (n) or (o) of this paragraph, the sum equals the value for that school district;
  - (n) in those instances in which the calculation pursuant to Subparagraph (k) or (m) of this paragraph yields a value less than one-tenth, one-tenth shall be used as the value for the subject school district;
  - (o) in those instances in which the calculation pursuant to Subparagraph (k) or (m) of this paragraph yields a value greater than one, one shall be used as the value for the subject school district;
  - (p) the phase one formula value shall equal a fraction the numerator of which is the value for the subject school district in the current year plus the value for that school district in each of the two preceding years and the denominator of which is three; and
  - (q) as used in this paragraph, "MEM" means the average full-time-equivalent enrollment of students attending public school in a school district on the second and third reporting dates of the prior school year;
- (6) no later than May 1 of each calendar year, the phase two formula value shall be calculated for each school district in accordance with the following procedure:
- (a) the sum of the final prior five years net taxable value for a school district multiplied by nine ten-thousandths for that school district is calculated for each school district;
  - (b) the value calculated pursuant to Subparagraph (a) of this paragraph is added to the average unrestricted revenue used for capital expenditures pursuant to Subsection K of this section;
  - (c) the maximum allowable gross square foot per student multiplied by the replacement cost per square foot divided by forty-five is calculated for each school district;
  - (d) in fiscal years 2022 through 2024, the value calculated pursuant to Subparagraph (a) of this paragraph divided by the value calculated pursuant to Subparagraph (c) of



this paragraph is calculated for each school district and in fiscal year 2025 and subsequent fiscal years, the value calculated pursuant to Subparagraph (b) of this paragraph divided by the value calculated pursuant to Subparagraph (c) of this paragraph is calculated for each school district;

(e) in those instances in which the calculation pursuant to Subparagraph (d) of this paragraph yields a value equal to or greater than one, the phase two formula value shall be zero for the subject school district;

(f) in those instances in which the calculation pursuant to Subparagraph (d) of this paragraph yields a value of ninety-hundredths or more but less than one, the phase two formula value shall be one minus the value calculated in Subparagraph (d) of this paragraph; and

(g) in those instances in which the calculation pursuant to Subparagraph (d) of this paragraph yields a value less than ninety-hundredths, the phase two formula value shall be one minus the value calculated in Subparagraph (d) of this paragraph plus the school district population density factor;

(7) the state share of a project approved by the council shall be funded within available resources pursuant to the provisions of this paragraph. Except as provided in Section 22-24-5.7 NMSA 1978 and except as adjusted pursuant to Paragraph (9), (10), (11) or (12) of this subsection, the amount to be distributed from the fund for an approved project shall equal the total project cost multiplied by the following percentage, except that in no case shall the state share be less than six percent:

(a) for fiscal years prior to fiscal year 2020, the percentage shall be the phase one formula value;

(b) for fiscal year 2020, the percentage shall be the sum of eight-tenths multiplied by the phase one formula value and two-tenths multiplied by the phase two formula value;

(c) for fiscal year 2021, the percentage shall be the sum of six-tenths multiplied by the phase one formula value and four-tenths multiplied by the phase two formula value;

(d) for fiscal year 2022, the percentage shall be the sum of four-tenths multiplied by the phase one formula value and six-tenths multiplied by the phase two formula value;

(e) for fiscal year 2023, the percentage shall be the sum of two-tenths multiplied by the phase one formula value and eight-tenths multiplied by the phase two formula value; and

(f) for fiscal year 2024 and thereafter, the percentage shall be the phase two formula value;

(8) as used in this subsection:

(a) "governmental entity" includes an Indian nation, tribe or pueblo;

(b) "phase one formula value" for a state-chartered charter school means the phase one formula value calculated pursuant to Paragraph (5) of this subsection for the school district in which the state-chartered charter school is physically located;

(c) "phase two formula value" for a state-chartered charter school means the phase two formula value calculated pursuant to Paragraph (6) of this subsection for the school district in which the state-chartered charter school is physically located;

(d) "subject school district" means the school district that has submitted the application for funding and in which the approved public school capital outlay project will be located; and

(e) "total project cost" means the total amount necessary to complete the public school capital outlay project less any insurance reimbursement received by the school district for the project;

(9) the amount to be distributed from the fund for an approved project pursuant to Paragraph (7) of this subsection shall be reduced by the following procedure:

(a) the total of all legislative appropriations made after January 1, 2003 for nonoperating purposes either directly to the subject school district or to another governmental entity for the purpose of passing the money through directly to the subject school district, and not rejected by the subject school district, is calculated; provided that: 1) an appropriation made in a fiscal year shall be deemed to be accepted by a school district unless, prior to June 1 of that fiscal year, the school district notifies the department of finance and administration and the public education

department that the school district is rejecting the appropriation; 2) the total shall exclude any education technology appropriation made prior to January 1, 2005 unless the appropriation was on or after January 1, 2003 and not previously used to offset distributions pursuant to the Technology for Education Act; 3) the total shall exclude any appropriation previously made to the subject school district that is reauthorized for expenditure by another recipient; 4) the total shall exclude one-half of the amount of any appropriation made or reauthorized after January 1, 2007 if the purpose of the appropriation or reauthorization is to fund, in whole or in part, a capital outlay project that, when prioritized by the council pursuant to this section either in the immediately preceding funding cycle or in the current funding cycle, ranked in the top one hundred fifty projects statewide; 5) the total shall exclude the proportionate share of any appropriation made or reauthorized after January 1, 2008 for a capital project that will be jointly used by a governmental entity other than the subject school district. Pursuant to criteria adopted by rule of the council and based upon the proposed use of the capital project, the council shall determine the proportionate share to be used by the governmental entity and excluded from the total; and 6) unless the grant award is made to the state-chartered charter school or unless the appropriation was previously used to calculate a reduction pursuant to this paragraph, the total shall exclude appropriations made after January 1, 2007 for nonoperating purposes of a specific state-chartered charter school, regardless of whether the charter school is a state-chartered charter school at the time of the appropriation or later opts to become a state-chartered charter school;

(b) the percentage used for the subject school district for the applicable fiscal year pursuant to Paragraph (7) of this subsection is subtracted from one;

(c) the value calculated pursuant to Subparagraph (a) of this paragraph for the subject school district is multiplied by the amount calculated pursuant to Subparagraph (b) of this paragraph for that school district;

(d) the total amount of reductions for the subject school district previously made pursuant to Subparagraph (e) of this paragraph for other approved public school capital outlay projects is subtracted from the amount calculated pursuant to Subparagraph (c) of this paragraph; and

(e) the amount to be distributed from the fund pursuant to Paragraph (7) of this subsection shall be reduced by the amount calculated pursuant to Subparagraph (d) of this paragraph;

(10) the amount calculated pursuant to Paragraph (7) of this subsection, after any reduction pursuant to Paragraph (9) of this subsection, may be increased by an additional five percent if the council finds that the subject school district has been exemplary in implementing and maintaining a preventive maintenance program. The council shall adopt such rules as are necessary to implement the provisions of this paragraph;

(11) the council may adjust the amount of local share otherwise required if it determines that a school district has made a good-faith effort to use all of its local resources. Before making any adjustment to the local share, the council shall consider whether:

(a) the school district has insufficient bonding capacity over the next four years to provide the local match necessary to complete the project and, for all educational purposes, has a residential property tax rate of at least ten dollars (\$10.00) on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds;

(b) the school district: 1) has fewer than an average of eight hundred full-time-equivalent students on the second and third reporting dates of the prior school year; 2) has at least seventy percent of its students eligible for free or reduced-fee lunch; 3) has a share of the total project cost, as calculated pursuant to provisions of this section, that would be greater than fifty percent; and 4) for all educational purposes, has a residential property tax rate of at least seven dollars (\$7.00) on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds; or

(c) the school district: 1) has an enrollment growth rate over the previous school year of at least two and one-half percent; 2) pursuant to its five-year facilities plan, will be building a new school within the next two years; and 3) for all educational purposes, has a residential



property tax rate of at least ten dollars (\$10.00) on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds;

(12) the local match for the constitutional special schools shall be set at fifty percent for projects that qualify under the educational adequacy category and one hundred percent for projects that qualify in the support spaces category; provided that the council may adjust or waive the amount of any direct appropriation offset to or local share required for the constitutional special schools if an applicant constitutional special school has insufficient or no local resources available; and

(13) no application for grant assistance from the fund shall be approved unless the council determines that:

(a) the public school capital outlay project is needed and included in the school district's five-year facilities plan among its top priorities;

(b) the school district has used its capital resources in a prudent manner;

(c) the school district has provided insurance for buildings of the school district in accordance with the provisions of Section 13-5-3 NMSA 1978;

(d) the school district has submitted a five-year facilities plan that includes: 1) enrollment projections; 2) a current preventive maintenance plan that has been approved by the council pursuant to Section 22-24-5.3 NMSA 1978 and that is followed by each public school in the district; 3) the capital needs of charter schools located in the school district; and 4) projections for the facilities needed in order to maintain a full-day kindergarten program;

(e) the school district is willing and able to pay any portion of the total cost of the public school capital outlay project that, according to Paragraph (7), (9), (10) or (11) of this subsection, is not funded with grant assistance from the fund;

(f) the application includes the capital needs of any charter school located in the school district or the school district has shown that the facilities of the charter school have a smaller deviation from the statewide adequacy standards than other district facilities included in the application; and

(g) the school district has agreed, in writing, to comply with any reporting requirements or conditions imposed by the council pursuant to Section 22-24-5.1 NMSA 1978.

C. After consulting with the public school capital outlay oversight task force and other experts, the council shall regularly review and update statewide adequacy standards applicable to all school districts. The standards shall establish the acceptable level for the physical condition and capacity of buildings, the educational suitability of facilities and the need for education technology infrastructure. Except as otherwise provided in the Public School Capital Outlay Act, the amount of outstanding deviation from the standards shall be used by the council in evaluating and prioritizing public school capital outlay projects.

D. The acquisition of a facility by a school district or charter school pursuant to a financing agreement that provides for lease payments with an option to purchase for a price that is reduced according to lease payments made may be considered a public school capital outlay project and eligible for grant assistance under this section pursuant to the following criteria:

(1) no grant shall be awarded unless the council determines that, at the time of exercising the option to purchase the facility by the school district or charter school, the facility will equal or exceed the statewide adequacy standards and the building standards for public school facilities;

(2) no grant shall be awarded unless the school district and the need for the facility meet all of the requirements for grant assistance pursuant to the Public School Capital Outlay Act;

(3) the total project cost shall equal the total payments that would be due under the agreement if the school district or charter school would eventually acquire title to the facility;

(4) the portion of the total project cost to be paid from the fund may be awarded as one grant, but disbursements from the fund shall be made from time to time as lease payments become due;

(5) the portion of the total project cost to be paid by the school district or charter school may be paid from time to time as lease payments become due; and

(6) neither a grant award nor any provision of the Public School Capital Outlay Act creates a legal obligation for the school district or charter school to continue the lease from year to year or to purchase the facility.

E. In order to encourage private capital investment in the construction of public school facilities, the purchase of a privately owned school facility that is, at the time of application, in use by a school district may be considered a public school capital outlay project and eligible for grant assistance pursuant to this section if the council finds that:

(1) at the time of the initial use by the school district, the facility to be purchased equaled or exceeded the statewide adequacy standards and the building standards for public school facilities;

(2) at the time of application, attendance at the facility to be purchased is at seventy-five percent or greater of design capacity and the attendance at other schools in the school district that the students at the facility would otherwise attend is at eighty-five percent or greater of design capacity; and

(3) the school district and the capital outlay project meet all of the requirements for grant assistance pursuant to the Public School Capital Outlay Act; provided that, when determining the deviation from the statewide adequacy standards for the purposes of evaluating and prioritizing the project, the students using the facility shall be deemed to be attending other schools in the school district.

F. It is the intent of the legislature that grant assistance made pursuant to this section allows every school district to meet the standards developed pursuant to Subsection C of this section; provided, however, that nothing in the Public School Capital Outlay Act or the development of standards pursuant to that act prohibits a school district from using other funds available to the district to exceed the statewide adequacy standards.

G. Upon request, the council shall work with, and provide assistance and information to, the public school capital outlay oversight task force.

H. The council may establish committees or task forces, not necessarily consisting of council members, and may use the committees or task forces, as well as existing agencies or organizations, to conduct studies, conduct surveys, submit recommendations or otherwise contribute expertise from the public schools, programs, interest groups and segments of society most concerned with a particular aspect of the council's work.

I. Upon the recommendation of the authority, the council shall develop building standards for public school facilities and shall promulgate other such rules as are necessary to carry out the provisions of the Public School Capital Outlay Act.

J. No later than December 15 of each year, the council shall prepare a report summarizing its activities during the previous fiscal year. The report shall describe in detail all projects funded, the progress of projects previously funded but not completed, the criteria used to prioritize and fund projects and all other council actions. The report shall be submitted to the public education commission, the governor, the legislative finance committee, the legislative education study committee and the legislature.

K. As used in this section, "unrestricted revenue used for capital expenditures" means the amount of revenue certified by the department that was not restricted for a particular purpose and used by a school district to make capital outlay expenditures, as defined by the council's rules. No later than July 1, 2024, the council shall adopt rules identifying the procedure for calculating unrestricted revenue used for capital expenditures after consulting with school districts, including school districts with limited bonding capacity for capital projects, the department, the public school capital outlay oversight task force, the legislative education study committee and the legislative finance committee; provided that the rules shall provide for the exclusion of revenue raised pursuant to the Public School Capital Improvements Act and the Public School Buildings Act and expenditures related to teacher housing. For the purposes of the phase two formula value pursuant to Paragraph (6) of Subsection B of this section, the average unrestricted revenue used for capital expenditures shall be calculated as follows:

(1) in fiscal year 2025, the amount shall be equal to unrestricted revenue used for capital expenditures in the most recent prior fiscal year for which data is available multiplied by 0.2;

(2) in fiscal year 2026, the amount shall be equal to the average unrestricted revenue used for capital expenditures for the two most recent prior fiscal years for which data is available multiplied by 0.4;



(3) in fiscal year 2027, the amount shall be equal to the average unrestricted revenue used for capital expenditures for the three most recent prior fiscal years for which data is available multiplied by 0.6;

(4) in fiscal year 2028, the amount shall be equal to the average unrestricted revenue used for capital expenditures for the four most recent prior fiscal years for which data is available multiplied by 0.8; and

(5) in fiscal year 2029 and subsequent fiscal years, the amount shall be equal to the average unrestricted revenue used for capital expenditures for the five most recent prior fiscal years for which data is available.

**History:** 1953 Comp., § 77-24-13, enacted by Laws 1975, ch. 235, § 5; 1977, ch. 247, § 205; 1978, ch. 152, § 5; 1987, ch. 326, § 1; 1994, ch. 88, § 3; 2000 (2nd S.S.), ch. 19, § 2; 2001, ch. 338, § 8; 2003, ch. 147, § 10; 2004, ch. 125, § 9; 2005, ch. 274, § 8; 2006, ch. 95, § 5; 2007, ch. 366, § 6; 2008, ch. 90, § 2; 2009, ch. 258, § 5; 2010, ch. 104, § 2; 2012, ch. 53, § 2; 2014, ch. 28, § 3; 2015, ch. 93, § 4; 2018, ch. 66, § 2; 2019, ch. 180, § 5; 2021, ch. 52, § 8.

**Cross references.** — For PL 874 funds, see 20 USCS § 7701 et seq.

**The 2021 amendment**, effective July 1, 2021, changed the phase two formula value calculation when determining the local and state match for capital outlay projects, and defined the term "unrestricted revenue used for capital expenditures" as used in this section; in Subsection B, added new Subparagraph B(6)(b) and redesignated former Subparagraphs B(6)(b) through B(6)(f) as Subparagraphs B(6)(c) through B(6)(g), respectively, in Subparagraph B(6)(d), added "in fiscal year 2022 through 2024", after the second occurrence of "Subparagraph", changed "(b)" to "(c)", and after "each school district", added the remainder of the subparagraph, in Subparagraph B(6)(e), B(6)(f), B(6)(g), after "Subparagraph", changed "(c)" to "(d)", and added Subsection K.

**The 2019 amendment**, effective July 1, 2019, provided that the public school capital outlay council may award school security system project grants to school districts, and clarified the calculation of state and local shares of projects funded from the public school capital outlay fund; in Subsection B, in Paragraph B(2), added new Subparagraph B(2)(d) and redesignated former Subparagraph B(2)(d) as Subparagraph B(2)(e), in Paragraph B(5), after "formula", added "value", in Subparagraph B(5)(p), deleted "except as provided in Section 22-24-5.7 NMSA 1978 and except as adjusted pursuant to Paragraph (6), (10), (11) or (12) of this subsection, the amount to be distributed from the fund for an approved project shall equal the total project cost multiplied by" and added "the phase one formula value shall equal", and after each occurrence of "value", deleted "calculated", in Subparagraph B(5)(q), deleted subparagraph designation "1)", after "district on the", deleted "eightieth and one hundred twentieth days" and added "second and third reporting dates", and deleted Subparagraphs B(5)(q)2) and B(5)(q)3), deleted Paragraph B(6) and redesignated former Paragraph B(7) as Paragraph B(6), in Paragraph B(6), in the introductory clause, after "formula", added "value", deleted paragraph designation "(8)" and deleted "except as provided in Paragraph (6), (10), (11) or (12) of this subsection", added new paragraph designations "(7)" and "(8)", in Paragraph B(7), rewrote this paragraph to the extent that a detailed comparison is impracticable, in Paragraph B(8), added new Subparagraphs B(8)(b) and B(8)(c), new subparagraph designation "(d)" and new Subparagraph B(8)(e), added new Paragraph B(9), in Paragraph B(10), after "pursuant to", deleted "Subparagraph (p) of", after the next occurrence of "Paragraph", deleted "(5)" and added "(7)", and after the next occurrence of "Paragraph", deleted "(6)" and added "(9)",

in Subparagraph B(11)(b), after "students on the", deleted "eightieth and one hundred twentieth days" and added "second and third reporting dates", in Subparagraph B(13)(e), after "Paragraph", deleted "(5), (6), (7), (9)", and after "from the fund," deleted "provided that school district funds used for a project that was initiated after September 1, 2002 when the statewide adequacy standards were adopted, but before September 1, 2004 when the standards were first used as the basis for determining the state and school district share of a project, may be applied to the school district portion required for that property,".

**The 2018 amendment**, effective May 16, 2018, changed the capital outlay funding formula for determination of state-local matches, and made stylistic and conforming changes; in Subsection B, Subparagraph B(2)(b), after "identified in Section", deleted "3 of this 2015 act" and added "22-24-6 NMSA 1978", in Paragraph B(5), in the introductory clause, deleted "except as provided in Paragraph (6), (8), (9) or (10) of this subsection, the state share of a project approved and ranked by the council shall be funded within available resources pursuant to the provisions of this paragraph", and after "calendar year", deleted "a value" and added "the phase one formula"; in Subparagraph B(5)(p), after "Paragraph (6)", deleted "(8), (9) or" and after "(10)", added "(11) or (12)"; added new Paragraphs B(7) and B(8) and redesignated former Paragraphs B(7) through B(11) as Paragraphs B(9) through B(13), respectively; in Subparagraph B(13)(e), after "Paragraph (5), (6)", deleted "(8) or (9)" and added "(10) or (11)"; and in Subsection I, after "recommendation of the", deleted "public school facilities".

**The 2015 amendment**, effective July 1, 2015, authorized the public school capital outlay council to award grants to school districts for the purpose of repairing, renovating or replacing public school building systems; added Subsection B, Paragraph (2)(b) and redesignated the succeeding subparagraphs accordingly; and in Subsection B, Paragraph (6)(a), after "public education department that the", added "school".

**The 2014 amendment**, effective March 6, 2014, permitted the public school outlay council to adjust the amount of the local share if it determines that a school district has made a good-faith effort to use all of its local resources; in Subsection B, Paragraph (6), Subparagraph (a), after "2) the total shall exclude any", deleted "educational" and added "education"; in Subsection B, Paragraph (9), in the introductory sentence, after "school district has", deleted "used" and added "made a good-faith effort to use"; and in Subsection C, in the second sentence, after "and the need for", deleted "technological" and added "education technology".

**The 2012 amendment**, effective May 16, 2012, made the school for the blind and visually impaired and the school for the deaf, including facilities that are necessary for their educational missions, eligible for public school capital outlay funding; permitted the council to waive local matching if the schools have insufficient or no local resources available; and in Subsection B, in Paragraph (2), added Subparagraph (b); in Paragraph (5), in the first sentence, after the paragraph



number "(9)", added "or (10)"; in Paragraph (5), in Subparagraph (p), after the paragraph number "(9)", added "or (10)"; in Paragraph (6), deleted former Subparagraph (b), which required that the amount to be distributed for a project be reduced by the amount of federal money received by the school district for nonoperating purposes; in Paragraph (6), deleted former Subparagraph (c), which required that the amount to be distributed for a project be reduced by the amount of state appropriations to the school district for nonoperating purposes; and added Paragraph (10).

**Laws 2010, ch. 104, § 2**, effective March 9, 2010, would have amended 22-24-5 NMSA 1978 as follows: in Subsection B(5), after "Paragraph (6), (8), (9)", added "or (11)"; in Subsection B(5)(p), after "Paragraph (6), (8), (9)", added "or (11)"; and added Subsection B(11), including Subparagraphs (a) and (b). These changes were line-item vetoed by the governor.

**The 2009 amendment**, effective April 8, 2009, in Paragraph (5) of Subsection B, added the reference to Paragraph (11); in Subparagraph (p) of Paragraph (5) of Subsection B, added the reference to Paragraph (11); added Subparagraphs (b) and (c) of Paragraph (6) of Subsection B; added Paragraph (11) of Subsection B; in Paragraph (1) of Subsection D, after "awarded unless the council", deleted "finds that, prior to the purchase of" and added "determines that, at the time of exercising the option to purchase"; and in Subsection F, after "prohibits a school district from using" changed "local funds to exceed" to "other funds available to the district to exceed".

**The 2008 amendment**, effective May 14, 2008, added the reference to Paragraph (9) of Subsection B in Paragraph (5), Subparagraph (p) of Paragraph (5) and Subparagraph (e) of Paragraph (10) of Subsection B; added item 5) of Subparagraph (a) of Paragraph (6) of Subsection B; and added Subparagraph (a) of Paragraph (7) and Paragraph (8) of Subsection B.

**The 2007 amendment**, effective July 1, 2007, amended Subsection B to: add Subparagraph (c) of Paragraph (3); add item (3) of Subparagraph (q) of Paragraph (5) of Subsection B to define "value calculated for the subject school district"; and add items (2) through (5) of Subparagraph (a) of Paragraph (6); and, added new Subsections D and E.

**The 2006 amendment**, effective March 6, 2006, deleted the provision in Subsection A that provided an order of priority and funding of projects in the two years beginning July 1, 2004; in Subsection B, deleted the reference to Subsection A of this section; in Subparagraph (p) of Paragraph (5) of Subsection B, added the exception in Section 22-24-5.7 NMSA 1978 and deleted the provision that provided for a formula to determine the distribution for calendar

year 2005; and in Subparagraph (b) of Paragraph (7) of Subsection B, deleted "fortieth" before "eightieth".

**The 2005 amendment**, effective April 6, 2005, changed "three years" to "two years" and changed "projects" to "specific projects" in Subsection A; provided in Subsection A that the order of projects that were partially funded shall exclude any expansion of the scope of the projects; changed the statutory reference in Subsection B and revised the funding priorities in Subsection B.

**The 2004 amendment**, effective May 19, 2004, replaced Subsections A and B with new Subsection A; designated former Subsection C as the last sentence of new Subsection A and added new language prior to Paragraph (1) of former Subsection C, now Subsection B; redesignated former Subsection D as Subsection C; redesignated former Subsections E through I as Subsections D through H; amended Subsection G to add the requirement of recommendation of the authority at the beginning of the subsection; and in Subsection H, changed "state board" to "public education commission" and deleted "each member of" preceding "the legislature".

**The 2003 amendment**, effective April 4, 2003, inserted Paragraph B(2) and redesignated former Paragraph B(2) as B(3); rewrote Paragraph C(5); inserted present Paragraphs C(6) and C(7), and redesignated the remaining paragraphs accordingly; substituted "that has been approved by the council pursuant to Section 22-24-5.3 NMSA 1978 and that is followed by" for "to which the school adheres for" in Subparagraph C(9)(d); substituted "(6) or (8) of this subsection" for "established by law" in Subparagraph C(9)(e); and in Subsection D, deleted "no later than September 1, 2002"; inserted "and regularly review and update" preceding "statewide adequacy standards" in the first sentence and substituted "December 15" for "December 1" in Subsection I.

**The 2001 amendment**, effective April 5, 2001, rewrote the section.

**The 2000 amendment**, effective April 12, 2000, inserted "school" at the beginning of Subsection A(4) and in the second sentence of Subsection B; in Subsection A(6), added "unless a determination and certification have been made pursuant to Subsection D of this section" to the preliminary language, designated the existing provisions of the subsection as Subparagraph (a) and added Subparagraph (b); in Subsection B, added Subsection B(1) and designated part of former Subsection B as Paragraph (2); and added Subsections D and E.

**The 1994 amendment**, effective May 18, 1994, deleted "all" preceding "available resources" in Paragraph A(2) and added Paragraphs A(6) and A(7), making related stylistic changes.

## 22-24-5.1. Council assistance and oversight.

In providing grant assistance pursuant to Section 22-24-5 NMSA 1978, the council shall:

A. assist school districts in identifying critical capital outlay needs and in preparing grant applications;

B. take such actions as are necessary to assist school districts in implementing the projects for which grants are made, including assistance with the preparation of requests for bids or proposals, contract negotiations and contract implementation;

C. take such actions as are necessary to ensure cost savings and efficiencies for those school districts that are not large enough to maintain their own construction management staff; and

D. include such reporting requirements and conditions and take such actions as are necessary to ensure that the grants are expended in the most prudent manner possible and consistent with the original purpose for which they were made. In order to ensure compliance with the intent of this subsection, the council may:

(1) access the premises of a project and review any documentation relating to a project;



(2) withhold all or part of the amount of grant assistance available for a project for grounds established by rule of the council; and

(3) if it determines that a project is repeatedly in substantial noncompliance with any reporting requirement or condition, take over the direct administration of the project until the project is completed.

**History:** 1978 Comp., § 22-24-5.1, enacted by Laws 2001, ch. 338, § 9.

## 22-24-5.2. Repealed.

**Repeal.** — Laws 2004, ch. 125, § 20 repealed 22-24-5.2 NMSA 1978, as enacted by Laws 2001, ch. 328, § 3, relating to effect upon school district indebtedness requirement,

effective May 19, 2004. For provisions of former section, see the 2003 NMSA 1978 on *NMOneSource.com*.

## 22-24-5.3. Preventive maintenance plans; guidelines; approval.

A. The council shall adopt guidelines that will assist school districts in the development and implementation of preventive maintenance plans. In developing the guidelines, the council shall ensure that they are not overly complex, that they are user-friendly and that they take into account the geographic and size variations of the districts throughout the state. The guidelines shall include the major requirements for:

- (1) establishing and implementing a preventive maintenance plan;
- (2) necessary budgets, personnel and staff support;
- (3) staff training; and
- (4) evaluation and auditing.

B. The council shall develop, implement and maintain a uniform web-based facility information management system. Within available appropriations, the council shall develop a schedule and procedure for phasing all school districts into the system, including those school districts not applying for grant assistance pursuant to the Public School Capital Outlay Act. The facility information management system shall:

- (1) provide a centralized database of maintenance activities to allow for monitoring, supporting and evaluating school-level and districtwide maintenance efforts;
- (2) provide comprehensive maintenance request and expenditure information to the school districts and the council; and
- (3) facilitate training of facilities maintenance and management personnel.

C. To the extent resources are available, the council shall provide assistance to districts in developing and implementing a preventive maintenance plan.

D. For project allocation cycles beginning after September 1, 2003, a school district shall not be eligible for funding pursuant to Section 22-24-5 NMSA 1978 unless:

- (1) the school district has a preventive maintenance plan that has been approved by the council; and
- (2) if applicable, the school district is participating in the implementation of the facility information management system.

E. As used in this section, "preventive maintenance" means the regularly scheduled repair and maintenance needed to keep a building component operating at peak efficiency and to extend its useful life. "Preventive maintenance" includes scheduled activities intended to prevent breakdowns and premature failures, including periodic inspections, lubrication, calibrations and replacement of expendable components of equipment.

**History:** 1978 Comp., § 22-24-5.3, enacted by Laws 2003, ch. 147, § 5; 2005, ch. 274, § 9.

**The 2005 amendment,** effective April 6, 2005, added Subsections B(1) through (3) to provide that the council shall develop, implement and maintain a uniform

web-based facility information management system; and added Subsection D(2) to provide that a school district shall not be eligible for funding unless, if applicable, the school district is participating in the implementation of the facility information management system.

#### **22-24-5.4. Recalcitrant school districts; court action to enforce constitutional compliance; imposition of property tax.**

A. The council may bring an action against a school district pursuant to the provisions of this section if, based upon information submitted to the council by the authority, the council determines that:

(1) the physical condition of a public school facility in the school district is so inadequate that the facility or the education received by students attending the facility is below the minimum required by the constitution of New Mexico;

(2) the school district is not taking the necessary steps to bring the facility up to the constitutionally required minimum; and

(3) either:

(a) the school district has not applied for the grant assistance necessary to bring the facility up to minimum constitutional standards; or

(b) the school district is unwilling to meet all of the requirements for the approval of an application for grant assistance pursuant to Paragraph (13) of Subsection B of Section 22-24-5 NMSA 1978.

B. An action brought pursuant to this section shall be brought by the council in the name of the state against the school district in the district court for Santa Fe county.

C. After a hearing and consideration of the evidence, if the court finds that the council's determination pursuant to Subsection A of this section was correct, the court shall:

(1) order the council to expend sufficient resources necessary to bring the facility up to the minimum level required by the constitution of New Mexico;

(2) order the school district to comply with Paragraph (13) of Subsection B of Section 22-24-5 NMSA 1978 and to take all other actions necessary to facilitate the completion of the project ordered pursuant to Paragraph (1) of this subsection; and

(3) enter a judgment against the school district for court costs and attorney fees and the necessary amount to satisfy the school district share, as determined by the formula prescribed by Subsection B of Section 22-24-5 NMSA 1978, for the project ordered pursuant to Paragraph (1) of this subsection.

D. The amount of a judgment entered against a school district pursuant to Paragraph (3) of Subsection C of this section is a public debt of the school district. If the court finds that the debt cannot be satisfied with available school district funds, other than funds needed for the operation of the public schools and other existing obligations, the court shall order the imposition of a property tax on all taxable property allocated to the school district at a rate sufficient to pay the judgment, with accrued interest, within a reasonable time as determined by the court. After paying court costs and attorney fees, amounts received pursuant to this subsection shall be deposited by the council into the fund.

**History:** Laws 2004, ch. 125, § 10; 2008, ch. 90, § 3; 2019, ch. 180, § 6.

**The 2019 amendment**, effective July 1, 2019, made technical changes to conform with amendments to the Public School Capital Outlay Act; in Subsection A, deleted "public school facilities" preceding "authority"; and in Subsection C, in Paragraph C(2), after "Paragraph", deleted "(10)" and added "(13)".

**The 2008 amendment**, effective May 14, 2008, changed the reference from Paragraph (9) to Paragraph (10) of Subsection B of Section 22-24-5 NMSA 1978 in Subparagraph (b) of Paragraph (3) of Subsection A and in Paragraph (2) of Subsection C.

#### **22-24-5.5. Preventive maintenance plans; participation in facility information management system.**

Each school district shall:

A. develop and implement a preventive maintenance plan following guidelines adopted by the public school capital outlay council pursuant to Section 22-24-5.3 NMSA 1978; and



B. participate in the facility information management system pursuant to the schedule adopted by the public school capital outlay council.

**History:** Laws 2005, ch. 274, § 16.

**Effective dates.** — Laws 2005, ch. 274, § 20 made the act effective April 6, 2005.

## **22-24-5.6. Outstanding deficiencies at certain state educational institutions.**

A. In consultation with the higher education department and the applicable board of regents, and after reviewing the existing five-year facilities plan and the facilities condition assessment, the public school facilities authority shall verify the assessed outstanding health, safety or infrastructure deficiencies at the constitutional special schools and shall develop a plan to correct the deficiencies.

B. The council may approve allocations from the fund and, working with the higher education department and the applicable board of regents, enter into construction contracts to correct the deficiencies.

C. The council shall establish oversight functions for the public school facilities authority and such other guidelines and conditions as it deems necessary to ensure that the allocations from the fund pursuant to this section are expended in the most prudent manner possible and consistent with the original purpose.

D. As used in the Public School Capital Outlay Act, "public school capital outlay project", "capital outlay project" or "project" includes a program for the correction of deficiencies at the constitutional special schools pursuant to this section.

**History:** Laws 2006, ch. 95, § 6; 2009, ch. 37, § 1; 2012, ch. 53, § 3.

**The 2012 amendment**, effective May 16, 2012, included the school for the blind and visually impaired and the school for the deaf in the defined term "constitutional special schools"; in Subsection A, after "deficiencies at the", deleted "New Mexico school for the blind and visually impaired and the New Mexico school for the deaf" and added "constitutional special schools"; in Subsection D, after "deficiencies at the", deleted "New Mexico school for the blind and visually impaired and the New Mexico

school for the deaf" and added "constitutional special schools"; and deleted former Subsection E, which defined "school district" for purposes of Sections 22-24-5.1, 22-24-5.3, 22-24-5.5, and Paragraph (10) of 22-24-5 NMSA 1978 to be the school for the blind and visually impaired and the school for the deaf.

**The 2009 amendment**, effective March 31, 2009, in Subsection B, deleted "To the extent that money has been appropriated for such purposes"; in Subsection D, changed "handicapped" to "impaired"; and added Subsection E.

## **22-24-5.7. Local match provisions for qualified high priority projects.**

A. For a qualified high priority project, if money has been specifically appropriated for the purposes of this section, and if the school district so requests, the money may be used to pay both the state share, as calculated by Subsection B of Section 22-24-5 NMSA 1978 and all or a portion of the district share, subject to the following criteria:

(1) the amount paid as the district's share plus any amount added pursuant to Paragraph (3) of this subsection shall be recouped by offsetting future allocations that otherwise would be made from the fund for the state share of projects qualifying for a grant award pursuant to Subsections B and C of Section 22-24-5 NMSA 1978;

(2) except as provided in Paragraph (6) of this subsection, once a project within a district has been funded pursuant to the provisions of this section, then, until the amount paid as the district's share plus any amount added pursuant to Paragraph (3) of this subsection is fully recouped, no standard-based grant awards from the fund shall be made to the district and the district shall be solely responsible for using its local resources to bring those facilities, that would otherwise be eligible for allocations from the fund pursuant to Section 22-24-5 NMSA 1978, up to the statewide adequacy standards;

(3) in determining the amount to be recouped pursuant to Paragraphs (1) and (2) of this subsection, any legislative appropriations for nonoperating purposes made either directly to the school district or to another governmental entity for the purpose of passing the money directly to

the school district and not rejected by the school district shall be added to the amount advanced from the fund as the district's share for a project;

(4) the amount to be recouped pursuant to Paragraph (1) of this subsection may be reduced by payments from the school district with cash balances and other available district resources that may legally be used for such payments;

(5) allocations from the fund for the district share shall only be made if the council finds that the school district is likely to complete the project within thirty-six months after the allocation for the district share is made available to the district; and

(6) notwithstanding the requirements of Paragraph (2) of this section, two projects within a school district may be funded pursuant to this section before the recoupment process under that paragraph commences, if:

(a) both projects qualify pursuant to the provisions of Paragraph (2) of Subsection B of this section; or

(b) both projects qualify during the same awards cycle, beginning on or after July 1, 2006.

B. As used in this section, "qualified high priority project" means a project:

(1) that is approved for a grant award pursuant to Section 22-24-5 NMSA 1978 during an awards cycle occurring in 2006 and subsequent award cycles and is located in a high-growth area, as designated by the council; or

(2) that was approved for a grant award pursuant to Section 22-24-5 NMSA 1978 during the 2004-2005 or 2005-2006 awards cycle but for which the school district, as of July 1, 2006, has not obtained funding for the district share and is located in a high-growth area, as designated by the council.

C. The council may designate an area that equals a contiguous attendance area of one or more existing schools as a "high-growth area" if the council determines that:

(1) within five years of the grant allocation decision, the estimated occupancy rate of the proposed new school would be seventy percent or more of the design capacity;

(2) at the time of the application, the attendance at the existing schools in the high-growth area from which students at the new school will be drawn is above design capacity; and

(3) for the period of five years after the grant allocation decision the attendance at those existing schools will be maintained at ninety-five percent or greater of design capacity.

**History:** Laws 2006, ch. 95, § 7; 2019, ch. 180, § 7.  
The 2019 amendment, effective July 1, 2019, made technical changes to conform with amendments to the

Public School Capital Outlay Act; in Subsection A, after "calculated by", deleted "Paragraphs (5) and (6) of".

## 22-24-5.8. Adequacy standards; constitutional special schools.

Until July 1, 2018, the council may apply the adequacy standards to the constitutional special schools on a building-by-building basis rather than the entire campus. After that time, the adequacy standards rankings shall be based on the facilities condition of the entire campus.

**History:** Laws 2012, ch. 53, § 4. **Effective dates.** — Laws 2012, ch. 53 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 16, 2012, 90 days after the adjournment of the legislature.

## 22-24-6. Council created; organization; duties.

A. There is created the "public school capital outlay council", consisting of the:

- (1) secretary of finance and administration or his designee;
- (2) state superintendent [secretary] or his designee;
- (3) the governor or his designee;
- (4) president of the New Mexico school boards association or his designee;
- (5) the director of the construction industries division of the regulation and licensing department or his designee;



- (6) the president of the state board or his designee;
- (7) the director of the legislative education study committee or his designee;
- (8) the director of the legislative finance committee or his designee; and
- (9) the director of the legislative council service or his designee.

B. The council shall investigate all applications for assistance from the fund and shall certify the approved applications to the secretary of finance and administration for distribution of funds.

C. The council shall elect a chairman from among the members. The council shall meet at the call of the chairman.

D. The department of education [public education department] shall account for all distributions and shall make annual reports to the legislative education study committee and to the legislative finance committee.

**History:** 1953 Comp., § 77-24-14, enacted by Laws 1975, ch. 235, § 6; 1977, ch. 247, § 206; 1978, ch. 152, § 6; 1980, ch. 151, § 51; 1988, ch. 64, § 43; 1993, ch. 226, § 51; 1994, ch. 88, § 4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**The 1994 amendment,** effective May 18, 1994, substituted "state superintendent" for "superintendent of public instruction" in Paragraph A(2), deleted "of education"

following "state board" in Paragraph A(6), and added Paragraphs A(8) and (9), making related stylistic changes.

**The 1993 amendment,** effective July 1, 1993, in Subsection A, added "or his designee" at the end of Paragraphs (1), (2) and (5) and deleted "state" preceding "superintendent" at the beginning of Paragraph (2).

**The 1988 amendment,** effective May 18, 1988, substituted "the governor or his designee" for "director of the public school finance division" in Subsection A(3); made a minor stylistic change in Subsection A(4); substituted "regulation and licensing department" for "commerce and industry department" in Subsection A(5); added Subsections A(6) and (7); inserted "shall" in Subsection B; and substituted "department of education" for "council shall employ a staff director who" in Subsection D.

## 22-24-6.1. Procedures for a state-chartered charter school.

All of the provisions of the Public School Capital Outlay Act apply to an application by a state-chartered charter school for grant assistance for a capital project except:

A. the portion of the cost of the project to be paid from the fund shall be calculated pursuant to Subsection B of Section 22-24-5 NMSA 1978 using data from the school district in which the state-chartered charter school is located; and

B. in calculating a reduction pursuant to Paragraph (9) of Subsection B of Section 22-24-5 NMSA 1978, the amount to be used in Subparagraph (a) of that paragraph shall equal the total of all legislative appropriations made after January 1, 2007 for nonoperating expenses either directly to the charter school or to another governmental entity for the purpose of passing the money through directly to the charter school, regardless of whether the charter school was a state-chartered charter school at the time of the appropriation or later opted to become a state-chartered charter school, except that the total shall not include any such appropriation if, before the charter school became a state-chartered charter school, the appropriation was previously used to calculate a reduction pursuant to Paragraph (9) of Subsection B of Section 22-24-5 NMSA 1978.

**History:** Laws 2007, ch. 214, § 1; 2009, ch. 258, § 6; 2019, ch. 180, § 8.

**The 2019 amendment,** effective July 1, 2019, made technical changes to conform with amendments to the Public School Capital Outlay Act; in Subsection B, after

the first occurrence of "Paragraph", deleted "(6) and added "(9)", deleted paragraph designation "(1)" and Paragraph B(2); and deleted former Subsection C.

**The 2009 amendment,** effective April 8, 2009, added Paragraph (2) of Subsection B.

## 22-24-6.2. Repealed.

**Repeals.** — Laws 2007, ch. 214, § 4 repealed 22-24-6.2 NMSA 1978, as enacted by Laws 2007, ch. 214, § 2, relating to public facilities for charter schools, effective July 1,

2012. For provisions of former section, see the 2011 NMSA 1978 on [NMSAOneSource.com](http://NMSAOneSource.com).

## 22-24-7. Public school capital outlay oversight task force; creation; staff.

A. The "public school capital outlay oversight task force" is created. The task force consists of twenty-five members as follows:

- (1) the secretary of finance and administration or the secretary's designee;
- (2) the secretary of public education or the secretary's designee;
- (3) the speaker of the house of representatives or the speaker's designee;
- (4) the president pro tempore of the senate or the president pro tempore's designee;
- (5) the chairs of the house appropriations and finance committee, the senate finance committee, the senate education committee and the house education committee or their designees;
- (6) two minority party members of the house of representatives, appointed by the New Mexico legislative council;
- (7) two minority party members of the senate, appointed by the New Mexico legislative council;
- (8) a member of the interim legislative committee charged with the oversight of Indian affairs, appointed by the New Mexico legislative council, provided that the member shall rotate annually between a senate member and a member of the house of representatives;
- (9) a member of the house of representatives and a member of the senate who represent districts with school districts receiving federal funds commonly known as "PL 874" funds or "impact aid", appointed by the New Mexico legislative council;
- (10) two public members who have expertise in education and finance appointed by the speaker of the house of representatives;
- (11) two public members who have expertise in education and finance appointed by the president pro tempore of the senate;
- (12) three public members, two of whom are residents of school districts that receive grants from the federal government as assistance to areas affected by federal activity authorized in accordance with Title 20 of the United States Code, appointed by the governor; and
- (13) three superintendents of school districts or their designees, two of whom are from school districts that receive grants from the federal government as assistance to areas affected by federal activity authorized in accordance with Title 20 of the United States Code, appointed by the New Mexico legislative council in consultation with the governor.

B. The chair of the public school capital outlay oversight task force shall be elected by the task force. The task force shall meet at the call of the chair, but no more than four times per calendar year.

C. Non-ex-officio members of the task force shall serve at the pleasure of their appointing authorities.

D. The public members of the public school capital outlay oversight task force shall receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978].

E. The legislative council service, with assistance from the public school facilities authority, the department of finance and administration, the public education department, the legislative education study committee and the legislative finance committee, shall provide staff for the public school capital outlay oversight task force.

**History:** Laws 2001, ch. 338, § 12; 2004, ch. 125, § 16; 2005, ch. 274, § 10; 2007, ch. 366, § 11; 2008, ch. 90, § 5.

**Cross references.** — For PL 874 funds, see 20 USCS § 7701 et seq.

**Temporary provisions.** — Laws 2010, ch. 104, § 5 provided that during calendar year 2010, the public school capital outlay oversight task force shall continue the working group studying issues relating to performance-based procurement for public school capital outlay projects, and shall report its findings and recommendations no later than December 15, 2010 to the governor and the legislature.

**The 2008 amendment,** effective May 14, 2008, in Subsection A, changed the number of members from

twenty-six to twenty five and deleted the state investment officer or the state investment officer's designee.

**The 2007 amendment,** effective July 1, 2007, changed the number of members of the public school capital outlay oversight task force to twenty-six and added Paragraph (10) of Subsection A to provide new legislative members representing PL 874 school districts.

**The 2005 amendment,** effective April 6, 2005, changed the name of the task force to the public school capital outlay oversight task force and the number of members from twenty to twenty four in Subsection A; deleted the dean of the university of New Mexico school of law or the dean's designee as a member in Subsection A; added in Subsections A(3), (4) and (9) respectively, the speaker of the house of representatives or the speaker's designee, the president



pro tempore of the senate or the president pro tempore's designee, and a member of the interim legislative committee charged with the oversight of Indian affairs as members of the task force; provided in Subsection A(9) that the member who is a member of the committee charged with Indian affairs shall rotate annually between a senate member and a house of representatives member; deleted the former requirement in Subsection A(10) that three members be public members who have expertise in education and finance; provided in Subsection A(12) that two of the public members must reside in school districts that receive federal

grants as assistance to areas affected by federal activity; provided in Subsection A(13) that two superintendents must be from school districts that receive federal grants as assistance to areas affected by federal activity; provided in Subsection B that the task force shall meet no more than four times per calendar year; deleted the former provision of Subsection C that members shall serve through June 30, 2005 and that the task force is terminated on July 1, 2005; and provided in Subsection C that non-ex-officio members shall serve at the pleasure of their appointing authorities.

## **22-24-8. Public school capital outlay oversight task force; duties.**

The public school capital outlay oversight task force shall:

- A. monitor the overall progress of bringing all public schools up to the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act;
- B. monitor the progress and effectiveness of programs administered pursuant to the Public School Capital Outlay Act and the Public School Capital Improvements Act [Chapter 22, Article 25 NMSA 1978];
- C. monitor the existing permanent revenue streams to ensure that they remain adequate long-term funding sources for public school capital outlay projects;
- D. oversee the work of the public school capital outlay council and the public school facilities authority as they perform functions pursuant to the Public School Capital Outlay Act, particularly as they implement the statewide-based process for making grant awards;
- E. appoint an advisory committee to study the feasibility of implementing a long-range planning process that will facilitate the interaction between charter schools and their school districts on issues relating to facility needs; and
- F. before the beginning of each regular session of the legislature, report the results of its analyses and oversight and any recommendations to the governor and the legislature.

**History:** Laws 2001, ch. 338, § 13; 2004, ch. 125, § 17; 2005, ch. 274, § 11.

**Temporary provisions.** — Laws 2009, ch. 37, § 2 provided that during calendar year 2009, the public school capital outlay oversight task force shall study reasonable alternatives for determining the local matching funds to be required from the New Mexico school for the blind and visually impaired and the New Mexico school for the deaf for a grant award pursuant to the Public School Capital Outlay Act and shall report its findings and recommendations to the second session of the forty-ninth legislature.

The 2005 amendment, effective April 6, 2005, added Subsection A to provide that the task force shall monitor the progress of bringing public schools up to the statewide adequacy standards; deleted the former requirement in Subsection B that the task force review the condition index and the methodology used for ranking projects; provided in Subsection C that the task force monitor revenue streams to ensure that they remain adequate; provided in Subsection D that the task force oversee the work of the council and the authority; added Subsection E to provide that the task force appoint an advisory committee to study the feasibility of a long-range planning process to facilitate interaction between charter schools and school districts.

## **22-24-9. Public school facilities authority; creation; powers and duties.**

A. The "public school facilities authority" is created under the council. The authority shall be headed by a director, selected by the council, who shall be versed in construction, architecture or project management. The director may hire no more than two deputies with the approval of the council, and, subject to budgetary constraints set out in Subsection G of Section 22-24-4 NMSA 1978, shall employ or contract with such technical and administrative personnel as are necessary to carry out the provisions of this section. The director, deputies and all other employees of the authority shall be exempt from the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978].

B. The authority shall:

- (1) serve as staff to the council;
- (2) as directed by the council, provide those assistance and oversight functions required of the council by Section 22-24-5.1 NMSA 1978;
- (3) assist school districts with:

- (a) the development and implementation of five-year facilities plans and preventive maintenance plans;
  - (b) procurement of architectural and engineering services;
  - (c) management and oversight of construction activities; and
  - (d) training programs;
- (4) conduct ongoing reviews of five-year facilities plans, preventive maintenance plans and performance pursuant to those plans;
- (5) as directed by the council, assist school districts in analyzing and assessing their space utilization options;
- (6) ensure that public school capital outlay projects are in compliance with applicable building codes;
- (7) conduct on-site inspections as necessary to ensure that the construction specifications are being met and periodically inspect all of the documents related to projects;
- (8) require the use of standardized construction documents and the use of a standardized process for change orders;
- (9) have access to the premises of a project and any documentation relating to the project;
- (10) after consulting with the department, recommend building standards for public school facilities to the council and ensure compliance with building standards adopted by the council;
- (11) notwithstanding the provisions of Subsection D of Section 22-24-6 NMSA 1978, account for all distributions of grant assistance from the fund for which the initial award was made after July 1, 2004, and make annual reports to the department, the governor, the legislative education study committee, the legislative finance committee and the legislature;
- (12) maintain a database of the condition of school facilities and maintenance schedules;
- (13) as a central purchasing office pursuant to the Procurement Code [13-1-28 through 13-1-199 NMSA 1978] and as directed by the council, select contractors and enter into and administer contracts for certain emergency projects funded pursuant to Subparagraph (b) of Paragraph (2) of Subsection B of Section 22-24-5 NMSA 1978; and
- (14) ensure that outstanding deficiencies are corrected pursuant to Section 22-24-4.1 NMSA 1978. In the performance of this duty, the authority:
- (a) shall work with school districts to validate the assessment of the outstanding deficiencies and the projected costs to correct the deficiencies;
  - (b) shall work with school districts to provide direct oversight of the management and construction of the projects that will correct the outstanding deficiencies;
  - (c) shall oversee all aspects of the contracts entered into by the council to correct the outstanding deficiencies;
  - (d) may conduct on-site inspections while the deficiencies correction work is being done to ensure that the construction specifications are being met and may periodically inspect all of the documents relating to the projects;
  - (e) may require the use of standardized construction documents and the use of a standardized process for change orders;
  - (f) may access the premises of a project and any documentation relating to the project; and
  - (g) shall maintain, track and account for deficiency correction projects separately from other capital outlay projects funded pursuant to the Public School Capital Outlay Act.

C. All actions taken by the authority shall be consistent with educational programs conducted pursuant to the Public School Code [Chapter 22 [except Article 5A] NMSA 1978]. In the event of any potential or perceived conflict between a proposed action of the authority and an educational program, the authority shall consult with the secretary.

D. A school district, aggrieved by a decision or recommendation of the authority, may appeal the matter to the council by filing a notice of appeal with the council within thirty days of the authority's decision or recommendation. Upon filing of the notice:

- (1) the decision or recommendation of the authority shall be suspended until the matter is decided by the council;
- (2) the council shall hear the matter at its next regularly scheduled hearing or at a special hearing called by the chair for that purpose;



(3) at the hearing, the school district, the authority and other interested parties may make informal presentations to the council; and

(4) the council shall finally decide the matter within ten days after the hearing.

**History:** Laws 2003, ch. 147, § 1; 2004, ch. 125, § 11; 2005, ch. 274, § 12; 2006, ch. 95, § 8; 2010, ch. 104, § 4.

**The 2010 amendment**, effective March 9, 2010, added Paragraph (13) of Subsection B and renumbered succeeding paragraphs.

**The 2006 amendment**, effective March 6, 2006, in Subsection A, added all other employees of the authority and deleted the provision that subjected all other employees to the Personnel Act after July 1, 2006.

**The 2005 amendment**, effective April 6, 2005, provided in Subsection A that the hiring of deputies is subject to the budgetary constraints set out in Subsection G of Section 22-24-4 NMSA 1978 and that after July 1, 2006, all other employees shall be subject to the Personnel Act; and added Subsection B(11) to provide that the authority shall account for all distributions of grant assistance from

the fund awarded after July 1, 2004 and make annual reports to the specified agencies or officers.

**The 2004 amendment**, effective May 19, 2004, amended Subsection A to delete "public school capital outlay" preceding "council", amended Subsection B to add new Paragraph (5), redesignated former Paragraphs (6) through (11) of Subsection B as Paragraphs (7) through (12), amended Paragraph (8) to delete "where appropriate" before "require" and amended Paragraph (10) to delete "of education, develop" following "education" and insert in its place "recommend", to add "to the council" after "facilities", to replace "those" with "building" preceding "standards" and to insert "adopted by the council at the end of the paragraph, amended Subsection C to substitute "secretary of public education" for "state superintendent", and added Subsection D.

## 22-24-10. Public facilities to be used by charter schools; assessment.

A. Prior to the occupancy of a public facility by a charter school, the charter school shall notify the council of the intended use, together with such other information as required by rule of the council.

B. Within sixty days of the notification to the council, the public school facilities authority shall assess the public facility in order to determine the extent of compliance with the statewide adequacy standards and the amount of outstanding deviation from those standards. The results of the assessment shall be submitted to the charter school, the school district in which the charter school is located and the council.

C. Once assessed pursuant to Subsection B of this section, the public facility shall be prioritized and eligible for grants pursuant to the Public School Capital Outlay Act in the same manner as all other public schools in the state.

D. As used in this section, "public facility" means a building owned by the charter school, the school district, the state, an institution of the state, another political subdivision of the state, the federal government or a tribal government.

**History:** Laws 2005, ch. 274, § 13.

**Effective dates.** — Laws 2005, ch. 274, § 20 makes the act effective April 6, 2005.

## 22-24-11. Recompiled.

**Recompilations.** — Laws 2007, ch. 366, § 25, effective July 1, 2007, recompiled former 22-24-11 NMSA 1978 as 22-8-48 NMSA 1978.

## 22-24-12. Pre-kindergarten classroom facilities initiative.

A. The council shall develop guidelines for a pre-kindergarten classroom facilities initiative in accordance with this section, including establishing and adopting pre-kindergarten classroom standards.

B. The authority shall rank all applications it receives for the pre-kindergarten classroom facilities initiative according to the methodology adopted by the council for that purpose.

C. After a public hearing, and to the extent that money is available in the fund for that purpose, the council may make pre-kindergarten classroom facilities initiative grants to school districts that the council determines are willing and able to pay for the portion of the total cost not funded with grant assistance from the fund according to those applicants' rankings.

D. The state share of the cost of an approved pre-kindergarten classroom facilities initiative shall be calculated according to the methodology outlined in Subsection B of Section 22-24-5 NMSA 1978.

E. A school district that receives a grant in accordance with this section shall expend the money within three years after the grant allocation, or the money shall revert to the fund.

**History:** Laws 2019, ch. 179, § 1.

**Effective dates.** — Laws 2019, ch. 179 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## ARTICLE 25

### Public School Capital Improvements

Sec.

22-25-1. Short title.

22-25-2. Definitions.

22-25-3. Authorization for local school board to submit question of capital improvements tax imposition.

22-25-4. Authorizing resolution; time limitation.

22-25-5. Conduct of election; notice; ballot.

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Sec.

22-25-7. Imposition of tax; limitation on expenditures.

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22-25-9. State distribution to school district imposing tax under certain circumstances.

22-25-10. Public school capital improvements fund created.

22-25-11. Expenditures by charter schools; reports to department.

#### 22-25-1. Short title.

Chapter 22, Article 25 NMSA 1978 may be cited as the "Public School Capital Improvements Act".

**History:** 1953 Comp., § 77-25-1, enacted by Laws 1975 (S.S.), ch. 5, § 1; 2007, ch. 366, § 12.

**Cross references.** — For public school finances generally, see 22-8-1 NMSA 1978 et seq.

For public school emergency capital outlays, see 22-24-1 NMSA 1978 et seq.

The 2007 amendment, effective July 1, 2007, changed the statutory reference to the act.

bonds or pursuant to the Public School Capital Improvements Act may not be spent to construct teacher housing. 1981 Op. Att'y Gen. No. 81-01.

For article, "No Cake For Zuni: The Constitutionality of New Mexico's Public School Capital Finance System," see 37 N.M.L. Rev. 307 (2007).

#### ANNOTATIONS

**Revenues not to be used for teacher housing.** — Revenues generated by school district general obligation

#### 22-25-2. Definitions.

As used in the Public School Capital Improvements Act, "capital improvements" means expenditures, including payments made with respect to lease-purchase arrangements as defined in the Education Technology Equipment Act [Chapter 6, Article 15A NMSA 1978] or the Public School Lease Purchase Act [Chapter 22, Article 26A NMSA 1978] but excluding any other debt service expenses, for:

A. erecting, remodeling, making additions to, providing equipment for or furnishing public school buildings, including teacher housing and pre-kindergarten classroom facilities;

B. purchasing or improving public school or pre-kindergarten grounds;

C. maintenance of public school buildings, including teacher housing, or public school or pre-kindergarten grounds, including the purchasing or repairing of maintenance equipment and participating in the facility information management system as required by the Public School Capital Outlay Act [Chapter 22, Article 24 NMSA 1978] and including payments under contracts with regional education cooperatives for maintenance support services and expenditures for technical training and certification for maintenance and facilities management personnel, but excluding salary expenses of school district employees;

D. purchasing activity vehicles for transporting students to extracurricular school activities;

E. purchasing computer software and hardware for student use in public school classrooms; and



F. purchasing and installing education technology improvements, excluding salary expenses of school district employees, but including tools used in the educational process that constitute learning and administrative resources, and that may also include:

(1) satellite, copper and fiber-optic transmission; computer and network connection devices; digital communication equipment, including voice, video and data equipment; servers; switches; portable media devices, such as discs and drives to contain data for electronic storage and playback; and the purchase or lease of software licenses or other technologies and services, maintenance, equipment and computer infrastructure information, techniques and tools used to implement technology in schools and related facilities; and

(2) improvements, alterations and modifications to, or expansions of, existing buildings or tangible personal property necessary or advisable to house or otherwise accommodate any of the tools listed in this subsection.

**History:** 1953 Comp., § 77-25-2, enacted by Laws 1975 (S.S.), ch. 5, § 2; 1981, ch. 314, § 1; 1989, ch. 159, § 1; 1996, ch. 67, § 2; 1999, ch. 89, § 2; 2004, ch. 125, § 12; 2006, ch. 95, § 9; 2007, ch. 366, § 13; 2009, ch. 258, § 8; 2017, ch. 73, § 1; 2019, ch. 179, § 3; 2021, ch. 52, § 9; 2022, ch. 22, § 1.

**Repeals.** — Laws 2020 (1st S.S.), ch. 3, § 12, effective June 26, 2020, repealed Laws 2020, ch. 64, § 1, which was to become effective July 1, 2020.

**The 2022 amendment,** effective July 1, 2022, removed the definition of "program unit" as used in the Public Schools Capital Improvements Act; deleted former Subsection A; and redesignated former Paragraphs B(1) through B(6) as Subsections A through F, respectively; in Subsection F, redesignated former Subparagraphs B(6) (a) and B(6)(b) as Paragraphs F(1) and F(2), respectively, and in Paragraph F(2), after "listed in this", deleted "paragraph" and added "subsection".

**The 2021 amendment,** effective July 1, 2021, revised the definition of "capital improvements", as used in the Public School Capital Improvements Act, to include erecting, remodeling, making additions to, providing equipment for, furnishing or maintaining teacher housing; and in Subsection B, Paragraphs B(1) and B(3), after "school buildings", added "including teacher housing".

**The 2019 amendment,** effective June 14, 2019, included "pre-kindergarten classroom facilities" within the definition of "capital improvements" as used in the Public School Capital Improvements Act; in Subsection B, Paragraph B(1), after "school buildings", added "and pre-kindergarten classroom facilities", in Paragraph B(2), after "public school", added "or pre-kindergarten", and in Paragraph B(3), after "public school", added "or pre-kindergarten".

**The 2017 amendment,** effective June 16, 2017, expanded allowable expenditures to include purchasing and

installing education technology improvements, excluding salary expenses of school district employees, but including certain tools used in the educational process; in Subsection B, at the end of Paragraph B(4), deleted "or", at the end of Paragraph B(5), added "and", and added Paragraph B(6).

**The 2009 amendment,** effective April 8, 2009, in Subsection B, added the reference to the Public School Lease Purchase Act; deleted former Paragraph (2) of Subsection B, which excluded lease payments on a lease with option to purchase; and in Paragraph (3) of Subsection B, added the language between "public school grounds" and "including payments under contracts", and after "including payments under contracts", added "with regional education cooperatives".

**The 2007 amendment,** effective July 1, 2007, added Paragraph (2) of Subsection B to include within the definition of "capital improvements" payments made for lease purchases.

**The 2006 amendment,** effective March 6, 2006, in Paragraph (3) of Subsection B, included payments under contracts for maintenance support services.

**The 2004 amendment,** effective May 19, 2004, in Paragraph (3) of Subsection B, deleted "exclusive of" preceding "salary expenses" and added "including expenditures for technical training and certification for maintenance and facilities management personnel, but excluding".

**The 1999 amendment,** effective March 19, 1999, substituted the language beginning "including payments" and ending "any other" for "exclusive of any" in Subsection B.

**The 1996 amendment,** effective May 15, 1996, added Paragraph B(5).

**The 1989 amendment,** effective June 16, 1989, added Subsection B(4).

### 22-25-3. Authorization for local school board to submit question of capital improvements tax imposition.

A. A local school board may adopt a resolution to submit to the qualified electors of the school district the question of whether a property tax should be imposed upon the net taxable value of property allocated to the school district under the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978] at a rate not to exceed that specified in the resolution for the purpose of capital improvements in the school district. The resolution shall:

(1) identify the capital improvements for which the revenue proposed to be produced will be used;

(2) specify the rate of the proposed tax, which shall not exceed two dollars (\$2.00) on each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district under the Property Tax Code;

(3) limit the imposition of the proposed tax to no more than six property tax years; and

(4) indicate the regular election on which the ballot question shall appear or specify the date a special election will be held to submit the question of imposition of the tax to the qualified electors of the district.

B. A school district that has one or more charter schools located within the school district boundaries shall collaborate with the charter schools to establish a process through which the charter schools submit necessary information to the school district for inclusion in the resolution. This process shall include:

(1) identification of the capital improvements of the charter school for which the revenue proposed to be produced will be used;

(2) a requirement that necessary information be submitted to the school district no later than June 1 of the calendar year in which the local school board will consider the resolution; and

(3) the point of contact in the school district to which the charter school is to submit the information.

C. A resolution submitted to the qualified electors pursuant to Subsection A of this section shall include capital improvements funding for a locally chartered or state-chartered charter school located within the school district if the charter school has complied with the process outlined in Subsection B of this section.

**History:** 1953 Comp., § 77-25-3, enacted by Laws 1975 (S.S.), ch. 5, § 3; 1986, ch. 32, § 21; 1997, ch. 138, § 1; 2003, ch. 147, § 6; 2009, ch. 258, § 9; 2019, ch. 212, § 222; 2022, ch. 19, § 4.

**The 2022 amendment**, effective May 18, 2022, specified the date by which charter schools must provide information on capital improvement projects proposed for funding through property tax imposition; added new Subsection B and redesignated former Subsection B as Subsection C; and in Subsection C, after "if the charter school", deleted "timely provides the necessary information to the school district for inclusion in the resolution that identifies the capital improvements of the charter school for which the revenue proposed to be produced will be used" and added "has complied with the process outlined in Subsection B of this section".

**The 2019 amendment**, effective April 3, 2019, revised the required contents of a resolution on the question of whether a property tax should be imposed for the purpose of funding capital improvements in a school district; in Subsection A, deleted former Paragraph A(3) and redesignated former Paragraph A(4) as Paragraph A(3), and added new Paragraph A(4); in Subsection B, after the subsection designation, deleted "On or after July 1, 2009".

**The 2009 amendment**, effective April 8, 2009, added Subsection B.

**The 2003 amendment**, effective April 4, 2003, substituted "six property tax years" for "four property tax years" at the end of Subsection D.

**The 1997 amendment**, effective June 20, 1997, substituted "four" for "three" in Subsection D.

## 22-25-4. Authorizing resolution; time limitation.

The resolution authorized under Section 22-25-3 NMSA 1978 shall be adopted within the time frames required by the Election Code [Chapter 1 NMSA 1978] and pursuant to the requirements of the property tax division of the taxation and revenue department.

**History:** 1953 Comp., § 77-25-4, enacted by Laws 1975 (S.S.), ch. 5, § 4; 2019, ch. 212, § 223.

**The 2019 amendment**, effective April 3, 2019, required that a resolution on the question of imposition of capital improvements tax be adopted within the time frames required by the Election Code and pursuant to the requirements of the property tax division of the

taxation and revenue department; after "Section", deleted "3 of the Public School Capital Improvements Act" and added "22-25-3 NMSA 1978", and after "adopted", deleted "no later than May 15 in the year in which the tax is proposed and to be imposed" and added the remainder of the section.

## 22-25-5. Conduct of election; notice; ballot.

A. An election on the question of imposing a tax under the Public School Capital Improvements Act shall be conducted as prescribed in the Local Election Act [Chapter 1, Article 22 NMSA 1978].

B. The proclamation authorizing the ballot question or calling for a special election shall include as the question to be submitted to the voters whether a property tax at a rate not to exceed the rate specified in the authorizing resolution should be imposed for the specified number of property tax years not exceeding six years upon the net taxable value of all property allocated to the school district for the capital improvements specified in the authorizing resolution.



C. The ballot shall include the information specified in Subsection B of this section and shall present the voter the choice of voting "for the public school capital improvements tax" or "against the public school capital improvements tax".

**History:** 1953 Comp., § 77-25-5, enacted by Laws 1975 (S.S.), ch. 5, § 5; 1986, ch. 32, § 22; 1997, ch. 138, § 2; 2003, ch. 147, § 7; 2018, ch. 79, § 94; 2019, ch. 212, § 224.

**The 2019 amendment**, effective April 3, 2019, revised the notice provision of the section; in Subsection B, after "The proclamation", deleted "required to be published as notice of the election under Section 1-22-11 NMSA 1978" and added "authorizing the ballot question or calling for a special election".

**The 2018 amendment**, effective July 1, 2018, provided that elections on the question of imposing a tax under the Public School Capital Improvements Act shall be held as prescribed in the Local Election Act, and made technical and conforming changes; in Subsection A, after "Public School Capital Improvements Act", deleted "may" and added "shall", after "be held", deleted "in conjunction with a regular school district election or may be

conducted as or held in conjunction with a special school district election, but the election shall be held prior to July 1 of the property tax year in which the tax is proposed to be imposed. Conduct of the election shall be", and after "as prescribed in the", deleted "School Election Law for regular and special school district elections" and added "Local Election Act"; and in Subsection B, after "under Section", deleted "1-22-4 or 1-22-5" and added "1-22-11".

**Temporary provisions.** — Laws 2018, ch. 79, § 174 provided that references in law to the Municipal Election Code and to the School Election Law shall be deemed to be references to the Local Election Act.

**The 2003 amendment**, effective April 4, 2003, substituted "proclamation" for "resolution" and "six years" for "four years" in Subsection B.

**The 1997 amendment**, effective June 20, 1997, substituted "four years" for "three years" in Subsection B.

## 22-25-6. Election results; canvass; certification.

The canvass and certification of the results of an election held on the question of imposition of a public school capital improvements tax shall be as prescribed in the Local Election Act [Chapter 1, Article 22 NMSA 1978] and in addition to the reporting of results as required by the Election Code [Chapter 1, NMSA 1978], and a copy of the certificate of results shall be delivered immediately to the director.

**History:** 1953 Comp., § 77-25-6, enacted by Laws 1975 (S.S.), ch. 5, § 6; 1977, ch. 246, § 66; 2019, ch. 212, § 225.

**The 2019 amendment**, effective April 3, 2019, provided that the canvass and certification of the results of an election held on the question of imposition of a public school capital improvements tax shall be as prescribed by the Local Election Act and the reporting requirements

of the Election Code; in the section heading, added "canvass"; after "The", added "canvass and", after "shall be", deleted "made in accordance with Section 77-5-16 NMSA 1953" and added "as prescribed in the Local Election Act and in addition to the reporting of results as required by the Election Code", and after "results shall be", deleted "mailed" and added "delivered".

## 22-25-7. Imposition of tax; limitation on expenditures.

A. If as a result of an election held in accordance with the Public School Capital Improvements Act a majority of the qualified electors voting on the question votes in favor of the imposition of the tax, the tax rate shall be certified, unless the local school board requests by resolution that a rate be discontinued, by the department of finance and administration at the rate specified in the resolution authorized under Section 22-25-3 NMSA 1978 or at any lower rate required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon the rate specified in the resolution and be imposed at the rate certified in accordance with the provisions of the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978].

B. The revenue produced by the tax and, except as provided in Subsections D and F of Section 22-25-9 NMSA 1978, any state distribution resulting to the district under the Public School Capital Improvements Act shall be expended only for the capital improvements specified in the authorizing resolution.

C. The amount of tax revenue to be distributed to each charter school that was included in the resolution shall be determined each year and shall be in the same proportion as the average full-time-equivalent enrollment of the charter school on the first reporting date of the prior school year is to the total such enrollment in the school district; provided that, in determining the school district's total enrollment, charter school students located within the school district shall be included; and provided further that no distribution shall be made to an approved charter school that had not commenced

classroom instruction in the prior school year. Each year, the department shall certify to the county treasurer of the county in which the eligible charter schools in the school district are located the percentage of the revenue to be distributed to each charter school. The county treasurer shall distribute the charter school's share of the property tax revenue directly to the charter school.

**History:** 1953 Comp., § 77-25-7, enacted by Laws 1975 (S.S.), ch. 5, § 7; 1986, ch. 32, § 23; 2004, ch. 125, § 13; 2009, ch. 258, § 10; 2019, ch. 212, § 226; 2022, ch. 22, § 2.

**Repeals.** — Laws 2020 (1st S.S.), ch. 3, § 12, effective June 26, 2020, repealed Laws 2020, ch. 64, § 2, which was to become effective July 1, 2020.

**The 2022 amendment**, effective July 1, 2022, provided that in determining the school district's total enrollment, for purposes of calculating state distributions to school districts that impose a public school capital improvements tax, charter school students located within the school district shall be included; in Subsection B, after "provided in", deleted "Subsection F, G or H" and added "Subsections D and F"; and in Subsection C, added "provided that, in determining the school district's total enrollment, charter school students located within the school district shall be included; and", and after the next occurrence of "provided", added "further".

**The 2019 amendment**, effective April 3, 2019, revised certain provisions related to determining a school district's total enrollment for purposes of determining the amount of tax revenue to be distributed to each charter school; in Subsection C, after "charter school on the",

deleted "fortieth day" and added "first reporting date", and after "prior school year", deleted "and, provided further, that, in determining a school district's total enrollment, students attending a state chartered charter school within that school district shall be included".

**The 2009 amendment**, effective April 8, 2009, in Subsection B, added the reference to Subsections G and H; and added Subsection C.

**The 2004 amendment**, effective May 19, 2004, added "except as provided in Subsection F of Section 22-25-9 NMSA 1978," after "The revenue produced by the tax and,".

## ANNOTATIONS

The "tax rate imposed in the district" under the **Public School Capital Improvements Act** is that rate certified in accordance with this section which incorporates Section 7-37-7.1 NMSA 1978. This certified rate must be that which the voters approve unless the operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 requires a lower rate, in which case the lower rate must be certified. 1987 Op. Att'y Gen. No. 87-52.

## 22-25-8. Tax to be imposed for a maximum of six years.

A tax imposed in a school district as a result of an election under the Public School Capital Improvements Act shall be imposed for a specified number of property tax years not exceeding six years. The local school board may discontinue, by resolution, the Public School Capital Improvements Act tax levy at the end of any property tax year. The local school board shall direct that the Public School Capital Improvements Act tax levy be decreased by the amount required for any year in which the decrease is required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978.

**History:** 1953 Comp., § 77-25-8, enacted by Laws 1975 (S.S.), ch. 5, § 8; 1976 (S.S.), ch. 31, § 1; 1986, ch. 32, § 24; 1997, ch. 138, § 3; 2003, ch. 147, § 8; 2019, ch. 212, § 227.

**The 2019 amendment**, effective April 3, 2019, removed a provision related to the commencement of a tax imposed as a result of an election under the Public School Capital Improvements Act; after "not exceeding six years", deleted "commencing with the property tax year in which the election was held".

**The 2003 amendment**, effective April 4, substituted "six years" for "four years" in the section heading; substituted "a specified number of property tax years not exceeding six years" for "one, two, three or four years" in the first sentence, and substituted "any property tax year" for "the first or second year of the levy" in the second sentence.

**The 1997 amendment**, effective June 20, 1997, substituted "four years" for "three years" in the section heading and "two, three or four years" for "two or three years" in the first sentence.

## 22-25-9. State distribution to school district imposing tax under certain circumstances.

A. Except as provided in Subsection E of this section, for each year that a capital improvements tax is imposed by a school district, the secretary shall distribute from the public school capital improvements fund to the school district an amount equal to the greater of:

(1) the difference between:

(a) the product of: 1) the school district's program units; 2) multiplied by the tax rate imposed by the school district; and 3) multiplied further by the sum calculated pursuant to Subsection B of this section; and

(b) the school district's estimated tax revenue; or



(2) the product of:

(a) five dollars (\$5.00) for fiscal year 2023; and in each subsequent fiscal year, the amount for the previous fiscal year adjusted by the percentage increase between the next preceding calendar year and the preceding calendar year of the consumer price index for the United States, all items, as published by the United States department of labor;

(b) multiplied by the school district's program units; and

(c) multiplied further by the tax rate imposed by the school district.

B. The amount in Item 3) of Subparagraph (a) of Paragraph (1) of Subsection A of this section shall be equal to the sum of:

(1) for fiscal year 2023, eighty-nine dollars twenty-five cents (\$89.25); and in each subsequent fiscal year, the amount for the previous fiscal year adjusted by the percentage increase between the next preceding calendar year and the preceding calendar year of the consumer price index for the United States, all items, as published by the United States department of labor; plus

(2) an additional amount certified to the secretary by the public school capital outlay council. No later than June 1 of each year, the council shall determine the amount needed in the next fiscal year for public school capital outlay projects pursuant to the Public School Capital Outlay Act [Chapter 22, Article 24 NMSA 1978] and the amount of revenue, from all sources, available for the projects. If, in the sole discretion of the council, the amount available exceeds the amount needed, the council may certify an additional amount pursuant to this paragraph; provided that the sum of the amount calculated pursuant to this paragraph plus the amount in Paragraph (1) of this subsection shall not result in a total statewide distribution that, in the opinion of the council, exceeds one-half of the total revenue estimated to be received from taxes imposed pursuant to the Public School Capital Improvements Act.

C. If a distribution is made to a school district pursuant to Subsection A of this section, the secretary shall make an additional distribution from the public school capital improvements fund to the school district in an amount equal to the product of:

(1) fifty-three dollars (\$53.00);

(2) multiplied by the sum of the school district's program units;

(3) multiplied further by the greater of six percent or the percentage calculated pursuant to Paragraph (6) of Subsection B of Section 22-24-5 NMSA 1978; and

(4) multiplied further by the tax rate imposed by the school district.

D. In expending distributions made pursuant to this section, school districts and charter schools shall give priority to maintenance projects, including payments under contracts with regional education cooperatives for maintenance support services. In addition, distributions made pursuant to this section may be expended by school districts and charter schools as follows, but no distribution from the public school capital improvements fund may be used for capital improvements to any administration building of a school district:

(1) for the school district portion of the total project cost for roof repair or replacement required by Section 22-24-4.3 NMSA 1978; or

(2) for the school district portion of payments made under a financing agreement entered into by a school district or a charter school for the leasing of a building or other real property with an option to purchase for a price that is reduced according to the payments made, if the school district has received a grant for the state share of the payments pursuant to Subsection D of Section 22-24-5 NMSA 1978.

E. In the event that sufficient funds are not available in the public school capital improvements fund to make the distributions pursuant to this section, the dollar per program unit figure shall be reduced as necessary.

F. A portion of each distribution made by the state pursuant to this section shall be further distributed by the school district to each locally chartered or state-chartered charter school located within the school district. The amount to be distributed to each charter school shall be in the same proportion as the average full-time-equivalent enrollment of the charter school on the second and third reporting dates of the prior school year is to the total such enrollment in the school district; provided that, in determining the school district's total enrollment, charter school students located within the school district shall be included; and provided further that no distribution shall be made to an approved charter school that had not commenced classroom instruction in the prior school



year. Each year, the department shall certify to the school district the amount to be distributed to each charter school. Distributions received by a charter school pursuant to this subsection shall be expended pursuant to the provisions of the Public School Capital Improvements Act; except that if capital improvements for the charter school were not identified in a resolution approved by the electors, the charter school may expend the distribution for any capital improvements, including those specified in Subsection D of this section.

G. In making distributions pursuant to this section, the secretary shall include such reporting requirements and conditions as are required by rule of the public school capital outlay council. The council shall adopt such requirements and conditions as are necessary to ensure that the distributions are expended in the most prudent manner possible and are consistent with the original purpose as specified in the authorizing resolution. Copies of reports or other information received by the secretary in response to the requirements and conditions shall be forwarded to the council.

H. As used in this section:

(1) "capital improvements tax" means the tax authorized pursuant to the Public School Capital Improvements Act;

(2) "estimated tax revenue" means the revenue estimated to be received by a school district from the capital improvements tax, using prior year valuations and assuming a one hundred percent collection rate;

(3) "program units" means a school district's final program units determined pursuant to Sections 22-8-19, 22-8-20 through 22-8-23.1 and 22-8-23.3 NMSA 1978 generated in the previous fiscal year, including such program units generated by a charter school located within the school district; and

(4) "tax rate" means the rate approved by the qualified electors in the most recent election on the question of imposing a tax pursuant to the Public School Capital Improvements Act.

**History:** 1953 Comp., § 77-25-9, enacted by Laws 1975 (S.S.), ch. 5, § 9; 1976 (S.S.), ch. 31, § 2; 1977, ch. 246, § 67; 1981, ch. 314, § 2; 1986, ch. 32, § 25; 1988, ch. 64, § 44; 1988, ch. 66, § 2; 2001, ch. 338, § 10; 2003, ch. 147, § 9; 2004, ch. 125, § 14; 2005, ch. 274, § 15; 2006, ch. 95, § 10; 2007, ch. 366, § 14; 2009, ch. 258, § 11; 2018, ch. 38, § 1; 2022, ch. 22, § 3.

**Repeals.** — Laws 2020 (1st S.S.), ch. 3, § 12, effective June 26, 2020, repealed Laws 2020, ch. 64, § 3, which was to become effective July 1, 2020.

**The 2022 amendment,** effective July 1, 2022, adjusted the amounts to be used in calculating state distributions to school districts that impose a public school capital improvements tax and to charter schools, and created an additional distribution to certain school districts and charter schools; deleted former Subsection A and added a new Subsection A; in Subsection B, deleted "In calculating the state distribution pursuant to Subsection A of this section, the following amounts shall be used:" and added "The amount in Item 3) of Subparagraph (a) of Paragraph (1) of Subsection A of this section shall be equal to the sum of:"; deleted former Paragraph B(1) and added a new Paragraph B(1); deleted former Subsections C through E, added a new Subsection C and redesignated former Subsection F as Subsection D; in Subsection D, in the introductory paragraph, added "but no distribution from the public school capital improvements fund may be used for capital improvements to any administration building of a school district"; deleted former Subsection G, added a new Subsection E and redesignated former Subsection H as Subsection F; in Subsection F, after "pursuant to this section", deleted "on or after July 1, 2009", added "provided that, in determining the school district's total enrollment, charter school students located within the school district shall be included; and", after the next occurrence of "provided", added "further", and after "specified in Subsection", deleted "F" and added "D"; deleted Subsection I and redesignated former Subsection J as Subsection G; and added Subsection H.

**The 2018 amendment,** effective July 1, 2018, amended the Public School Capital Improvements Act to require the Public Education Department to use prior year data for determination of distribution amounts to school districts; in Subsection A, after "the imposed tax," added "using prior year valuations", after "calculated by multiplying", added "an average of", and after "the school district's", deleted "first forty days" and added "prior years second and third reporting dates"; in Subsection C, after "multiplied by the", added "average of the", after "school district's", deleted "first forty days" and added "prior year second and third reporting dates"; and in Subsection H, after "charter school on the", deleted "fortieth day" and added "second and third reporting dates".

**The 2009 amendment,** effective April 8, 2009, in Subsection F, in the first sentence, after "school districts", added "and charter schools", and after "payments under contracts", added "with regional education cooperatives"; in the second sentence, deleted "for the school district portion of", and added "and charter schools as follows"; in Paragraphs (1) and (2) of Subsection F, at the beginning of each sentence, added "for the school district portion of"; and added Subsections H and I.

**The 2007 amendment,** effective July 1, 2007, changed the amount used in Paragraph (1) of Subsection B from sixty dollars (\$60.00) in fiscal year 2006 to seventy dollars (\$70.00) in fiscal year 2008 and added Paragraph (2) of Subsection F relating to payments made by a district for leases until an option to purchase.

**The 2006 amendment,** effective March 6, 2006, in Paragraph (2) of Subsection B, deleted "for fiscal year 2006 and thereafter" at the beginning of the sentence and changed "June 1, 2005 and each June thereafter" to "June 1 of each year"; in Subsection C, changed "fiscal year 2004 and thereafter" to "any fiscal year"; in Subsection D, deleted the amount of fifty dollars through fiscal year 2005; and in Subsection F, included payments under contracts for maintenance support services.



**The 2005 amendment**, effective April 6, 2005, added the exception in Subsection G in Subsection A; added the exception in Subsection G in Subsection C; added the amount of \$60 for fiscal year 2006 in Subsection D; provided in Subsection F that distributions may be expended by school districts for the school district portion of the total project cost for roof repair or replacement; and added Subsection G to provide that if a roof deficiency has been corrected and the school district refuses to pay its share of the cost, until the school district reimbursed the capital outlay fund for its share of the cost, the distribution shall not be made to the school district but shall be made to the capital outlay fund.

**The 2004 amendment**, effective May 19, 2004, amended Subsection A to substitute "secretary of public education" for "state superintendent", amended Subsection B to substitute in Paragraph (1) "the amount calculated pursuant to Subsection D of this subsection" for "fifty dollars (\$50.00)" and to substitute in Paragraph (2) "secretary of public education" for "state superintendent", amended Subsection C to substitute "an amount equal to five dollars (\$5.00)" for "the amount calculated pursuant to Subsection E of this section", added new Subsections D through F, redesignated former Subsection C as Subsection G and substituted "secretary of public education" for "state superintendent" and "secretary" for "state superintendent".

**The 2003 amendment**, effective April 4, 2003, inserted Subsection C.

**The 2001 amendment**, effective April 5, 2001, redesignated the former section as Subsection A; inserted the exception at the beginning of Subsection A; substituted "by the dollar amount specified in Subsection B of this section" for "times thirty-five dollars"; and added Subsections B and D.

As vetoed by the governor April 5, 2001, Subsection C read: "Notwithstanding the amount calculated to be distributed pursuant to Subsections A and B of this section, no school district, the voters of which have approved a tax pursuant to Section 22-25-3 NMSA 1978, shall receive a distribution less than an amount equal to five dollars (\$5.00) multiplied by the school district's first forty days' total program units and further multiplying the product obtained by the approved tax rate."

**The 1988 amendments**, effective March 8, 1988, substituted "approved by the qualified electors in the most recent election on the question of imposing a tax" for "imposed in the district" near the end of the first sentence; deleted "by December 1" preceding "of each year" in the second sentence; and inserted the proviso at the end of the second sentence.

## ANNOTATIONS

**The "tax rate imposed in the district" under the Public School Capital Improvements Act** is that rate certified in accordance with Section 22-25-7 NMSA 1978 which incorporates Section 7-37-7.1 NMSA 1978. This certified rate must be that which the voters approve unless the operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 requires a lower rate, in which case the lower rate must be certified. 1987 Op. Att'y Gen. No. 87-52.

**Administrative charge not to be used to reduce revenue estimate.** — The school district, not the state's public school capital improvements fund, must absorb the two percent (now one percent) administrative charge authorized by Section 7-38-38.1 NMSA 1978, and such fee may not be used to reduce the revenue estimate that this section requires. 1987 Op. Att'y Gen. No. 87-52 (rendered prior to 1988 amendment).

## 22-25-10. Public school capital improvements fund created.

There is created a "public school capital improvements fund." Balances in the fund remaining at the end of a fiscal year shall not revert.

**History:** 1953 Comp., § 77-25-10, enacted by Laws 1975 (S.S.), ch. 5, § 10; 1976 (S.S.), ch. 31, § 3.

## 22-25-11. Expenditures by charter schools; reports to department.

A. No later than December 1 of each year, each locally chartered or state-chartered charter school that expects a state distribution or a distribution of property taxes pursuant to the Public School Capital Improvements Act during the next calendar year shall submit a report to the department and its chartering authority showing the purposes for which the expected distribution will be expended. The department shall review the report and, no later than twenty days after receiving the report, shall advise the charter school if, in its opinion, the proposed expenditures are consistent with law and shall provide a copy of the advice to the local district.

B. No later than January 31 of each year, each locally chartered or state-chartered charter school that received a state distribution or a distribution of property taxes pursuant to the Public School Capital Improvements Act during the preceding calendar year shall submit a report to the department and its chartering authority showing the purposes for which the distribution was expended and the amount expended for each purpose.

**History:** Laws 2011, ch. 11, § 1. **Effective dates.** — Laws 2011, ch. 11 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

## ARTICLE 26

### Public School Buildings

Sec.  
 22-26-1. Short title.  
 22-26-2. Definition.  
 22-26-3. Authorization for local school board to submit question of capital improvements tax imposition.  
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 22-26-6. Election results; certification.  
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 22-26-8. Tax to be imposed for a maximum of six years.  
 22-26-9. Charter schools; receipt of local property tax revenue.  
 22-26-10. Expenditures by charter schools; reports to department.

#### 22-26-1. Short title.

Chapter 22, Article 26 NMSA 1978 may be cited as the "Public School Buildings Act".

**History:** Laws 1983, ch. 163, § 1; 2007, ch. 366, § 18.  
 The 2007 amendment, effective July 1, 2007, changed the statutory reference to the act.

#### ANNOTATIONS

For article, "No Cake For Zuni: The Constitutionality of New Mexico's Public School Capital Finance System," see 37 N.M.L. Rev. 307 (2007).

#### 22-26-2. Definition.

As used in the Public School Buildings Act, "capital improvements" means expenditures, including payments made with respect to lease-purchase arrangements as defined in the Education Technology Equipment Act [Chapter 6, Article 15A NMSA 1978] but excluding any other debt service expenses, for:

A. erecting, remodeling, making additions to, providing equipment for or furnishing public school buildings, including teacher housing and pre-kindergarten classrooms belonging to the school district or charter school located in the school district;

B. payments made pursuant to a financing agreement entered into by a school district or a charter school for the leasing of a building or other real property with an option to purchase for a price that is reduced according to payments made;

C. purchasing or improving public school grounds;

D. purchasing activity vehicles for transporting students to and from extracurricular school activities; provided that this authorization for expenditure does not apply to school districts with a student MEM greater than sixty thousand;

E. administering the projects undertaken pursuant to Subsections A and C of this section, including expenditures for facility maintenance software, project management software, project oversight and district personnel specifically related to administration of projects funded by the Public School Buildings Act; provided that expenditures pursuant to this subsection shall not exceed five percent of the total project costs; and

F. purchasing and installing education technology improvements, excluding salary expenses of school district employees, but including tools used in the educational process that constitute learning and administrative resources, and that may also include:

(1) satellite, copper and fiber-optic transmission; computer and network connection devices; digital communication equipment, including voice, video and data equipment; servers; switches; portable media devices, such as discs and drives to contain data for electronic storage and playback; and purchase or lease of software licenses or other technologies and services, maintenance, equipment and computer infrastructure information, techniques and tools used to implement technology in schools and related facilities; and

(2) improvements, alterations and modifications to, or expansions of, existing buildings or tangible personal property necessary or advisable to house or otherwise accommodate any of the tools listed in this subsection.



**History:** Laws 1983, ch. 163, § 2; 1999, ch. 89, § 3; 2007, ch. 366, § 19; 2009, ch. 25, § 1; 2017, ch. 73, § 2; 2019, ch. 179, § 4; 2021, ch. 52, § 10.

**The 2021 amendment**, effective July 1, 2021, revised the definition of "capital improvements", as used in the Public School Buildings Act, to include erecting, remodeling, making additions to, providing equipment for or furnishing teacher housing; and in Subsection A, after "including", added "teacher housing".

**The 2019 amendment**, effective June 14, 2019, included "pre-kindergarten classrooms" within the definition of "capital improvements" as used in the Public School Buildings Act; in Subsection A, after "public school buildings," added "including pre-kindergarten classrooms belonging to the school district or charter school located in the school district".

**The 2017 amendment**, effective June 16, 2017, expanded allowable expenditures to include purchasing and installing education technology improvements, excluding salary expenses of school district employees, but including certain tools used in the educational process; at the end of Subsection D, deleted "or"; at the end of Subsection E, added "and"; and added Subsection F.

**The 2009 amendment**, effective June 19, 2009, added Subsection D.

**The 2007 amendment**, effective July 1, 2007, added Subsections B and D.

**The 1999 amendment**, effective March 19, 1999, substituted the language beginning "including payments" and ending "any other" for "exclusive of any" in the introductory language.

## 22-26-3. Authorization for local school board to submit question of capital improvements tax imposition.

A. A local school board may adopt a resolution to submit to the qualified electors of the school district the question of whether a property tax at a rate not to exceed the rate specified in the resolution should be imposed upon the net taxable value of property allocated to the school district under the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978] for the purpose of capital improvements to public schools in the school district. The resolution shall:

- (1) identify the capital improvements for which the revenue proposed to be produced will be used;
- (2) specify the rate of the proposed tax, which shall not exceed ten dollars (\$10.00) on each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district under the Property Tax Code;
- (3) limit the imposition of the proposed tax to no more than six property tax years; and
- (4) indicate the regular election on which the ballot question shall appear or specify the date a special election will be held to submit the question of imposition of the tax to the qualified electors of the district.

B. A school district that has one or more charter schools located within the school district boundaries shall collaborate with the charter schools to establish a process through which the charter schools submit necessary information to the school district for inclusion in the resolution. This process shall include:

- (1) identification of the capital improvements of the charter school for which the revenue proposed to be produced will be used;
- (2) a requirement that necessary information be submitted to the school district no later than June 1 of the calendar year in which the local school board will consider the resolution; and
- (3) the point of contact in the school district to which the charter school is to submit the information.

C. A resolution submitted to the qualified electors pursuant to Subsection A of this section shall include capital improvements funding for a locally chartered or state-chartered charter school located within the school district if:

- (1) the charter school has complied with the process outlined in Subsection B of this section; and
- (2) the capital improvements are included in the five-year facilities plan:
  - (a) of the school district, if the charter school is a locally chartered charter school; or
  - (b) of the charter school, if the charter school is a state-chartered charter school.

**History:** Laws 1983, ch. 163, § 3; 1986, ch. 32, § 26; 2007, ch. 366, § 20; 2019, ch. 212, § 228; 2022, ch. 19, § 5.

**The 2022 amendment**, effective May 18, 2022, specified the date by which charter schools must provide information on capital improvement projects proposed for

funding through property tax imposition; added a new Subsection B and redesignated former Subsection B as Subsection C; and in Subsection C, Paragraph C(1), after "the charter school", deleted "timely provides the necessary information to the school district for inclusion on the resolution that identifies the capital improvements of the

charter school for which the revenue proposed to be produced will be used" and added "has complied with the process outlined in Subsection B of this section".

**The 2019 amendment**, effective April 3, 2019, revised the list of required contents of a resolution on the question of whether a property tax should be imposed for the purpose of capital improvements to public schools in the school district; in Subsection A, deleted Paragraph A(3)

and redesignated former Paragraph A(4) as Paragraph A(3), added new Paragraph A(4); and in Subsection B, after the subsection designation, deleted "After July 1, 2007".

**The 2007 amendment**, effective July 1, 2007, added Paragraph (1) of Subsection A to require bond resolutions to identify the capital improvements and added Subsection B.

## 22-26-4. Authorizing resolution; time limitation.

The resolution authorized under Section 22-26-3 NMSA 1978 shall be adopted within the time frames required by the Election Code [Chapter 1 NMSA 1978] and pursuant to the requirements of the property tax division of the taxation and revenue department.

**History:** Laws 1983, ch. 163, § 4; 2019, ch. 212, § 229.

**The 2019 amendment**, effective April 3, 2019, revised the time limitation on the adoption of a resolution on the question of imposition of a capital improvements tax; after "authorized under Section", deleted "3 of the Public School

Buildings Act" and added "22-26-3 NMSA 1978" and after "shall be adopted", deleted "no later than May 15 in the year in which the tax is proposed to be imposed" and added the remainder of the section.

## 22-26-5. Conduct of election; notice; ballot.

A. An election on the question of imposing a tax under the Public School Buildings Act shall be held as prescribed in the Local Election Act [Chapter 1, Article 22 NMSA 1978].

B. The resolution authorizing the ballot question or calling for a special election shall include as the question to be submitted to the voters whether a property tax at a rate not to exceed the rate specified in the authorizing resolution should be imposed for the specified number of property tax years not exceeding six years upon the net taxable value of all property allocated to the school district for capital improvements.

C. The ballot shall include the information specified in Subsection B of this section and shall present the voter the choice of voting "for the public school buildings tax" or "against the public school buildings tax".

**History:** Laws 1983, ch. 163, § 5; 1986, ch. 32, § 27; 2007, ch. 366, § 21; 2018, ch. 79, § 95; 2019, ch. 212, § 230.

**The 2019 amendment**, effective April 3, 2019, revised the notice provision of the section; in Subsection B, after "The resolution", deleted "required to be published as notice of the election under Section 1-22-11 NMSA 1978" and added "authorizing the ballot question or calling for a special election".

**The 2018 amendment**, effective July 1, 2018, provided that elections on the question of imposing a tax under the Public School Buildings Act shall be held as prescribed in the Local Election Act, and made technical and conforming changes; in Subsection A, after "Public School Buildings Act", deleted "may" and added "shall", after "be held", deleted "in conjunction with a regular school district election

or may be conducted as or held in conjunction with a special school district election, but the election shall be held prior to July 1 of the property tax year in which the tax is proposed to be imposed. Conduct of the election shall be", and after "as prescribed in the", deleted "School Election Law for regular and special school district elections" and added "Local Election Act"; and in Subsection B, after "under Section", deleted "1-22-4 or 1-22-5" and added "1-22-11".

**Temporary provisions.** — Laws 2018, ch. 79, § 174 provided that references in law to the Municipal Election Code and to the School Election Law shall be deemed to be references to the Local Election Act.

**The 2007 amendment**, effective July 1, 2007, changed the maximum number of property tax years for imposing the tax from five to six years.

## 22-26-6. Election results; certification.

The certification of the results of an election held on the question of imposition of a public school buildings tax shall be as prescribed in the Local Election Act [Chapter 1, Article 22 NMSA 1978], and in addition to the reporting of results required by the Election Code [Chapter 1 NMSA 1978], a copy of the certificate of results shall be delivered immediately to the secretary.

**History:** Laws 1983, ch. 163, § 6; 1993, ch. 226, § 52; 2019, ch. 212, § 231.

**The 2019 amendment**, effective April 3, 2019, provided that the certification of the results of an election held on the question of imposition of a public school



buildings tax shall be as prescribed by the Local Election Act and the reporting requirements of the Election Code; after "shall be", deleted "made in accordance with the School Election Law" and added "as prescribed in the Local Election Act", after "and", added "in addition to the reporting of results required by the Election Code", after "results shall be", deleted "mailed" and added "delivered",

and after "immediately to the", deleted "state superintendent" and added "secretary".

**The 1993 amendment**, effective July 1, 1993, substituted "the School Election Law" for "Section 22-6-16 NMSA 1978" and "state superintendent" for "director of public school finance".

## 22-26-7. Imposition of tax; limitations.

If as a result of an election held in accordance with the Public School Buildings Act a majority of the qualified electors voting on the question votes in favor of the imposition of the tax, the tax rate shall be certified, unless the local school board directs that the tax levy not be made for the year, by the department of finance and administration at the rate specified in the authorizing resolution or at any lower rate required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon the rate specified in the authorizing resolution or at any rate lower than the rate required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 if directed by the local school board pursuant to Section 22-26-8 NMSA 1978, and the tax shall be imposed at the rate certified in accordance with the provisions of the Property Tax Code [Chapter 7, Articles 35 through 38 NMSA 1978]. If in any tax year the authorized tax rate under the Public School Buildings Act, when added to the tax rates for servicing debt of the school district and for capital improvements pursuant to the Public School Capital Improvements Act [Chapter 22, Article 25 NMSA 1978], exceeds fifteen dollars (\$15.00), or a lower amount that would be required by applying the rate limitation provisions of Section 7-37-7.1 NMSA 1978 to the amount of fifteen dollars (\$15.00), on each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district under the Property Tax Code, the tax rate under the Public School Buildings Act shall be reduced to an amount that, when added to such additional rates, will equal fifteen dollars (\$15.00), or the lower amount that would be required by applying the rate limitation provisions of Section 7-37-7.1 NMSA 1978 to the amount of fifteen dollars (\$15.00), on each one thousand dollars (\$1,000) of net taxable value of property so allocated to the school district. The revenue produced by the tax and any state distribution resulting to the district under the Public School Buildings Act shall be expended only for capital improvements.

**History:** Laws 1983, ch. 163, § 7; 1986, ch. 32, § 28; 1996, ch. 63, § 1.

**The 1996 amendment**, effective May 15, 1996, substituted "fifteen dollars (\$15.00)" for "ten dollars (\$10.00)" throughout the section.

## 22-26-8. Tax to be imposed for a maximum of six years.

A tax imposed in a school district as a result of an election under the Public School Buildings Act shall be imposed for one, two, three, four, five or six years. The local school board may direct that such levy be decreased or not made for any year if, in its judgment, the total levy is not necessary for such year and shall direct that the levy be decreased by the amount required if a decrease is required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978.

**History:** Laws 1983, ch. 163, § 8; 1986, ch. 32, § 29; 2007, ch. 366, § 22; 2019, ch. 212, § 232.

**The 2019 amendment**, effective April 3, 2019, removed a provision related to the commencement of a tax imposed as a result of an election under the Public School

Buildings Act; after "six years", deleted "commencing with the property tax year in which the election was held".

**The 2007 amendment**, effective July 1, 2007, changed the maximum number of property tax years for imposing the tax from five to six years.

## 22-26-9. Charter schools; receipt of local property tax revenue.

If the qualified electors of a school district have voted in favor of the imposition of a property tax as provided in Section 22-26-3 NMSA 1978, the amount of tax revenue to be distributed to each charter school that was included in the resolution shall be determined each year and shall be in the same proportion as the average full-time-equivalent enrollment of the charter school on the

first reporting date of the prior school year is to the total such enrollment in the district; provided that, in the case of an approved charter school that had not commenced classroom instruction in the prior school year, the estimated full-time-equivalent enrollment in the first year of instruction, as shown in the approved charter school application, shall be used, subject to adjustment after the first reporting date. Each year, the department shall certify to the county treasurer of the county in which the eligible charter schools in the school district are located the percentage of the revenue to be distributed to each charter school. The county treasurer shall distribute the charter school's share of the property tax revenue directly to the charter school.

**History:** Laws 2007, ch. 366, § 23; 2010, ch. 116, § 8; 2019, ch. 212, § 233.

**The 2019 amendment**, effective April 3, 2019, after "If", deleted "in an election held after July 1, 2007".

**The 2010 amendment**, effective May 19, 2010, in the first sentence, after "enrollment of the charter school on the", deleted "fortieth day" and added "first reporting date" and after "subject to adjustment after the", deleted "fortieth day" and added "first reporting date".

**Temporary provisions.** — Laws 2010, ch. 116, § 9 provided that references in the Public School Code pertaining to the fortieth-day or forty-day report of public school membership or enrollment shall be deemed to be references to the first reporting date, which is the

second Wednesday in October; references pertaining to the eightieth-day or eighty-day report of public school membership or enrollment shall be deemed to be references to the second reporting date, which is the second Wednesday in December; and references pertaining to the one-hundred twentieth-day or one-hundred twenty-day report of public school membership or enrollment shall be deemed to be references to the third reporting date, which is the second Wednesday in February.

As the public schools transition from former reporting dates to new reporting dates, the public education department may use any combination of former and new reporting dates as necessary to develop membership and cost projections and budgets for the 2010-2011 school year.

## 22-26-10. Expenditures by charter schools; reports to department.

A. No later than December 1 of each year, each locally chartered or state-chartered charter school that expects a distribution of property taxes pursuant to the Public School Buildings Act during the next calendar year shall submit a report to the department and its chartering authority showing the purposes for which the expected distribution will be expended. The department shall review the report and, no later than twenty days after receiving the report, shall advise the charter school if, in its opinion, the proposed expenditures are consistent with law and shall provide a copy of the advice to the local district.

B. No later than January 31 of each year, each locally chartered or state-chartered charter school that received a distribution of property taxes pursuant to the Public School Buildings Act during the preceding calendar year shall submit a report to the department and its chartering authority showing the purposes for which the distribution was expended and the amount expended for each purpose.

**History:** Laws 2011, ch. 11, § 2. IV, § 23, was effective June 17, 2011, 90 days after the

**Effective dates.** — Laws 2011, ch. 11 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

## ARTICLE 26A

### Public School Lease Purchase Act

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### 22-26A-1. Short title.

Chapter 22, Article 26A NMSA 1978 may be cited as the "Public School Lease Purchase Act".

**History:** Laws 2007, ch. 173, § 1; 2009, ch. 132, § 2.

**The 2009 amendment**, effective June 19, 2009, changed the reference to the act to the article and chapter of NMSA 1978.

### 22-26A-2. Purpose.

The purpose of the Public School Lease Purchase Act is to implement the provision of Article 9, Section 11 of the constitution of New Mexico, as approved by the voters of the state of New Mexico at the general election held in November 2006, which declares that a financing agreement entered into by a school district or a charter school for leasing of a building or other real property with an option to purchase for a price that is reduced according to the payments made by the school district or charter school pursuant to the financing agreement is not a debt if:

A. there is no legal obligation for the school district or charter school to continue the lease from year to year or to purchase the real property; and

B. the agreement provides that the lease shall be terminated if sufficient money is not available to meet the current lease payments.

**History:** Laws 2007, ch. 173, § 2.

**Effective dates.** — Laws 2007, ch. 173 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

### 22-26A-3. Definitions.

As used in the Public School Lease Purchase Act:

A. "financing agreement" or "lease purchase arrangement" means an agreement for the leasing of a building or other real property with an option to purchase for a price that is reduced according to the payments made, which periodic lease payments composed of principal and interest components are to be paid to the holder of the agreement and pursuant to which the owner of the building or other real property may retain title to or a security interest in the building or other real property and may agree to release the security interest or transfer title to the building or other real property to the school district for nominal consideration after payment of the final periodic lease payment; and

B. "governing body" means:

- (1) the governing structure of a charter school, as set forth in its approved charter; or
- (2) a local school board as the governing structure of a school district.

**History:** Laws 2007, ch. 173, § 3; 2015, ch. 106, § 1.

**The 2015 amendment**, effective July 1, 2015, clarified the definition of "governing body" in the Public School Lease Purchase Act to include the governing structure of

a charter school and a local school board; in Subsection A, after the semicolon, added "and"; deleted former Subsections B and C, relating to the meaning of "local school board" and "school district"; and added new Subsection B.

### 22-26A-4. Notice of proposed lease purchase arrangement; approval of department.

A. When a governing body determines, pursuant to Subsection B of Section 22-26A-6 NMSA 1978, that a lease purchase arrangement is in the best interest of the school district or the charter school, the governing body shall forward to the department a copy of the proposed lease purchase arrangement and the source of funds that the governing body has identified to make payments due under the lease purchase arrangement.

B. A governing body shall not enter into a lease purchase arrangement without the approval of the department.

**History:** Laws 2007, ch. 173, § 4; 2009, ch. 132, § 3; 2015, ch. 106, § 2.

**The 2015 amendment**, effective July 1, 2015, amended the Public School Lease Purchase Act to require a governing body of a charter school or school district to give the public education department notice of a lease purchase agreement when the governing body determines that a lease purchase arrangement is in the best interest of the school district or charter school and requires the governing body to obtain approval from the public education department prior to entering into a lease purchase arrangement; in Subsection A, after "When a", deleted "local school board" and added "governing body", after "best interest of the school district",

added "or the charter school", after the third occurrence of "the", deleted "board" and added "governing body", and after "source of funds that the", deleted "local school board" and added "governing body"; and in Subsection B, after "A", deleted "local school board" and added "governing body".

**The 2009 amendment**, effective June 19, 2009, in Subsection A, at the beginning of the sentence, deleted former language, which provided that when a school district contemplates entering into a lease purchase arrangement for a building or other real property payable from ad valorem taxes, the local school board was required to give a copy of the proposed lease to the department; and added the new language.

## 22-26A-5. Lease purchase arrangements; terms.

Lease purchase arrangements:

A. may have payments payable annually or more frequently as determined by the governing body;

B. may be subject to prepayment at the option of the governing body at such time or times and upon such terms and conditions with or without the payment of such premium or premiums as determined by the governing body;

C. may have a final payment date not exceeding thirty years after the date of execution;

D. may be acquired or executed at a public or negotiated sale;

E. may be entered into between the governing body and the owner of the building or other real property who may be a trustee or other person that issues or sells certificates of participation or other interests in the payments to be made under the lease purchase arrangement, the proceeds of which may be used to acquire the building or other real property;

F. shall specify the principal and interest component of each payment made under the lease purchase arrangement; provided that the net effective interest rate shall not exceed the maximum permitted by the Public Securities Act [6-14-1 through 6-14-3 NMSA 1978];

G. shall provide that, if the school district or charter school makes capital improvements to the building or other real property, there shall be no change in the lease payments or final payment without a written amendment approved by the department;

H. shall provide that, if state, school district or charter school funds, above those required for lease payments, are used to construct or acquire improvements, the cost of the improvements shall constitute a lien on the real estate in favor of the school district or charter school and then, if the lease purchase arrangement is terminated prior to the final payment and the release of the security interest or the transfer of title at the option of the school district or charter school:

(1) the school district or charter school may foreclose on the real estate lien; or

(2) the current market value of the building or other real property at the time of termination, as determined by an independent appraisal certified by the taxation and revenue department, in excess of the outstanding principal due under the lease purchase arrangement shall be paid to the school district or charter school;

I. shall provide that there is no legal obligation for the school district or charter school to continue the lease purchase arrangement from year to year or to purchase the building or other real property;

J. shall provide that the lease purchase arrangement shall be terminated if sufficient money is not available to meet any current lease payment;

K. shall provide that, with the prior approval of the lessor, which shall not be unreasonably withheld, the lease purchase arrangement is assignable, without cost to the school district, or charter school and with all of the rights and benefits of its predecessor in interest being transferred to the assignee, to:

(1) a school district or charter school; or

(2) the state or one of its institutions, instrumentalities or other political subdivisions; and



L. shall provide that amendments to the lease purchase arrangement, except amendments that would improve the building or other real property without additional financial obligations to the school district or charter school; shall be approved by the department.

**History:** Laws 2007, ch. 173, § 5; 2009, ch. 132, § 4; 2015, ch. 106, § 3.

The 2015 amendment, effective July 1, 2015, amended the Public School Lease Purchase Act to provide the governing body of a charter school or school district with the authority to set terms of lease purchase arrangements and provided for certain terms relating to charter schools that must be included in lease purchase arrangements; after "school district", added "or charter school" throughout the section; in Subsection A, after "determined by the", deleted "local school board" and added "governing body"; in Subsection B, after "at the option of the", deleted "local school board" and added "governing body", and after "determined by the", deleted "local school board" and added "governing body"; in Subsection E, after "between the", deleted "local school board" and added "governing body"; in the introductory paragraph of Subsection H, after "state", deleted "or"; in Subsection K, deleted "if the lessee is a charter school" and added "and with all of the rights and benefits of its predecessor in interest being transferred to

the assignee", and after "to:", added the designation for Paragraph (1) of Subsection K, and after "a", deleted "locally chartered or state-chartered school district or", after "charter school; or", added the designation for Paragraph (2) of Subsection K, and after "political subdivisions", deleted "The assignee shall acquire all rights and benefits of its predecessor in interest under the terms and conditions of the lease purchase arrangement".

The 2009 amendment, effective June 19, 2009, in Subsection A, after "payable", deleted "at intervals or at maturity as may be" and added the phrase "annually or more frequently as"; in Subsection C, after "payment date", deleted "or mature at any time or times" and after "exceeding", deleted "twenty" and added the word "thirty"; deleted former Subsection D, which provided for payment at one time or in installments; deleted former Subsection E, which provided for pricing at or below par; deleted former Subsection F, which provided for acquisition by public bid, negotiated sale or placement; and added Subsections D through H, K and L.

## **22-26A-5.1. Transfer or assignment of lease purchase arrangement; designation as public property.**

A. A holder of a lease purchase arrangement, including any public entity holding a lease purchase arrangement, may secure financing by issuing certificates of participation or otherwise assigning or transferring all or a portion of the lease purchase arrangement.

B. A building or other real property subject to a lease purchase arrangement that has been entered into and approved pursuant to the Public School Lease Purchase Act shall be considered to be a public property.

**History:** 1978 Comp., § 22-26A-5.1, as enacted by Laws 2009, ch. 132, § 5.

**Effective dates.** — Laws 2009, ch. 132 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## **22-26A-6. Authorizing lease purchase arrangements; resolution.**

A. If a governing body proposes to acquire a building or other real property through a lease purchase arrangement, it shall comply with the requirements of this section and the provisions of the Open Meetings Act [Chapter 10, Article 15 NMSA 1978].

B. At a regular meeting or at a special meeting called for the purpose of considering the acquisition of a building or other real property through a lease purchase arrangement, a governing body shall:

- (1) make a determination of the necessity for acquiring the building or other real property through a lease purchase arrangement;
- (2) determine the estimated cost of the buildings or other real property needed;
- (3) review a summary of the terms of the proposed lease purchase arrangement;
- (4) identify the source of funds for the lease purchase payments;
- (5) if obtaining all or part of the funds needed requires or anticipates the imposition of a property tax, determine the estimated rate of the tax and what, if any, the percentage increase in property taxes will be for real property owners in the school district; and
- (6) if the governing body determines that the lease purchase arrangement is in the best interest of the school district or charter school, forward a copy of the arrangement to the department pursuant to Section 22-26A-4 NMSA 1978.

C. After receiving department approval of the lease purchase arrangement, the governing body may adopt a final resolution approving the lease purchase of the building or other real property.

D. If a local school board finds that obtaining all or part of the funds needed for a lease purchase arrangement requires the imposition of a property tax, the board may adopt a resolution to be presented to the voters pursuant to Section 22-26A-8 NMSA 1978.

E. If the governing body of a charter school finds that obtaining all or part of the necessary funds requires the imposition of a property tax, the local school board of the school district in which the charter school is located may adopt a resolution to be presented to the voters, pursuant to Section 22-26A-8 NMSA 1978; provided that the governing body of the charter school has notified the local school board that the charter school has been approved to enter into a lease purchase arrangement and has identified revenue from the proposed tax as a necessary source of funds. The local school board:

(1) shall include the tax revenue needed by the charter school in the resolution if the school's charter has been renewed at least once; and

(2) may include the tax revenue needed by the charter school in the resolution if the charter school is a locally chartered charter school prior to its first renewal term.

F. If a local school board adopts a resolution that includes tax revenue for a charter school, and, if the tax is approved in an election pursuant to Sections 22-26A-8 through 22-26A-12 NMSA 1978, the local school board shall distribute an amount of the tax revenue, as established in its resolution, to the charter school to be used in the lease purchase arrangement.

G. The local school board shall not adopt a resolution for or approve a lease purchase arrangement for a term that exceeds thirty years.

**History:** Laws 2007, ch. 173, § 6; 2009, ch. 132, § 6; 2015, ch. 106, § 4.

**The 2015 amendment**, effective July 1, 2015, amended the Public School Lease Purchase Act to authorize a local school board to adopt a resolution to be presented to the voters for approval of the imposition of a property tax to acquire a building or other real property through a lease purchase arrangement; in Subsection A, after "If a", deleted "local school board" and added "governing body"; in the introductory sentence of Subsection B, after "purchase arrangement, a", deleted "local school board" and added "governing body"; in Paragraph (6) of Subsection B, after "if the", deleted "board" and added "governing body", and after "the school district", added "or charter school"; in Subsection C, after "purchase arrangement, the", deleted "local school board" and added "governing body"; in Subsection D, after "If", deleted "the" and added "a", after "funds needed for", deleted "the" and added "a", after "the board may", deleted "also", and after "22-26A-8 NMSA 1978", deleted "provided that"; added the designation Subsection E and a new introductory paragraph of Subsection E, making former Paragraph (1) of Subsection D into Paragraph (1) of Subsection E; deleted the language in Paragraph (1) of Subsection E and deleted the subparagraph designation of Subparagraph E(1)(a) and added the

language from former Subparagraph (a) to Paragraph (1) of Subsection E; in Paragraph (1) of Subsection E, after "resolution if the", deleted "charter school is a locally chartered or state-chartered charter school whose" and added "school's"; redesignated former Subparagraph D(1)(b) as Paragraph (2) of Subsection E; in Paragraph (2) of Subsection E, after "may", deleted "in its discretion", and after "term.", deleted "and"; deleted "if the tax revenue for a charter school is included in the resolution" from former Paragraph (2) of Subsection D and redesignated the remaining language as Subsection F; in Subsection F, added "If a local school board adopts a resolution that includes tax revenue for a charter school"; and redesignated former Subsection E as Subsection G.

**The 2009 amendment**, effective June 19, 2009, in Subsection A, at the end of the sentence, added "and the provisions of the Open Meetings Act"; in Subsection D, after "provided that:", deleted language that required the local school board to consider requests by a charter school for funds needed for a lease purchase agreement entered into by the charter school; added Paragraph (1) of Subsection D; in Paragraph (2) of Subsection D, at the beginning of the sentence, added "if the tax revenue for a charter school is included in the resolution and"; and in Subsection E, changed "twenty" to "thirty".

## 22-26A-7. Payments under lease purchase arrangements.

A school district or charter school may apply any legally available funds to acquire or improve buildings or other real property subject to a lease purchase arrangement or to the payments due under a lease purchase arrangement, including any combination of:

A. money from the school district's or charter school's general fund;

B. investment income actually received from investments;

C. proceeds from taxes imposed pursuant to the Public School Capital Improvements Act [Chapter 22, Article 25 NMSA 1978] or the Public School Buildings Act [Chapter 22, Article 26 NMSA 1978];



D. loans, grants or lease payments received from the public school capital outlay council pursuant to the Public School Capital Outlay Act [Chapter 22, Article 24 NMSA 1978];

E. state distributions to the school district or charter school pursuant to the Public School Capital Improvements Act;

F. fees or assessments received by the school district;

G. proceeds from the sale of real property and rental income received from the rental or leasing of school district or charter school property;

H. grants from the federal government as assistance to those areas affected by federal activity authorized in accordance with Title 20 of the United States Code, commonly known as "PL 874 funds" or "impact aid";

I. revenues from the tax authorized pursuant to Sections 22-26A-8 through 22-26A-12 NMSA 1978, if proposed by the local school board and approved by the voters; and

J. legislative appropriations.

**History:** Laws 2007, ch. 173, § 7; 2009, ch. 132, § 7; 2015, ch. 106, § 5.

**Cross references.** — For PL 874 funds, see 20 USCS § 7701 et seq.

**The 2015 amendment**, effective July 1, 2015, amended the Public School Lease Purchase Act to authorize charter schools to apply any legally available funds to acquire or improve buildings or other real property subject to a lease purchase arrangement; in the introductory sentence of the section, after "A school district", added "or charter school"; in Subsection A, after "school district's", added "or charter school's"; in Subsection E, after "school district", added "or charter school".

**The 2009 amendment**, effective June 19, 2009, in the introductory sentence, after "funds to", deleted "the payments due on or any prepayment premium payable in connection with lease purchase arrangements as they become due" and added the remainder of the sentence; in Subsection C, after "proceeds from taxes imposed", deleted "to pay school district general obligation bonds or" and after "Building Act", deleted "or the Educational Technology Equipment Act"; deleted Subsection D, which included revenue from bonds or notes pursuant to the School Revenue Bond Act or the School District Anticipation Notes Act; and added Subsection J.

## 22-26A-8. Authorization for local school board to submit question of lease purchase tax.

A local school board may adopt a resolution to submit to the qualified electors of the school district the question of whether a property tax at a rate not to exceed the rate specified in the resolution should be imposed upon the net taxable value of property allocated to the school district under the Property Tax Code [Chapter 7, Articles 35 through 38 NMSA 1978] for the purpose of making payments under lease purchase arrangements. The resolution shall:

A. specify the maximum rate of the proposed tax, which shall not exceed ten dollars (\$10.00) on each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district under the Property Tax Code;

B. specify the date an election will be held to submit the question of imposition of the tax to the qualified electors of the district; and

C. limit the imposition of the proposed tax to no more than thirty property tax years.

**History:** Laws 2007, ch. 173, § 8; 2009, ch. 132, § 8.

**The 2009 amendment**, effective June 19, 2009, in Subsection A after "specify the", added "maximum" and in Subsection C, changed "twenty" to "thirty".

## 22-26A-9. Authorizing resolution; time limitation.

The resolution authorized under Section 8 [22-26A-8 NMSA 1978] of the Public School Lease Purchase Act shall be adopted no later than May 15 in the year in which the tax is proposed to be imposed.

**History:** Laws 2007, ch. 173, § 9.

**Effective dates.** — Laws 2007, ch. 173 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

## 22-26A-10. Conduct of election; notice; ballot.

A. An election on the question of imposing a tax under Sections 22-26A-8 through 22-26A-12 NMSA 1978 shall be held as prescribed in the Local Election Act [Chapter 1, Article 22 NMSA 1978].

B. The resolution required to be published as notice of the election under Section 1-22-11 NMSA 1978 shall include as the question to be submitted to the voters whether a property tax at a rate not to exceed the rate specified in the authorizing resolution should be imposed for the specified number of property tax years not exceeding thirty years upon the net taxable value of all property allocated to the school district for payments due under lease purchase arrangements.

C. The ballot shall include the information specified in Subsection B of this section and shall present the voter the choice of voting "for the lease purchase tax" or "against the lease purchase tax".

**History:** Laws 2007, ch. 173, § 10; 2009, ch. 132, § 9; 2018, ch. 79, § 96.

**The 2018 amendment**, effective July 1, 2018, provided that elections on the question of imposing a tax under Sections 22-26A-8 through 22-26A-12 NMSA 1978 shall be held as prescribed in the Local Election Act, and made technical and conforming changes; in Subsection A, after "Section 22-26A-12 NMSA 1978", deleted "may" and added "shall", after "be held", deleted "in conjunction with a regular school district election or may be conducted as or held in conjunction with a special school district election, but the election shall be held prior to July 1 of the

property tax year in which the tax is proposed to be imposed. Conduct of the election shall be", and after "as prescribed in the", deleted "School Election Law for regular and special school district elections" and added "Local Election Act"; and in Subsection B, after "under Section", deleted "1-22-4 or 1-22-5" and added "1-22-11".

**Temporary provisions.** — Laws 2018, ch. 79, § 174 provided that references in law to the Municipal Election Code and to the School Election Law shall be deemed to be references to the Local Election Act.

**The 2009 amendment**, effective June 19, 2009, in Subsection B, changed "twenty" to "thirty".

## 22-26A-11. Election results; certification.

The certification of the results of an election held on the question of imposition of a lease purchase tax shall be made in accordance with the Local Election Act [Chapter 1, Article 22 NMSA 1978], and a copy of the certificate of results shall be mailed immediately to the secretary.

**History:** Laws 2007, ch. 173, § 11; 2018, ch. 79, § 97.

**The 2018 amendment**, effective July 1, 2018, provided that elections held on the question of imposition of a lease purchase tax shall be made in accordance with the Local Election Act, and made conforming changes; and changed "School Election Law" to "Local Election Act".

**Temporary provisions.** — Laws 2018, ch. 79, § 174 provided that references in law to the Municipal Election Code and to the School Election Law shall be deemed to be references to the Local Election Act.

## 22-26A-12. Imposition of tax; limitations.

If as a result of an election held in accordance with Sections 22-26A-8 through 22-26A-11 NMSA 1978 a majority of the qualified electors voting on the question votes in favor of the imposition of the tax, the tax rate shall be certified, unless the local school board directs that the tax levy not be made for the year, by the department of finance and administration at the rate specified in the authorizing resolution or at a lower rate directed by the local school board and the tax shall be imposed at the rate certified in accordance with the provisions of the Property Tax Code [Chapter 7, Articles 35 through 38 NMSA 1978]. The revenue produced by the tax shall be expended only for payments due under lease purchase arrangements, as specified in the authorizing resolution.

**History:** Laws 2007, ch. 173, § 12; 2009, ch. 132, § 10.

**The 2009 amendment**, effective June 19, 2009, after "authorizing resolution", added "or at a lower rate directed by the local school board".

## 22-26A-13. Publication of notice; validation.

A. After adoption of a resolution approving a lease purchase arrangement, the governing body shall publish notice of the adoption of the resolution once in a newspaper of general circulation in the school district in which the governing body's school is located.



B. After the passage of thirty days from the publication required by Subsection A of this section, any action attacking the validity of the proceedings taken by the governing body preliminary to and in the authorization of and entering into the lease purchase arrangement described in the notice is perpetually barred.

**History:** Laws 2007, ch. 173, § 13; 2015, ch. 106, § 6.

The 2015 amendment, effective July 1, 2015, amended the Public School Lease Purchase Act to require the governing body of a charter school or school district to publish notice of the adoption of a resolution approving a lease purchase arrangement; in Subsection A, after

"arrangement, the", deleted "local school board" and added "governing body", and after "circulation in the school district", added "in which the governing body's school is located"; and in Subsection B, after "taken by the", deleted "local school board" and added "governing body".

## 22-26A-14. Refunding or refinancing lease purchase arrangements.

School districts and charter schools may enter into lease purchase arrangements for the purpose of refunding or refinancing any lease purchase arrangements then outstanding, including the payment of any prepayment premiums thereon and any interest accrued or to accrue to the date of prepayment maturity of the outstanding lease purchase arrangements. Until the proceeds of the lease purchase arrangements issued for the purpose of refunding or refinancing outstanding lease purchase arrangements are applied to the prepayment or retirement of the outstanding lease purchase arrangements, the proceeds may be placed in escrow and invested and reinvested. The interest, income and profits, if any, earned or realized on any such investment may, in the discretion of the governing body, also be applied to the payment of the outstanding lease purchase arrangements to be refunded or refinanced by prepayment or retirement, as the case may be. After the terms of the escrow have been fully satisfied and carried out, any balance of such proceeds and interest, if any, earned or realized on the investments thereof may be returned to the governing body to be used for payment of the refunding or refinancing lease purchase arrangement. If the proceeds from a tax imposed pursuant to Sections 22-26A-8 through 22-26A-12 NMSA 1978 were used as a source of payments for the refunded lease purchase arrangement, the proceeds may continue to be used for the refunding or refinancing lease purchase arrangements without the requirement of an additional election on the issue.

**History:** Laws 2007, ch. 173, § 14; 2015, ch. 106, § 7.

The 2015 amendment, effective July 1, 2015, amended the Public School Lease Purchase Act to authorize charter schools to enter into lease purchase arrangements for the purpose of refunding or refinancing any outstanding lease purchase arrangements; after "School districts", added "and charter schools", after "in the discretion of the",

deleted "school board" and added "governing body", after "investments thereof may be returned to the", deleted "local school board" and added "governing body", after "tax imposed pursuant to Section", deleted "8 through 12 of the Public School Lease Purchase Act" and added "22-26A-8 through 22-26A-12 NMSA 1978".

## 22-26A-15. Agreement of the state.

The state does hereby pledge to and agree with the holders of any lease purchase arrangement, certificates of participation or other partial interest in a lease purchase arrangement entered into under the Public School Lease Purchase Act that the state will not limit or alter the rights vested in school districts or charter schools to fulfill the terms of any lease purchase arrangement or related sublease arrangement or in any way impair the rights and remedies of the holders of lease purchase arrangements, certificates of participation or other partial interests in lease purchase arrangements until the payments due thereon, and all costs and expenses in connection with any action or proceedings by or on behalf of those holders, are fully met and discharged. School districts and charter schools are authorized to include this pledge and agreement of the state in any lease purchase arrangement or related sublease arrangement.

**History:** Laws 2007, ch. 173, § 15; 2009, ch. 132, § 11; 2015, ch. 106, § 8.

The 2015 amendment, effective July 1, 2015, amended the Public School Lease Purchase Act to include charter schools in the "Agreement of the State", which provides

that the state will not limit or alter the rights vested in school districts or charter schools to fulfill the terms of any lease purchase arrangement or in any way impair the rights and remedies of the holders of lease purchase arrangements; after "vested in school districts", added "or charter schools", and after "School districts", added "and charter schools".

**The 2009 amendment**, effective June 19, 2009, after the first occurrence of "purchase arrangement", added

"certificates of participation or other partial interest in a lease purchase arrangement"; after the second occurrence of "purchase arrangement", added "or related sublease arrangement"; after the third occurrence of "purchase arrangements", added "certificates of participation or other partial interests in lease purchase arrangements"; and after the fourth occurrence of "purchase arrangement", added "or related sublease arrangement".

## 22-26A-16. Legal investments for public officers and fiduciaries.

Lease purchase arrangements entered into under the authority of the Public School Lease Purchase Act, including certificates of participation and other partial interests in such lease purchase arrangements, shall be legal investments in which all insurance companies, banks and savings and loan associations organized under the laws of the state, public officers and public bodies and all administrators, guardians, executors, trustees and other fiduciaries may properly and legally invest funds.

**History:** Laws 2007, ch. 173, § 16; 2009, ch. 132, § 12.

**The 2009 amendment**, effective June 19, 2009, after "Purchase Act", added "including certificates of

participation and other partial interests in such lease purchase arrangements".

## 22-26A-17. Tax exemption.

The state covenants with the original holder and all subsequent holders and transferees of lease purchase arrangements entered into by governing bodies, in consideration of the acceptance of and payment for the lease purchase arrangements entered into pursuant to the Public School Lease Purchase Act, that lease purchase arrangements, certificates of participation and other partial interests in lease purchase arrangements and the interest income from the lease purchase arrangements, certificates of participation and other partial interests shall at all times be free from taxation by the state, except for estate or gift taxes and taxes on transfers.

**History:** Laws 2007, ch. 173, § 17; 2009, ch. 132, § 13; 2015, ch. 106, § 9.

**The 2015 amendment**, effective July 1, 2015, amended the Public School Lease Purchase Act to include charter schools in the state's covenant that lease purchase

arrangements will be free from taxation by the state, except for estate or gift taxes and taxes on transfers; after "arrangements entered into by", deleted "local school boards" and added "governing bodies".

## 22-26A-18. Cumulative and complete authority.

The Public School Lease Purchase Act shall be deemed to provide an additional and alternative method for acquiring buildings and other real property authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as a derogation of any powers now existing. The Public School Lease Purchase Act shall be deemed to provide complete authority for acquiring buildings and other real property and entering into lease purchase arrangements contemplated thereby, and no other approval of any state agency or officer, except as provided therein, shall be required with respect to any lease purchase arrangements, and the governing body acting thereunder need not comply with the requirements of any other law applicable to the issuance of debt by school districts.

**History:** Laws 2007, ch. 173, § 18; 2015, ch. 106, § 10.

**The 2015 amendment**, effective July 1, 2015, amended the Public School Lease Purchase Act to provide that this act provides complete authority for acquiring buildings and other real property through lease purchase

arrangements, and that the governing body of a charter school or school district need not comply with the requirements of any other law applicable to the issuance of debt; after "arrangements, and the", deleted "local school board" and added "governing body".



**22-26A-19. Repealed.**

**Repeals.** — Laws 2015, ch. 106, § 11 repealed 22-26A-19 NMSA 1978, as enacted by Laws 2007, ch. 173, § 19, relating to lease purchase arrangements for charter schools,

effective July 1, 2015. For provisions of former section, see the 2014 NMSA 1978 on *NMOneSource.com*.

**22-26A-20. Liberal interpretation.**

The Public School Lease Purchase Act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect its purposes.

**History:** Laws 2007, ch. 173, § 20.

**Effective dates.** — Laws 2007, ch. 173 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

**ARTICLE 27****Meditation in Public School**

Sec.

22-27-1. Short title.

22-27-2. Findings; purpose.

Sec.

22-27-3. Moment of silent meditation.

**22-27-1. Short title.**

This act [22-27-1 to 22-27-3 NMSA 1978] may be cited as the "Meditation in Public School Act".

**History:** Laws 1995, ch. 72, § 1.

**22-27-2. Findings; purpose.**

A. The legislature finds that:

(1) the first amendment of the United States constitution protects religious freedom and freedom of speech;

(2) the constitution of New Mexico protects each citizen's rights to worship God according to the dictates of the citizen's conscience; and

(3) the constitution of New Mexico prohibits public schools from requiring attendance or participation by students or teachers in any religious service.

B. The purpose of the Meditation in Public School Act is to foster respect for the educational process and environment and to provide for the right of every public school student to exercise his freedom of conscience on public school grounds without pressure from the state, any public school, teacher, school personnel or other student.

**History:** Laws 1995, ch. 72, § 2.

**22-27-3. Moment of silent meditation.**

Students in the public schools may voluntarily engage in student-initiated moments of silent meditation.

**History:** Laws 1995, ch. 72, § 3.

**Severability.** — Laws 1995, ch. 72, § 4 provided that if any part or application of the Meditation in Public School

Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## ARTICLE 28

### School Bus Advertisements

Sec.

22-28-1. Bus advertisements authorized; limitations and restrictions.

22-28-2. School bus title; leasing space.

22-28-3. Solicitation; lease; rent payment.

Sec.

22-28-4. School bus advertising fund.

22-28-5. Distribution.

22-28-6. Accountability.

#### 22-28-1. Bus advertisements authorized; limitations and restrictions.

A. The state transportation division of the department of education [public education department] shall authorize local school boards to sell advertising space on the interior and exterior of school buses. The local school board shall develop guidelines for the type of advertisements that will be permitted. There shall be no advertisements that involve:

(1) obscenity, sexual material, gambling, tobacco, alcohol, political campaigns or causes, religion or promoting the use of drugs; or

(2) general content that is harmful or inappropriate for school buses as determined by the state board [department].

B. All school bus advertisements shall be painted or affixed by decal on the bus in a manner that does not interfere with national and state requirements for school bus markings, lights and signs. The commercial advertiser that contracts with the school district for the use of the space for advertisements shall be required to pay the cost of placing the advertisements on the bus and shall pay for its removal after the term of the contract has expired.

C. The right to sell advertising space on school buses shall be within the sole discretion of the local school board, except as required by Section 3 [22-28-1 NMSA 1978] of this act.

D. An officer or employee of a school district or of the department of education [public education department] who fails to comply with the obligations or restrictions created by this act shall be subject to discipline, including the possibility of being terminated from employment. A school bus private owner that fails to comply with the obligations or restrictions created by this act is in breach of contract and the contract is subject to cancellation after notice and hearing before the director of the state transportation division.

**History:** Laws 1997, ch. 233, § 3.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed

references to the public education department. *See* 9-24-15 NMSA 1978.

**Compiler's notes.** — The phrase "this act" as used in this section means Laws 1997, ch. 233, which enacted the provisions of this article.

**Cross references.** — For the state transportation division of the department of education, *see* 22-16-2 NMSA 1978.

#### 22-28-2. School bus title; leasing space.

A. All school bus private owners that have legal title to school buses used and operated pursuant to an existing bus service contract with a school district may lease space on their buses to the school district for the purpose of selling commercial advertisements. In exchange for leasing the space, the school bus private owners shall receive ten percent of the total value of the amount of the contract between the school district and the commercial advertiser.

B. The amount of space that will be available for commercial advertisements on school buses shall be established by regulations of the department of education [public education department] consistent with national and state requirements for school bus markings, lights and signs.

C. Space for advertising on school buses owned by the department of education [public education department] shall be provided to school districts without cost for the purpose of selling advertising space to commercial advertisers.



**History:** Laws 1997, ch. 233, § 4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be

deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

### 22-28-3. Solicitation; lease; rent payment.

A. A school district shall be permitted to solicit offers from commercial advertisers for the use of space on the school buses that service their school district. The school district may enter into a lease agreement with a commercial advertiser for the use of any designated advertising space on a school bus that services the school district.

B. In a lease agreement with a commercial advertiser, the school district shall establish the rental amount, schedule and term. The term of any lease agreement shall not be for a period longer than the time remaining on the school district's bus service contract with a school bus private owner who owns the bus that is the subject of the lease agreement.

C. A school district shall not enter into a lease agreement with a commercial advertiser that seeks to display an advertisement that is prohibited by local school board guidelines.

**History:** Laws 1997, ch. 233, § 5.

### 22-28-4. School bus advertising fund.

The "school bus advertising fund" is created in the state treasury and shall be administered by the department of education [public education department]. The fund shall consist of money raised pursuant to this act. Balances in the fund at the end of any fiscal year shall not revert to the general fund. Income from investment of the fund shall be credited to the fund.

**History:** Laws 1997, ch. 233, § 6.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education

or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**Compiler's notes.** — The phrase "this act" as used in this section means Laws 1997, ch. 233, which enacted the provisions of this article and amended 22-1-2 and 22-16-2 NMSA 1978.

### 22-28-5. Distribution.

A. Funds raised from commercial advertisement shall be distributed from the school bus advertising fund after the required payment is made to school bus private owners.

B. Sixty percent of the proceeds raised shall be distributed to each school district to use in accordance with the school district's technology plan in amounts proportionate to the amount that each school district contributed to the school bus advertising fund.

C. Forty percent of the proceeds raised shall be distributed on a per membership basis of middle and junior high schools by the state superintendent [secretary] to school districts for extracurricular activities. If a school district does not expend money from the school bus advertising fund for extracurricular activities, it shall revert back to the fund.

D. School districts shall report to the department of education [public education department] on how the funds were used in the technology plans and for extracurricular activities.

**History:** Laws 1997, ch. 233, § 7.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed

references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

## 22-28-6. Accountability.

Funds raised by a school district from lease agreements relating to the use of advertising space on school buses by commercial advertisers shall be fully accounted for and subject to review and examination by the department of education [public education department].

**History:** Laws 1997, ch. 233, § 8.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be

deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## ARTICLE 29

### Public School Insurance Authority

Sec.

22-29-1. Short title.

22-29-2. Purpose of act.

22-29-3. Definitions.

22-29-4. Authority created.

22-29-5. Board created; membership; duties.

22-29-6. Fund created; budget review; premiums.

22-29-7. Authority; duties.

Sec.

22-29-8. Receipts and disbursements; issuance of warrants, purchase orders and contracts; deposit of funds.

22-29-9. Participation; waivers.

22-29-10. Group insurance contributions.

22-29-11. Expenditure of insurance proceeds for public schools.

22-29-12. Due process reimbursement.

### 22-29-1. Short title.

Chapter 22, Article 29 NMSA 1978 may be cited as the "Public School Insurance Authority Act".

**History:** 1978 Comp., § 22-2-6.1, enacted by Laws 1986, ch. 94, § 1; 1978 Comp., § 22-2-6.1, recompiled as § 22-29-1, by Laws 2003, ch. 153, § 72; 2005, ch. 274, § 17.

**Repeals and reenactments.** — Laws 1986, ch. 94, § 1 repealed former 22-2-6.1 NMSA 1978, as enacted by Laws 1985, ch. 237, § 1, relating to group insurance for public schools, and enacted a new section.

**The 2005 amendment,** effective April 6, 2005, added the statutory reference to the act.

### ANNOTATIONS

**The Public School Insurance Authority** is a state agency for purposes of the state budget laws, 1990 Op. Att'y Gen. No. 90-23.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 78 C.J.S. Schools and School Districts § 401.

### 22-29-2. Purpose of act.

The purpose of the Public School Insurance Authority Act is to provide comprehensive core insurance programs, including reimbursement coverage for the costs of providing due process to students with disabilities, for all participating public schools, school board members, school board retirees and public school employees and retirees by expanding the pool of subscribers to maximize cost containment opportunities for required insurance coverage.

**History:** 1978 Comp., § 22-2-6.2, enacted by Laws 1986, ch. 94, § 2; 1978 Comp., § 22-2-6.2, recompiled as § 22-29-2 by Laws 2003, ch. 153, § 72; 2008, ch. 56, § 1.

**The 2008 amendment,** effective July 1, 2008, provided that the purpose of the act includes reimbursement coverage for the costs of providing due process to students with disabilities.

### 22-29-3. Definitions.

As used in the Public School Insurance Authority Act:

- A. "authority" means the public school insurance authority;
- B. "board" means the board of directors of the authority;



C. "charter school" means a school organized as a charter school pursuant to the provisions of the Charter Schools Act [Chapter 22, Article 8B NMSA 1978];

D. "director" means the director of the authority;

E. "due process reimbursement" means the reimbursement of a school district's or charter school's expenses for attorney fees, hearing officer fees and other reasonable expenses incurred as a result of a due process hearing conducted pursuant to the federal Individuals with Disabilities Education Improvement Act;

F. "educational entities" means state educational institutions as enumerated in Article 12, Section 11 of the constitution of New Mexico and other state diploma, degree-granting and certificate-granting post-secondary educational institutions, regional education cooperatives and nonprofit organizations dedicated to the improvement of public education and whose membership is composed exclusively of public school employees, public schools or school districts;

G. "fund" means the public school insurance fund;

H. "group health insurance" means coverage that includes life insurance, accidental death and dismemberment, medical care and treatment, dental care, eye care and other coverages as determined by the authority;

I. "risk-related coverage" means coverage that includes property and casualty, general liability, auto and fleet, workers' compensation and other casualty insurance; and

J. "school district" means a school district as defined in Subsection R of Section 22-1-2 NMSA 1978, excluding any school district with a student enrollment in excess of sixty thousand students.

**History:** 1978 Comp., § 22-2-6.3, enacted by Laws 1986, ch. 94, § 3; 1991, ch. 142, § 1; 1999, ch. 281, § 17; 2001, ch. 293, § 2; 1978 Comp., § 22-2-6.3, recompiled as § 22-29-3 by Laws 2003, ch. 153, § 72; 2007, ch. 41, § 1; 2007, ch. 236, § 1.

**Cross references.** — For the federal Individuals with Disabilities Education Improvement Act, see 20 U.S.C., § 1400.

**2007 Multiple Amendments.** — Laws 2007, ch. 41, § 1 and Laws 2007, ch. 236, § 1 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2007, ch. 236, § 1, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2007, ch. 41, § 1 and Laws 2007, ch. 236, § 1 are described below. To view the session laws in their entirety, see the 2007 session laws on *NMOneSource.com*.

Laws 2007, ch. 236, § 1, effective July 1, 2008, added Subsection E defining "due process reimbursement".

Laws 2007, ch. 41, § 1, effective July 1, 2007, amended the definition of "educational entities" to include nonprofit organizations dedicated to the improvement of public education and whose membership is composed exclusively of public school employees, public schools or school districts.

**The 2001 amendment**, effective June 15, 2001, added "and regional education cooperatives" to the end of Subsection E and made stylistic changes throughout.

**The 1999 amendment**, effective June 18, 1999, added Subsection C, redesignated former Subsections C to H as Subsections D to I, in Subsection H, substituted "workers' compensation" for "workmen's compensation", and substituted "Subsection K" for "Subsection J" in Subsection I.

**The 1991 amendment**, effective June 14, 1991, added present Subsection C; redesignated former Subsections C to G as Subsections D to H; and inserted "state" preceding "diploma" in Subsection D.

## 22-29-4. Authority created.

There is created the "public school insurance authority", which is established to provide for group health insurance, other risk-related coverage and due process reimbursement with the exception of the mandatory coverage provided by the risk management division on the effective date of the Public School Insurance Authority Act.

**History:** 1978 Comp., § 22-2-6.4, enacted by Laws 1986, ch. 94, § 4; 1978 Comp., § 22-2-6.4, recompiled as § 22-29-4, by Laws 2003, ch. 153, § 72; 2007, ch. 236, § 2.

**The 2007 amendment**, effective July 1, 2008, added due process reimbursement.

## 22-29-5. Board created; membership; duties.

A. There is created the "board of directors of the public school insurance authority". The board shall be composed of nine members, consisting of the following:

- (1) one member to be selected by the state board [department] of education;
- (2) one school business official to be selected by the New Mexico school administrators;

- (3) one board member of the New Mexico school boards association to be selected by the association;
- (4) one superintendent to be selected by the New Mexico superintendents' association;
- (5) three members to be selected by the New Mexico national education association and the New Mexico federation of teachers with the intent that representation be proportional to their respective membership, provided that each of these three members be currently employed as public school teachers employed by participating entities;
- (6) one member to be selected by the board from lists submitted by the participating educational entities; and three members to be appointed by and serve at the pleasure of the governor; such members shall not be employed by or on behalf of or be contracting with an employer participating in or eligible to participate in the public school insurance authority.

B. Each member of the board shall serve at the pleasure of the party by which he has been appointed for a term not to exceed three years. Any board member who has been appointed and who misses four meetings of the board during a fiscal year shall be replaced and shall forfeit his position on the board, and his replacement shall be made by the organization affected. The board shall set minimum terms of appointment and shall elect from its membership a president, vice president and secretary.

C. The board has the authority to hire a director and appoint such other officers and employees as it may deem necessary and has the authority to contract with consultants or other professional persons or firms as may be necessary to carry out the provisions of the Public School Insurance Authority Act. The board has the authority to provide for its full- and part-time employees, as it deems necessary, employee benefits insurance on the same basis as a member public school district may provide such employee benefits. In addition, the board has the authority to provide to members of the board and the employees risk coverages of the same scope and limitations as are allowed its member school districts to be provided to their local school boards. The board has the authority to provide employees an irrevocable option of qualifying for coverage under either the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] or the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978].

D. The members of the board shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978], but shall receive no other compensation, perquisite or allowance.

**History:** 1978 Comp., § 22-2-6.5, enacted by Laws 1986, ch. 94, § 5; 1988, ch. 64, § 11; 1989, ch. 373, § 1; 1991, ch. 142, § 2; 1978 Comp., 22-2-6.5, recompiled as § 22-29-5, by Laws 2003, ch. 153, § 72.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**The 1991 amendment,** effective June 14, 1991, in Subsection A, deleted "public" preceding "education" in Paragraph (1), added the proviso at the end of Paragraph (5); deleted former Paragraph (6) which read "one member to be selected by the New Mexico association of educational retirees", added the language beginning "and three members" at the end of Paragraph (6) and made a

related stylistic change; added "for a term not to exceed three years" at the end of the first sentence in Subsection B; and inserted "hire a director and" near the beginning of the first sentence in Subsection C.

**The 1989 amendment,** effective June 16, 1989, rewrote Subsection A(1), which formerly read "the state superintendent or his designee"; substituted "school business official" for "member" in Subsection A(2); in Subsection B deleted "Except for the state superintendent who serves by virtue of his office," at the beginning of the first sentence, and added the present second sentence; and in Subsection C added the second, third and fourth sentences.

**The 1988 amendment,** effective May 18, 1988, substituted "state superintendent or his designee" for "director of the office of education of the department of finance and administration" in Subsection A(1), "educational retirees" for "retired educators" in Subsection A(6), and "state superintendent" for "director of the office of education" in the first sentence in Subsection B.

## 22-29-6. Fund created; budget review; premiums.

A. There is created the "public school insurance fund". All income earned on the fund shall be credited to the fund. The fund is appropriated to the authority to carry out the provisions of the Public School Insurance Authority Act. Any money remaining in the fund at the end of each fiscal year shall not revert to the general fund.



B. The board shall determine which money in the fund constitutes the long-term reserves of the authority. The state investment officer shall invest the long-term reserves of the authority in accordance with the provisions of Sections 6-8-1 through 6-8-16 NMSA 1978. The state treasurer shall invest the money in the fund that does not constitute the long-term reserves of the fund in accordance with the applicable provisions of Chapter 6, Article 10 NMSA 1978.

C. All appropriations shall be subject to budget review through the department of education [public education department], the state budget division of the department of finance and administration and the legislative finance committee.

D. The authority shall provide that premiums are collected from school districts and charter schools participating in the authority sufficient to provide the required insurance coverage and to pay the expenses of the authority. All premiums shall be credited to the fund.

E. Any reserves remaining at the termination of an insurance contract shall be disbursed to the individual school districts, charter schools and other participating entities on a pro rata basis.

F. Disbursements from the fund for purposes other than procuring and paying for insurance or insurance-related services, including but not limited to third-party administration, premiums, claims and cost containment activities, shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the director or his designee; provided that the chairman of the board may sign vouchers if the position of director is vacant.

**History:** 1978 Comp., § 22-2-6.6, enacted by Laws 1986, ch. 94, § 6; 1989, ch. 373, § 2; 1991, ch. 142, § 3; 1999, ch. 281, § 18; 1978 Comp., § 22-2-6.6, recompiled as § 22-29-6, by Laws 2003, ch. 153, § 72.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**The 1999 amendment**, effective June 18, 1999, substituted "Any money remaining in the fund" for "Any funds remaining" in the last sentence of Subsection A, deleted "of funds" following "All appropriations" in Subsection C, and added the references to charter schools in Subsections D and E.

**The 1991 amendment**, effective June 14, 1991, deleted "deposited in a segregated account and invested in securities eligible for investment by the educational retirement board pursuant to Section 22-11-13 NMSA 1978" at the end of the first sentence in Subsection A; added Subsections B and F; and redesignated former Subsections B to D as Subsections C to E.

**The 1989 amendment**, effective June 16, 1989, in Subsection B substituted "department of education" for "office of education" and "state budget division" for "budget division"; in Subsection C substituted "fund" for "public school insurance fund" in the second sentence; and substituted all of the present language of Subsection D beginning with "school" for "districts on a pro rata basis".

#### ANNOTATIONS

"Budget review" as used in Subsection B (now Subsection C) means approval of the public school insurance authority's proposed budget. 1990 Op. Att'y Gen. No. 90-23.

## 22-29-7. Authority; duties.

In order to effectuate the purposes of the Public School Insurance Authority Act, the authority has the power to:

- A. enter into professional services and consulting contracts or agreements as necessary;
- B. collect money and provide for the investment of the fund;
- C. collect all current and historical claims and financial information necessary for effective procurement of lines of insurance coverage;
- D. promulgate necessary rules, regulations and procedures for implementation of the Public School Insurance Authority Act;
- E. by rule, establish a policy to be followed by participating members relating to the use of volunteers. The policy shall be distributed to participating members and posted upon the authority's web site;
- F. by rule, establish a policy to be followed by participating members relating to the use of school facilities by private persons; provided that the policy shall relate only to liability and risk issues and shall not affect the rights and responsibilities of local school boards to determine how, when and by whom school district facilities are used. The policy shall be distributed to participating members and posted upon the authority's web site;
- G. provide public liability coverage for health care liability of health care student interns currently enrolled in health care instructional programs provided by any member;

H. insure, by negotiated policy, self-insurance or any combination thereof, participating members against claims of bodily injury, personal injury or property damage related to the use of school facilities by private persons; provided that the coverage shall be subject to the following conditions:

- (1) no more than one million dollars (\$1,000,000) shall be paid for each occurrence; and
- (2) the coverage shall only apply if the participating member was following the policy adopted by the authority pursuant to Subsection F of this section;

I. negotiate new insurance policies covering additional or lesser benefits as determined appropriate by the authority, but the authority shall maintain all coverage levels required by federal and state law for each participating member. In the event it is practical to self-insure wholly a particular line of coverage, the authority may do so;

J. procure lines of insurance coverage in compliance with the provisions of the Health Care Purchasing Act [Chapter 13, Article 7 NMSA 1978] and the competitive sealed proposal process of the Procurement Code [13-1-28 through 13-1-199 NMSA 1978]; provided that any group medical insurance plan offered pursuant to this section shall include effective cost-containment measures to control the growth of health care costs. The board shall report annually by September 1 to appropriate interim legislative committees on the effectiveness of the cost-containment measures required by this subsection; and

K. purchase, renovate, equip and furnish a building for the board.

**History:** 1978 Comp., § 22-2-6.7, enacted by Laws 1986, ch. 94, § 7; 1989, ch. 373, § 3; 1990, ch. 6, § 21; 1991, ch. 142, § 4; 1994, ch. 62, § 21; 1997, ch. 74, § 7; recompiled as § 22-29-7 by Laws 2003, ch. 153, § 72; 2003, ch. 273, § 22; 2009, ch. 198, § 1; 2011, ch. 120, § 1.

**The 2011 amendment**, effective June 17, 2011, granted the authority the power to provide public liability coverage for health care student interns.

**The 2009 amendment**, effective July 1, 2010, added Subsections D through G.

**The 2003 amendment**, effective July 1, 2003, deleted former Subsection A which read: "employ the services of the state fiscal agent or select its own fiscal agent pursuant to regulations adopted by the board; provided that for the purposes of disbursing all money other than that in the fund, the secretary of finance and administration shall be the fiscal agent for the authority;" and redesignated former Subsections B to H as present Subsections A to G; in present Subsection B, inserted "money and" near the beginning, and deleted "and disburse money in" near the end.

**The 1997 amendment**, effective July 1, 1997, inserted "provisions of the Health Care Purchasing Act and the" following "procure lines of insurance coverage in compliance with the" in Subsection G and deleted the remainder of the Subsection after "purchase, renovate, equip and furnish a building for the board" in Subsection H.

**The 1994 amendment**, effective March 4, 1994, added the language beginning "provided that" in Subsection G.

**The 1991 amendment**, effective June 14, 1991, added the proviso at the end of Subsection A; rewrote Subsection C which read "collect, invest and disburse funds"; and deleted "the authority is authorized to" at the beginning of Subsection I.

**The 1990 amendment**, effective February 13, 1990, added "and" at the end of Subsections G and H and, in Subsection I, substituted "seventy-eighth fiscal year" for "seventy-seventh fiscal year" in the first sentence and "seventy-ninth fiscal year" for "seventy-eighth fiscal year" at the end of the second sentence.

**The 1989 amendment**, effective June 16, 1989, added Subsections H and I.

#### ANNOTATIONS

**Contract action not barred by sovereign immunity.** — Receiving a premium, providing insurance coverage, and denying benefits indicated the existence of a valid, written, enforceable insurance contract under the Public School Insurance Authority Act between the New Mexico public schools insurance authority and a school district regarding the authority's first-party insurance obligation; therefore, the school district stated a claim for breach of contract which was not barred by sovereign immunity. *Moriarty Mun. Schs. v. N.M. Pub. Schs. Ins. Auth.*, 2001-NMCA-096, 131 N.M. 180, 34 P.3d 124.

## 22-29-8. Receipts and disbursements; issuance of warrants, purchase orders and contracts; deposit of funds.

A. All premiums and other money collected by the authority shall be deposited in the fund. Except as provided in Subsection F of Section 22-2-6.6 NMSA 1978 [22-29-6 NMSA 1978], funds shall be disbursed directly by the authority, but receipts and disbursements are subject to audit by the state auditor. Except as provided in that subsection, the authority is not required to submit proposed vouchers, purchase orders or contracts to the department of finance and administration as otherwise provided by law. The department of finance and administration shall not require the authority to rebid or to disapprove any contractual arrangements determined by the board to be in the best interests of the authority.

B. Except as provided in Subsection F of Section 22-2-6.6 NMSA 1978 [22-29-6 NMSA 1978], the board shall issue warrants in the name of the authority against funds of the authority in



payment of its lawful obligations, issue purchase orders and contract for goods or services in the name of the authority. The authority shall provide its own warrant, purchase order and contract forms as well as other supplies and equipment.

**History:** 1978 Comp., § 22-2-6.8, enacted by Laws 1986, ch. 94, § 8; 1991, ch. 142, § 5; 1978 Comp., § 22-2-6.8, recompiled as § 22-29-8, by Laws 2003, ch. 153, § 72.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2003, ch. 153, § 72 recompiled former 22-2-6.6 NMSA 1978 as 22-29-6 NMSA 1978, effective April 4, 2003.

**The 1991 amendment,** effective June 14, 1991, in Subsection A, substituted the first two sentences for a sentence which read "All premiums and other money collected by the authority shall be received and disbursed directly by the authority, but receipts and disbursements are subject to audit by the state auditor", added the exception at the beginning of the third sentence and added the final sentence and, in Subsection B, added the exception at the beginning.

## 22-29-9. Participation; waivers.

A. School districts and charter schools shall participate in the authority, unless the school district or charter school is granted a waiver by the board.

B. In determining whether a waiver should be granted, the board shall establish minimum benefit and financial standards for the desired line of coverage. These minimum benefit and financial standards and the proposed time schedule for responsive offers shall be sent to all school districts and charter schools at the time the request for proposals for the desired line of coverage is issued. Any school district or charter school seeking a waiver of coverage shall match the minimum benefit and financial standards set forth in the request for proposals for the desired line of coverage. School districts and charter schools shall submit documentation of their proposals matching the board's minimum benefit and financial requirements prior to the deadline established by the board. The authority has the power to approve or disapprove a waiver of participation based on the documentation submitted by the school district or charter school regarding the benefit and financial standards established by the board. The board shall grant a waiver to a school district or charter school that requests a waiver and that has met the minimum benefit and financial standards within the time schedule established by the board. Once the board awards the insurance contract, no school district or charter school shall be granted a waiver for the entire term of the contract.

C. Any school district or charter school granted a waiver of participation for health insurance shall be required to petition for participation in other kinds of group insurance coverage and shall be required to meet the requirements established by the authority prior to participation in other kinds of group insurance coverage. A school district or charter school which has been granted a waiver shall be prohibited from participating in the coverage for which a waiver was granted for the entire term of the authority's insurance contract. Provided, however, that if the authority contracts for a line or lines of coverage for a period of eight years, the board may establish procedures and preconditions for authorizing a school district or charter school which has been granted a waiver to again participate in the coverage after the expiration of the first four years of coverage.

D. Any school district or charter school granted a waiver of participation for workers' compensation shall be required to petition for participation in other risk-related coverages and shall be required to meet the requirements established by the authority prior to participation in other kinds of risk-related coverages. A school district or charter school which has been granted a waiver shall be prohibited from participating in the coverage for which a waiver was granted for the entire term of the authority's insurance contract.

E. Educational entities may petition the authority for permission to participate in the insurance coverage provided by the authority. To protect the stability of the fund, the authority shall establish reasonable terms and conditions for participation by educational entities.

F. A participating school district or charter school may separately provide for coverage additional to that offered by the authority.

G. The local school districts, charter schools or the authority, as appropriate, may provide for marketing and servicing to be done by licensed insurance agents or brokers who should receive reasonable compensation for their services.

**History:** 1978 Comp., § 22-2-6.9, enacted by Laws 1986, ch. 94, § 9; 1989, ch. 373, § 4; 1999, ch. 281, § 19; 1978 Comp., § 22-2-6.9, recompiled as § 22-29-9, by Laws 2003, ch. 153, § 72.

The 1999 amendment, effective June 18, 1999, added references to charter schools throughout the section, and substituted "workers' compensation" for "workmen's compensation" in the first sentence of Subsection D.

The 1989 amendment, effective June 16, 1989, in Subsection B substituted "proposals" for "proposal" in the second and third sentences; added the third sentence of Subsection C; and in Subsection G substituted all of the present language preceding "may provide" for "Whenever

appropriate, the local school districts", and inserted "or brokers".

#### ANNOTATIONS

**Duty to defend lawsuit until exclusion proven.** — The authority had the duty to defend a federal lawsuit against a school district until it could establish that the claims for discrimination and civil rights violations were factually supported only by acts connected with sexual misconduct, such acts being excluded from the insurance policy. *Lopez v. N.M. Pub. Sch. Ins. Auth.*, 1994-NMSC-017, 117 N.M. 207, 870 P.2d 745.

### 22-29-10. Group insurance contributions.

A. Group insurance contributions for school districts, charter schools and participating entities in the authority shall be made as follows:

- (1) at least seventy-five percent of the cost of the insurance of an employee whose annual salary is less than fifteen thousand dollars (\$15,000);
- (2) at least seventy percent of the cost of the insurance of an employee whose annual salary is fifteen thousand dollars (\$15,000) or more but less than twenty thousand dollars (\$20,000);
- (3) at least sixty-five percent of the cost of the insurance of an employee whose annual salary is twenty thousand dollars (\$20,000) or more but less than twenty-five thousand dollars (\$25,000); or
- (4) at least sixty percent of the cost of the insurance of an employee whose annual salary is twenty-five thousand dollars (\$25,000) or more.

B. Within available revenue, school districts, charter schools and participating entities in the authority may contribute up to eighty percent of the cost of the insurance of all employees.

C. Whenever a school district, charter school or participating entity in the authority offers to its employees alternative health plan benefit options, including health maintenance organizations, preferred provider organizations or panel doctor plans, the school district, charter school or participating entity may pay an amount on behalf of the employee and family member for the indemnity health insurance plan sufficient to result in equal employee monthly costs to the cost of the health maintenance organization plans, preferred provider organization plans or panel doctor plans, regardless of the percentage limitations in the Public School Insurance Authority Act. School districts, charter schools and participating entities in the authority may pay up to one hundred percent of the first fifty thousand dollars (\$50,000) of term life insurance.

**History:** 1978 Comp., § 22-2-6.10, enacted by Laws 1989, ch. 373, § 5; 1999, ch. 281, § 20; 1978 Comp., 22-2-6.10, recompiled as § 22-29-10, by Laws 2003, ch. 153, § 72; 2004, ch. 82, § 2.

The 2004 amendments, effective May 19, 2004, in Subsection A, inserted "at least" at the beginning of Paragraphs (1) through (4); added a new Subsection B; and re-designated former Subsection B as Subsection C.

The 1999 amendment, effective June 18, 1999, inserted references to charter schools throughout the section, and deleted "public school insurance" or "public schools insurance" preceding "authority" in the introductory language of Subsection A and the first and second sentences of Subsection B.

### 22-29-11. Expenditure of insurance proceeds for public schools.

Payment for a claim under property insurance coverage for property damage to public school facilities may be paid directly to the school district, or, pursuant to the Procurement Code [13-1-28 through 13-1-199 NMSA 1978], the insurance proceeds may be expended by the insurer to repair the damage. If the payment is made directly to the school district, without further approval of the authority or any insurance carrier, the proceeds of the insurance payment may be expended by the school district to repair or replace the damaged facility if:



A. the school district complies with the Procurement Code; and

B. contracts for the repair or replacement are approved by the public school facilities authority pursuant to Section 22-20-1 NMSA 1978, provided that:

(1) the cost of settlement of the insurance claim shall not be increased by inclusion of the insurance proceeds in the construction contracts; and

(2) insurance claims settlements shall continue to be governed by insurance policies, memoranda of coverage and rules related to them.

**History:** Laws 2005, ch. 274, § 18.

**Effective dates.** — Laws 2005, ch. 274, § 20 made Laws 2005, ch. 274, § 18 effective April 6, 2005.

## 22-29-12. Due process reimbursement.

The authority shall include due process reimbursement in its self-insured retention risk pool. Each year, the legislature shall authorize the board to collect the due process reimbursement premium from member districts and charter schools to cover the cost of due process reimbursement. From the authorization, the board shall allocate due process reimbursement premiums based on a school district's or charter school's claims experience and other criteria determined by the board. A single due process reimbursement shall not exceed one hundred thousand dollars (\$100,000).

Prior to the beginning of each fiscal year, the authority shall determine the amount of money available in the fund for special education due process reimbursements. The authority shall set forth in its general liability memorandum of coverage the provisions for distribution of that amount for due process reimbursements to school districts and charter schools, including:

A. the process by which school districts and charter schools submit claims for reimbursement by the end of the fiscal year; and

B. the method for distributing the money available to school districts and charter schools on a pro rata basis if the available money is not sufficient to cover all claims.

**History:** Laws 2007, ch. 236, § 3; 2008, ch. 56, § 2.

**The 2008 amendment,** effective July 1, 2008, decreased the maximum single due process reimbursement from \$300,000 to \$100,000 and added the last paragraph.

## ARTICLE 30

### Statewide Cyber Academy Act

Sec.

22-30-1. Short title.

22-30-2. Definitions.

22-30-3. Statewide cyber academy created.

22-30-4. Department rules.

22-30-5. Statewide cyber academy; duties.

Sec.

22-30-6. Distance learning students.

22-30-7. Distance learning and computer-based courses.

22-30-8. Evaluation of regional education cooperative and distance learning networks.

## 22-30-1. Short title.

Sections 1 through 7 [and 11] of this act [Chapter 22, Article 30 NMSA 1978] may be cited as the "Statewide Cyber Academy Act".

**History:** Laws 2007, ch. 292, § 1 and Laws 2007, ch. 293, § 1.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2007, ch. 292, § 11 and Laws 2007, ch. 293, § 11, recompiled former 22-13-27 NMSA 1978 into the Statewide Cyber Academy Act as 22-30-7 NMSA 1978.

**Compiler's notes.** — Laws 2007, ch. 292, § 1 and Laws 2007, ch. 293, § 1 enacted identical new sections, effective June 15, 2007.

## 22-30-2. Definitions.

As used in the Statewide Cyber Academy Act:

- A. "course provider" means a person that supplies educational course content for distance learning courses;
- B. "distance learning course" means an educational course that is taught where the student and primary instructor are separated by time or space and linked by technology;
- C. "distance learning student" means a qualified student as defined in Section 22-8-2 NMSA 1978 who is enrolled in one or more distance learning courses for credit;
- D. "learning management system" means a software application that facilitates online instruction and interaction between teachers and distance learning students;
- E. "local distance learning site" means a school district or charter school that offers and grants credit for distance learning courses to distance learning students enrolled in the school district or charter school;
- F. "primary enrolling district" means the school district or charter school in which the distance learning student is enrolled;
- G. "regional host" means an educational institution, school district or other entity selected by the statewide cyber academy to coordinate the delivery of distance learning courses within a broad geographic region of the state;
- H. "service center" means the single central facility where administrative and management functions of the statewide cyber academy are physically located in New Mexico; and
- I. "statewide cyber academy" means the department's collaborative program that offers distance learning courses to all local distance learning sites.

**History:** Laws 2007, ch. 292, § 2 and Laws 2007, ch. 293, § 2.

**Compiler's notes.** — Laws 2007, ch. 292, § 2 and Laws 2007, ch. 293, § 2 enacted identical new sections, effective June 15, 2007.

## 22-30-3. Statewide cyber academy created.

The "statewide cyber academy" program is created in the department. The statewide cyber academy is a collaborative program among the department, the higher education department, telecommunications networks and representatives of other state agencies engaged in providing distance education. The statewide cyber academy shall provide distance learning courses for grades six through twelve and professional development for teachers, instructional support providers and school administrators.

**History:** Laws 2007, ch. 292, § 3 and Laws 2007, ch. 293, § 3.

**Compiler's notes.** — Laws 2007, ch. 292, § 3 and Laws 2007, ch. 293, § 3 enacted identical new sections, effective June 15, 2007.

The Statewide Cyber Academy Act was enacted as part of the Public School Code, 22-1-1 NMSA 1978. The

department referred to in the Statewide Cyber Academy Act means the public education department, 22-1-2 NMSA 1978.

**Cross references.** — For the public education department, *see* 9-24-4 NMSA 1978.

For the higher education department, *see* 9-25-1 NMSA 1978.

## 22-30-4. Department rules.

The department shall promulgate rules to carry out the provisions of the Statewide Cyber Academy Act.

**History:** Laws 2007, ch. 292, § 4 and Laws 2007, ch. 293, § 4.

**Compiler's notes.** — Laws 2007, ch. 292, § 4 and Laws 2007, ch. 293, § 4 enacted identical new sections, effective June 15, 2007.

## 22-30-5. Statewide cyber academy; duties.

The statewide cyber academy shall:



A. establish a distance learning course delivery system that is efficient and cost-effective and that uses a statewide service center and regional hosts to provide approved distance learning courses;

B. select regional hosts based on pre-existing experience and capacity to facilitate the delivery of distance educational programs, including public post-secondary educational institutions, regional education cooperatives and school districts;

C. provide technical and program support to regional hosts and local distance learning sites;

D. ensure that all distance learning courses offered by course providers are taught by highly qualified teachers or members of the faculty of accredited post-secondary educational institutions and meet state academic content and performance standards;

E. provide for reasonable and equitable means to allocate the costs of distance learning courses among the statewide cyber academy, the course providers and the school districts whose students are enrolled in a distance learning course;

F. give first priority to the delivery of distance learning courses for credit to distance learning students who have the greatest need because of geographic location or circumstances in which a school district may have difficulty delivering essential course instruction due to financial restraints or lack of highly qualified teachers; provided that in fiscal year 2008 the statewide cyber academy shall include, among those distance learning students who are determined to have the greatest need, distance learning students served by school districts that are members of regional education cooperatives three, eight and nine;

G. ensure that the statewide cyber academy's learning management system is compatible with school district and department data collection, analysis and reporting systems;

H. ensure that all deficiencies in the infrastructure, hardware and software in the statewide cyber academy are corrected in accordance with educational technology adequacy standards pursuant to Section 22-15A-11 NMSA 1978;

I. comply with all rules governing privacy and confidentiality of student records for secure record storage;

J. offer distance learning courses to distance learning students;

K. offer professional development via distance learning, using a learning management system;

L. assist the council on technology in education in its development of the statewide plan required by Section 22-15A-7 NMSA 1978, including a statewide cyber academy plan that addresses short- and long-range goals;

M. define and coordinate the roles and responsibilities of the collaborating agencies to establish a distance learning governance and accountability framework; and

N. conduct an annual evaluation and provide an annual report to the department and the legislature that includes a detailed report of expenditures; a description of services provided, including the number and location of local distance learning sites, public schools and distance learning students served; the courses offered; the credits generated by local distance learning sites; and student and teacher accountability reporting data.

**History:** Laws 2007, ch. 292, § 5 and Laws 2007, ch. 293, § 5.

**Compiler's notes.** — Laws 2007, ch. 292, § 5 and Laws 2007, ch. 293, § 5 enacted identical new sections, effective June 15, 2007.

## 22-30-6. Distance learning students.

A. A student must be enrolled in a public school or a state-supported school and must have the permission of the student's local distance education learning site to enroll in a distance learning course. A distance learning student shall only be counted in the student's primary enrolling district for the purpose of determining the membership used to calculate a school district's state equalization guarantee. A student shall have only one primary enrolling district.

B. A home school student may participate in the statewide cyber academy by enrolling for one-half or more of the minimum course requirements approved by the department for public school students in the school district in which the student resides; or, if the student is enrolled for less than

one-half of the minimum course requirements, the student may participate in the statewide cyber academy by paying not more than thirty-five percent of the current unit value per curricular unit.

C. A student enrolled in a nonpublic school may participate in the statewide cyber academy if the school in which the student is enrolled enters into a contract with the school district in which the nonpublic school is located.

D. A student who is detained in or committed to a juvenile detention facility or a facility for the long-term care and rehabilitation of delinquent children may participate in the statewide cyber academy if the facility in which the student is enrolled enters into a contract with the school district in which the facility is located.

**History:** Laws 2007, ch. 292, § 6 and Laws 2007, ch. 293, § 6.

**Compiler's notes.** — Laws 2007, ch. 292, § 6 and Laws 2007, ch. 293, § 6 enacted identical new sections, effective June 15, 2007.

## 22-30-7. Distance learning and computer-based courses.

Public schools that offer distance learning and computer-based courses of study shall provide accompanying electronic formats that are usable by a person with a disability using assistive technology, and those formats shall be based on the American standard code for information interchange, hypertext markup language and extensible markup language.

**History:** Laws 2003, ch. 162, § 2; recompiled by Laws 2007, ch. 292, § 11 and Laws 2007, ch. 293, § 11.

1978 into the Statewide Cyber Academy Act as 22-30-7 NMSA 1978, effective June 15, 2007.

**Recompilations.** — Laws 2007, ch. 292, § 11 and Laws 2007, ch. 293, § 11 recompiled former 22-13-27 NMSA

## 22-30-8. Evaluation of regional education cooperative distance learning networks.

A network developed by regional education cooperatives three, eight and nine shall serve as a regional host in fiscal year 2008. The statewide cyber academy shall provide a preliminary report to the governor and the legislature by January 1, 2008 on the quality and cost-effectiveness of the provision of distance learning courses by the regional education cooperatives. At the end of fiscal year 2008, the statewide cyber academy shall prepare a final report on the quality and cost-effectiveness of services provided, including whether the services increased the rigor of school district and charter school curricula, and make recommendations for the expansion to other regional education cooperatives.

**History:** Laws 2007, ch. 292, § 7 and Laws 2007, ch. 293, § 7.

**Compiler's notes.** — Laws 2007, ch. 292, § 7 and Laws 2007, ch. 293, § 7 enacted identical new sections, effective June 15, 2007.

# ARTICLE 31

## School Athletics Equity

Sec.

22-31-1. Short title.

22-31-2. Applicability; nondiscrimination.

22-31-3. Data reporting.

Sec.

22-31-4. Disclosure to students and public.

22-31-5. Assurance of compliance.

22-31-6. Report to governor and legislature.

### 22-31-1. Short title.

This act [22-31-1 through 22-31-6 NMSA 1978] may be cited as the "School Athletics Equity Act".

**History:** Laws 2009, ch. 178, § 1.



**Effective dates.** — Laws 2009, ch. 178 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## 22-31-2. Applicability; nondiscrimination.

Except as provided in Subsections C, D and E of Section 22-31-3 NMSA 1978, the School Athletics Equity Act applies to each public school that has an athletics program for grades seven through twelve. Each public school shall operate its program in a manner that does not discriminate against students or staff on the basis of gender.

**History:** Laws 2009, ch. 178, § 2; 2012, ch. 24, § 1.

**The 2012 amendment**, effective May 16, 2012, eliminated certain reporting requirements for school athletics

programs in grades seven and eight, and at the beginning of the first sentence, added "Except as provided in Subsections C, D and E of Section 22-31-3 NMSA 1978,".

## 22-31-3. Data reporting.

The department shall collect annual data from public schools on their athletics programs. Each public school shall collect and submit the prior-year data required in this section in a format required by the department. The data submitted shall include:

- A. by August 31, 2011, the following information pertaining to enrollment:
  - (1) the total enrollment in each public school as an average of enrollment at the second and third reporting dates;
  - (2) student enrollment by gender;
  - (3) total number of students participating in athletics;
  - (4) athletics participation by gender; and
  - (5) the number of boys' teams and girls' teams by sport and by competition level;
- B. by August 31, 2011, the following information pertaining to athletic directors and coaches:
  - (1) the names and genders of each public school's athletic director and other athletic program staff;
  - (2) the names of each team's coaches, with their gender, job title and employment status, such as full-time, part-time, contract or volunteer, specified;
  - (3) the coach-to-athlete ratio for each team; and
  - (4) the stipend or other compensation for coaching paid to coaches of boys' teams and to coaches of girls' teams for each public school;
- C. by August 31, 2012, an accounting of the funding sources that are used to support the school's athletics programs in grades nine through twelve and to which programs those funds are allocated; funding sources include state funding, federal funding, fundraising or booster clubs, game and concession receipts, gate receipts, cash or in-kind donations, grants and any other source;
- D. by August 31, 2012, the following information regarding expenses for athletics programs in grades nine through twelve, including:
  - (1) any capital outlay expenditures for each public school's athletics programs; and
  - (2) the expenditures for each public school's athletics programs, including travel expenses such as transportation, meal allowances and overnight accommodations; equipment; uniforms; facilities; facilities improvements; publicity expenses; awards; banquets; insurance; and any other expenses incurred by each athletic program; and
- E. by August 31, 2012, a statement of benefits and services to each athletic program in grades nine through twelve, including:
  - (1) replacement schedules for uniforms;
  - (2) practice and game schedules; and
  - (3) locker rooms, weight rooms and practice, competitive and training facilities.

**History:** Laws 2009, ch. 178, § 3; 2012, ch. 24, § 2.

**The 2012 amendment**, effective May 16, 2012, eliminated certain reporting requirements for school athletics

programs in grades seven and eight and clarified other reporting requirements; in Subsection A, in Paragraph (1), after "average of enrollment at the", deleted

"eighteen and one hundred twentieth days of the school year" and added "second and third reporting dates"; in Subsection B, in the introductory sentence, after "directors and coaches", deleted "and other school personnel"; in Paragraph (1), after "athletic director", added "and other athletic program staff"; and in Paragraph (2), after "team's coaches", deleted "and other team personnel"; in Subsection C, after "athletics programs", added "in grades nine through twelve" and after "and to which", deleted "teams" and added "programs"; in Subsection D, in the introductory sentence, after "regarding expenses", added "for athletics programs in grades nine through

twelve"; and in Paragraph (2), after "athletics programs", deleted "and (3) the expenditure for individual teams" and after "expenses incurred by each"; deleted "team" and added "athletic program"; and in Subsection E, in the introductory sentence, after "services to each", deleted "team" and added "athletic program in grades nine through twelve"; in Paragraph (1), after "schedules for", deleted "equipment" and after "uniforms", deleted "and supplies"; in Paragraph (3), at the beginning of the sentence, deleted "access to"; and deleted former Paragraph (4), which required a statement of assistance in obtaining scholarships.

#### 22-31-4. Disclosure to students and public.

A. Each public school shall make its data available to the public, including all materials relied upon to compile the data. Each public school shall inform all students at the public school of their right to review the data.

B. The department shall publish the following information:

- (1) each public school's data; and
- (2) a list of public schools that did not submit fully completed data.

C. Each public school shall maintain its data and all materials relied upon to complete the data for at least three years. Each public school shall publish its data in a newspaper of general circulation in the state or make the data available on a publicly accessible web site.

**History:** Laws 2009, ch. 178, § 4.

**Effective dates.** — Laws 2009, ch. 178 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

#### 22-31-5. Assurance of compliance.

A. Each public school shall submit an assurance of compliance with Title 9 to its local school board or governing body and provide a copy to the department no later than August 31 of each year. The assurance shall be signed by the superintendent of the district or the head administrator of the charter school. The department shall publish, in a newspaper of general circulation in the state or on a publicly accessible web site, a list of public schools that fail to submit the assurance of compliance with Title 9.

B. As used in this section, "Title 9" means federal Public Law 92-318, Title 9, of the Education Amendments of 1972, which is codified at 20 U.S.C. 1681, et seq., and the regulations promulgated pursuant to that act.

**History:** Laws 2009, ch. 178, § 5.

**Effective dates.** — Laws 2009, ch. 178 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

#### 22-31-6. Report to governor and legislature.

Beginning December 1, 2011, the department shall submit annually a report on the School Athletics Equity Act to the governor and the legislature, including a summary of the data received from the public schools. The report shall include recommendations on how to increase gender equity in athletics in public schools. The department shall post the report on its web site.

**History:** Laws 2009, ch. 178, § 6.

**Effective dates.** — Laws 2009, ch. 178 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.



## ARTICLE 32

### Community Schools

Sec.  
 22-32-1. Short title.  
 22-32-2. Purpose.  
 22-32-3. Community schools initiatives; school improvement functions; requirements.  
 22-32-4. Community schools initiatives; indirect costs; grants; school district, group of public schools or public school duties; requirements.

Sec.  
 22-32-5. Definitions.  
 22-32-6. Community school framework; community school coordinator.  
 22-32-7. Coalition for community schools.  
 22-32-8. Community schools fund; created; accountability.

#### 22-32-1. Short title.

Chapter 22, Article 32 NMSA 1978 may be cited as the "Community Schools Act".

**History:** Laws 2013, ch. 16, § 1; 2017, ch. 66, § 1.

**The 2017 amendment**, effective June 16, 2017, changed "This act" to "Chapter 22, Article 32" NMSA 1978".

#### 22-32-2. Purpose.

The Community Schools Act is enacted to provide a strategy to organize the resources of a community to ensure student success while addressing the needs, including cultural and linguistic needs, of the whole student from early childhood programs and voluntary public pre-kindergarten through high school graduation; to partner federal, state and local and tribal governments with community-based organizations to improve the coordination, delivery, effectiveness and efficiency of services provided to students and families; and to coordinate resources, in order to align and leverage community resources and integrate funding streams.

**History:** Laws 2013, ch. 16, § 2; 2019, ch. 198, § 1.

**The 2019 amendment**, effective July 1, 2019, expanded the purpose of community schools to address the cultural and linguistic needs of students from early childhood programs and pre-kindergarten through high school graduation; after "addressing the needs," added "including

cultural and linguistic needs", after "whole student", added "from early childhood programs and voluntary public pre-kindergarten through high school graduation", after "state and local", deleted "entities" and added "and tribal governments", after "with", deleted "private", and after "provided to", deleted "children" and added "students".

#### 22-32-3. Community schools initiatives; school improvement functions; requirements.

A. A community schools initiative may be created in any public school in the state and may be created as a consortium of public schools.

B. A community schools initiative shall include the following:

(1) a lead partner agency, including a public or private agency or community-based organization, to help coordinate programs and services;

(2) an annual assessment that is a meaningful and collaborative inquiry process to develop a comprehensive understanding of local needs and assets and of community resources that is conducted by the community school coordinator and informed by the site-based leadership team and that relates to the effective alignment and delivery of programs and services within the community school; and

(3) the community school framework.

C. A lead partner agency for more than three public schools shall provide a full-time position that supports the community school coordinators at those public schools.

D. Where early childhood services and supports are indicated as a need, a community school site-based leadership team shall prioritize strong partnerships and integration with early

childhood providers located both on and off the public school campus, including transportation to meet community needs.

**History:** Laws 2013, ch. 16, § 3; 2017, ch. 66, § 2; 2019, ch. 198, § 4.

**The 2019 amendment**, effective July 1, 2019, required community school initiatives to work with a lead partner agency to conduct an annual community needs and assets assessment and to implement a program framework; in Subsection A, after "state", added "and may be created as a consortium of public schools"; deleted former Subsection B and redesignated former Subsection C as Subsection B; in Subsection B, in Paragraph B(2), after "an", added "annual", after "assessment", added "that is a meaningful and collaborative inquiry process to develop a comprehensive understanding of local needs and assets and", after "community resources", deleted "informed by students, families and community and school leaders" and added "that is conducted by the community school coordinator and informed by the site-based leadership team and", after "effective", added "alignment and", and after "delivery of", deleted "core services on site" and added "programs and services within the community school", deleted former Paragraph (3) and added new Paragraph B(3); and added new Subsections C and D.

**The 2017 amendment**, effective June 16, 2017, required a community schools initiative to include opportunities to strengthen behavior of students, expanded the core strategies requirement for strengthening the behavior of students, and required each community schools initiative to establish and implement an independently evaluated and evidence-based or results-based model of integrated student services and comprehensive supports proven to increase student achievement; in Subsection B, in the introductory clause, after "shall include", deleted "but not be limited to", and after "set of strategies", added "and opportunities to strengthen behavior for all students", in Paragraph B(1), after "including", deleted "before- and", and after "after-school programs", deleted "as well as" and added "and", deleted former Paragraph B(3) and added new Paragraphs B(3) through B(6); in Subsection C, Paragraph C(1), after "including", deleted "but not limited to", in Paragraph C(3), after the first occurrence of "the", deleted "establishment of an evaluation process that measures both the quality and quantity of outcomes", and added the remainder of the paragraph.

#### **22-32-4. Community schools initiatives; indirect costs; grants; school district, group of public schools or public school duties; requirements.**

A. A school district shall bear any indirect costs associated with the establishment and implementation of a community school within the school district.

B. Subject to the availability of funding, grants for community schools initiatives are available to a school district, a group of public schools or a single public school that has demonstrated partnerships with the local community to establish, operate and sustain the community school framework and that meets department eligibility requirements.

C. The department shall promulgate rules and procedures to distribute funds through a competitive grant program developed and designed in partnership with the coalition for community schools.

D. Applications for grants for community schools initiatives shall be in the form prescribed by the department to support a continuum of community school development.

E. A school district, a group of public schools or a single public school that uses funds under this section to transform a public school into an evidence-based community schools initiative shall:

- (1) use rigorous, transparent, equitable and evidence-based evaluation systems to assess the effectiveness of the implementation of the community schools initiative;
- (2) provide ongoing, high-quality professional development that:
  - (a) aligns with the community school's instructional program;
  - (b) facilitates effective teaching and learning; and
  - (c) supports the implementation of school reform strategies; and
- (3) give the community school sufficient operational flexibility in programming, curriculum, staffing, budgeting and scheduling so that the community school can fully implement a comprehensive community school framework designed to focus on improving the community school climate, student academic achievement, attendance, behavior, family engagement and, for high schools, graduation rates and readiness for college or a career.

F. If a grantee receives funding to implement the community schools initiative at three or more public school sites, the school district shall employ a community schools director or manager to oversee and coordinate implementation across all of the covered school sites and ensure the employment of a community school coordinator by the lead partner agency at each school site.



G. A school district or public school may use Title 1 funds for its community schools initiative and the department may use Title 1 funds to invest in community schools statewide.

H. The department is authorized to provide planning, implementation and renewal grants to eligible applicants as follows:

(1) a one-year, one-time planning grant of up to fifty thousand dollars (\$50,000) for each eligible public school to conduct an initial school and community needs assessment, identify community supports and services through asset mapping and establish a site-based leadership team; and

(2) annual implementation grants of one hundred fifty thousand dollars (\$150,000) each year for a period of three years for each eligible school; and

(3) at the conclusion of the initial three-year grant period, applicants may apply for a renewal grant for one year in an amount determined by the department.

I. Eligible applicants shall provide satisfactory documentation required by the department that the applicant intends to apply for an implementation grant within six months of receiving a planning grant.

J. Eligible applicants shall submit an application for an implementation or renewal grant to the department for each eligible community school through the grant authorization process.

**History:** Laws 2013, ch. 16, § 4; 2017, ch. 66, § 3; 2019, ch. 198, § 5.

The 2019 amendment, effective July 1, 2019, required the public education department to promulgate rules and procedures to distribute funds through a competitive grant program, and revised the community school application requirements; in the section heading, deleted "administrative" and added "indirect"; in Subsection A, after "bear any", deleted "administrative" and added "indirect"; in Subsection B, after "public schools or a", added "single", after "partnerships with", deleted "any lead agency and local, private and public agencies for the purpose of establishing, operating and sustaining" and added "the local community to establish, operate and sustain the", and after the next occurrence of "community", deleted "schools" and added "school framework"; added new Subsection C and redesignated former Subsections C and D as Subsections D and E, respectively; in Subsection D, after "prescribed by the department", deleted "and shall include the following

information" and added "to support a continuum of community school development", and deleted former Paragraphs (1) through (10); in Subsection E, after "schools or a", added "single", after "transform a", added "public", and after "school into", deleted "research and" and added "an", in Paragraph E(2), after "development", deleted "to staff", in Subparagraph E(2)(a), after "aligns with the", added "community", in Paragraph E(3), added "community" preceding each occurrence of "school", and after "comprehensive", deleted "strategy" and added "community school framework"; and added new Subsections F through J.

The 2017 amendment, effective June 16, 2017, required a school district, a group of public schools or a public school that uses funds under the Community Schools Act to use an evidence-based evaluation system to assess the effectiveness of the implementation of the community schools initiative; and in Subsection D, Paragraph D(1), after "transparent", deleted "and", and after "equitable", added "and evidence-based".

## 22-32-5. Definitions.

As used in the Community Schools Act:

A. "community school" means a public school that partners with families and the community, including tribal partners, nonprofit community-based organizations and local businesses, to provide well-rounded educational opportunities and supports for student success through the implementation of a community school framework;

B. "community school coordinator" means a full-time person employed by the lead partner agency who works within a community school as part of the site-based leadership team;

C. "community school framework" means a set of strategies implemented in a community school that include culturally and linguistically responsive instruction, programs and services and restorative practices that focus on building and maintaining relationships;

D. "community schools initiative" means the implementation of the community school framework to provide comprehensive or targeted support and improvement activities pursuant to the federal Every Student Succeeds Act;

E. "elementary school" may include early childhood services and pre-kindergarten;

F. "lead partner agency" means the agency that employs the community school coordinator and works collaboratively with the community school coordinator, the school principal and the site-based leadership team to assess, plan and carry out the community school framework;

G. "site-based leadership team" means an interdisciplinary, school-based leadership team that includes the school principal, the community school coordinator, teachers, other school employees,

families, community partners, tribal partners, nonprofit organizations, unions and neighboring community residents that guides collaborative planning, implementation and oversight; and

H. "statewide coalition" means a group of community schools, members of their site-based leadership teams, foundations, businesses and other organizations, including unions, cultural and linguistic experts and tribal leaders, who have joined together to advocate for and support the development of community schools across New Mexico in alignment with an evidence-based community school framework.

**History:** Laws 2019, ch. 198, § 2.

**Effective dates.** — Laws 2019, ch. 198, § 8 made Laws 2019, ch. 198, § 2 effective July 1, 2019.

**Cross references.** — For the federal Every Student Succeeds Act see P.L. No. 114-95.

## **22-32-6. Community school framework; community school coordinator.**

A. The community school framework shall ensure the use of research- and evidence-based strategies and best practices that support students, families and communities in ensuring student success and shall include:

(1) integrated student supports that address non-academic and out-of-school barriers to learning through partnerships with social and health service agencies and providers that may include school-based or school-linked health care, case management services and family stability supports coordinated by a community school coordinator and that are culturally and linguistically responsive to the needs of students and their families;

(2) expanded and enriched learning time and opportunities, including before-school, after-school, weekend, summer and year-round programs, that provide additional academic support, enrichment activities and other programs that may be offered in partnership with community-based organizations to enhance academic learning, social skills, emotional skills and life skills and are aligned with the school's curriculum;

(3) active family and community engagement that:

(a) values the experiences of people from diverse backgrounds as empowered partners in decision making and encourages partnerships with parents or caregivers to develop and promote a vision for student success;

(b) offers courses, activities and services for parents or caregivers and community members; and

(c) creates structures and opportunities for shared leadership; and

(4) collaborative leadership and practices that build a culture of professional learning, collective trust and shared responsibility using strategies that at a minimum include a site-based leadership team and a community school coordinator.

B. The community school framework may include:

(1) broader use of public school facilities in which school buildings become hubs for neighborhood events, activities, advocacy and civic life;

(2) community-based curriculum in which the content of instruction is centered on local knowledge, service learning and problem-solving around community issues; and

(3) public pre-kindergarten and other state and federally funded early childhood services that:

(a) support working families and help ensure that children come to kindergarten ready to learn;

(b) provide students and working parents or caregivers with full-day and after-school child care;

(c) provide high-quality pre-kindergarten programs that are aligned to early childhood professional and curricular early learning standards;

(d) provide health, vision, dental and other supports and services to children before school age; and

(e) include strong partnerships and alignment with early learning centers and child care providers that may include transportation or coordination to meet the broader early childhood community needs.

C. The lead partner agency shall employ a community school coordinator to:



- (1) implement the community school framework;
- (2) lead the needs and assets assessment;
- (3) facilitate communication between partners as a stakeholder- and community-driven approach to problem-solving;
- (4) guide data-informed continuous improvement;
- (5) manage data collection; and
- (6) align, leverage and coordinate resources for student and family success.

**History:** Laws 2019, ch. 198, § 3.

**Effective dates.** — Laws 2019, ch. 198, § 8 made Laws 2019, ch. 198, § 3 effective July 1, 2019.

## 22-32-7. Coalition for community schools.

The department shall appoint a "coalition for community schools" that is a statewide coalition of community school participants, which shall include local community school content experts, culturally responsive content experts and tribal leaders. The coalition shall provide advocacy, capacity building and technical assistance to ensure equitable distribution of resources to all school districts in New Mexico. The coalition shall assist the department in reviewing applications for grants and making recommendations for awards.

**History:** Laws 2019, ch. 198, § 6.

**Effective dates.** — Laws 2019, ch. 198, § 8 made Laws 2019, ch. 198, § 6 effective July 1, 2019.

## 22-32-8. Community schools fund; created; accountability.

A. The "community schools fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants and donations. The department shall administer the fund, and money in the fund is appropriated to the department to distribute grant awards to support the development and implementation of community schools initiatives.

B. The department shall ensure that the money expended from the community schools fund is used for the purposes stated in the Community Schools Act and shall not be used to correct for previous reductions in program services.

**History:** Laws 2019, ch. 198, § 7.

**Effective dates.** — Laws 2019, ch. 198, § 8 made Laws 2019, ch. 198, § 7 effective July 1, 2019.

# ARTICLE 33

## Emergency Medication In Schools

Sec. 22-33-1. Short title.  
 22-33-2. Definitions.  
 22-33-3. Emergency medication; albuterol; epinephrine; stock supply; storage.

Sec. 22-33-4. Local school board or governing body; emergency medication; protocols and policies; training.  
 22-33-5. Medical cannabis; possession; storage; administration; restriction; exemptions.

### 22-33-1. Short title.

Sections 1 through 4 [22-33-1 through 22-33-4 NMSA 1978] of this act may be cited as the "Emergency Medication in Schools Act".

**History:** Laws 2014, ch. 50, § 1.

**Effective dates.** — Laws 2014, ch. 50 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 21, 2014, 90 days after the adjournment of the legislature.

## 22-33-2. Definitions.

As used in the Emergency Medication in Schools Act:

- A. "albuterol" includes albuterol or another inhaled bronchodilator, as recommended by the department of health, for the treatment of respiratory distress;
- B. "albuterol aerosol canister" means a portable drug delivery device packaged with multiple premeasured doses of albuterol;
- C. "anaphylaxis" or "anaphylactic reaction" means a sudden, severe and potentially life-threatening whole-body allergic reaction;
- D. "emergency medication" means albuterol or epinephrine;
- E. "epinephrine" includes epinephrine or another medication, as recommended by the department of health, used to treat anaphylaxis until the immediate arrival of emergency medical system responders;
- F. "epinephrine auto-injector" means a portable, disposable drug delivery device that contains a premeasured single dose of epinephrine;
- G. "governing body" includes a governing body of a private school;
- H. "health care practitioner" means a person authorized by the state to prescribe emergency medication;
- I. "respiratory distress" includes impaired oxygenation of the blood or impaired ventilation of the respiratory system;
- J. "school" means a public school, charter school or private school;
- K. "spacer" means a holding chamber that is used to optimize the delivery of albuterol to a person's lungs;
- L. "stock supply" means an appropriate quantity of emergency medication, as recommended by the department of health; and
- M. "trained personnel" means a school employee, agent or volunteer who has completed epinephrine administration training documented by the school nurse, school principal or school leader and approved by the department of health and who has been designated by the school principal or school leader to administer epinephrine on a voluntary basis outside of the scope of employment.

**History:** Laws 2014, ch. 50, § 2.

**Effective dates.** — Laws 2014, ch. 50 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 21, 2014, 90 days after the adjournment of the legislature.

## 22-33-3. Emergency medication; albuterol; epinephrine; stock supply; storage.

A. Each local school board or governing body may obtain a standing order for and may provide to schools within its jurisdiction a stock supply of albuterol aerosol canisters and spacers prescribed in the name of the school or school district by a health care practitioner employed or authorized by the department of health. Each school that receives a stock supply of albuterol aerosol canisters and spacers pursuant to this subsection shall store them:

(1) in a secure location that is unlocked and readily accessible to a school nurse to administer albuterol;

(2) pursuant to board of pharmacy regulations; and

(3) within the manufacturer-recommended temperature range.

B. Each local school board or governing body may obtain a standing order for and may provide to schools within its jurisdiction a stock supply of standard-dose and pediatric-dose epinephrine auto-injectors prescribed in the name of each school by a health care practitioner employed or authorized by the department of health. Each school that receives a stock supply of standard-dose and pediatric-dose epinephrine auto-injectors pursuant to this subsection shall store them:

(1) in a secure location that is unlocked and readily accessible to trained personnel;

(2) pursuant to board of pharmacy regulations; and

(3) within the manufacturer-recommended temperature range.



C. Each local school board or governing body shall dispose of expired emergency medication pursuant to board of pharmacy regulations or department of health rules.

D. A local school board or governing body or a school within its jurisdiction may accept gifts, grants, bequests and donations from any source to carry out the provisions of the Emergency Medication in Schools Act, including the acceptance of albuterol aerosol canisters and spacers and epinephrine auto-injectors from a manufacturer or wholesaler.

**History:** Laws 2014, ch. 50, § 3.

**Effective dates.** — Laws 2014, ch. 50 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 21, 2014, 90 days after the adjournment of the legislature.

#### **22-33-4. Local school board or governing body; emergency medication; protocols and policies; training.**

A. Each local school board or governing body that provides to schools within its jurisdiction a stock supply of albuterol aerosol canisters and spacers shall develop policies, based on department of health rules and recommendations, for a school nurse to administer albuterol to a student who is perceived to be in respiratory distress, regardless of whether the student has been identified or documented as having asthma, has a prescription for albuterol or has supplied the school with albuterol. Such policies shall include procedures to:

- (1) recognize the symptoms of respiratory distress;
- (2) administer albuterol using a spacer;
- (3) call 911 to initiate an emergency medical system;
- (4) continue to monitor the student's condition and deliver any additional treatment indicated until an emergency medical system responder arrives;
- (5) notify the parent, guardian or legal custodian of the student having respiratory distress; and
- (6) take any other necessary actions based on training completed pursuant to the Emergency Medication in Schools Act.

B. Each local school board or governing body that provides to schools within its jurisdiction a stock supply of standard-dose and pediatric-dose epinephrine auto-injectors shall develop policies based on the protocols in this section and department of health rules and recommendations, publish the policies on its web site and receive documentation that trained personnel have received training to:

- (1) administer epinephrine to a student who is reasonably believed to be having an anaphylactic reaction, regardless of whether the student has been identified or documented as having a severe allergy, has a prescription for epinephrine or has supplied the school with epinephrine auto-injectors; and
- (2) follow an anaphylaxis action protocol to:
  - (a) recognize symptoms of anaphylaxis;
  - (b) administer an epinephrine auto-injector to a student reasonably believed to be having an anaphylactic reaction;
  - (c) call 911 to initiate an emergency medical system;
  - (d) continue to monitor the student's condition and deliver any additional treatment indicated until an emergency medical system responder arrives;
  - (e) notify the parent, guardian or legal custodian of the student having an anaphylactic reaction; and
  - (f) take any other necessary actions based on training completed pursuant to the Emergency Medication in Schools Act.

C. Each school that receives a stock supply of standard-dose and pediatric-dose epinephrine auto-injectors shall:

- (1) develop and implement a plan to have one or more trained personnel on the school premises during operating hours; and

(2) follow an anaphylactic reaction prevention protocol, as recommended by the department of health, to minimize an allergic student's exposure to food allergies.

**History:** Laws 2014, ch. 50, § 4.

**Effective dates.** — Laws 2014, ch. 50 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective May 21, 2014, 90 days after the adjournment of the legislature.

## **22-33-5. Medical cannabis; possession; storage; administration; restriction; exemptions.**

A. Except as provided pursuant to Subsection C of this section, local school boards and the governing bodies of charter schools shall adopt policies and procedures to authorize the possession, storage and administration of medical cannabis by parents and legal guardians, or by designated school personnel, to qualified students for use in school settings; provided that:

(1) a student shall not possess, store or self-administer medical cannabis in a school setting;

(2) a parent, legal guardian or designated school personnel shall not administer medical cannabis in a manner that creates disruption to the educational environment or causes other students to be exposed to medical cannabis;

(3) a written treatment plan for the administration of the medical cannabis is agreed to and signed by the principal or the principal's designee of the qualified student's school and the qualified student's parent or legal guardian; and

(4) before the first administration of medical cannabis in a school setting, the qualified student's parent or legal guardian completes and submits documentation as required by local school board or charter school rules that includes a:

(a) copy of the qualified student's written certification for use of medical cannabis pursuant to the Lynn and Erin Compassionate Use Act [26-2B-1 through 26-2B-7 NMSA 1978]; and

(b) written statement from the qualified student's parent or legal guardian releasing the school and school personnel from liability, except in cases of willful or wanton misconduct or disregard of the qualified student's treatment plan.

B. A school board or the governing body of a charter school may adopt policies that:

(1) restrict the types of designated school personnel who may administer medical cannabis to qualified students;

(2) establish reasonable parameters regarding the administration and use of medical cannabis and the school settings in which administration and use are authorized; and

(3) ban student possession, use, distribution, sale or being under the influence of a cannabis product in a manner that is inconsistent with the provisions of this subsection.

C. The provisions of Subsection A of this section shall not apply to a charter school or school district if:

(1) the charter school or school district reasonably determines that it would lose, or has lost, federal funding as a result of implementing the provisions of Subsection A of this section; and

(2) the determination is appealable by any parent to the secretary, based on rules established by the department.

D. A public school, charter school or school district shall not:

(1) discipline a student who is a qualified student on the basis that the student requires medical cannabis as a reasonable accommodation necessary for the student to attend school;

(2) deny eligibility to attend school to a qualified student on the basis that the qualified student requires medical cannabis as a reasonable accommodation necessary for the student to attend school or a school-sponsored activity; or

(3) discipline a school employee who refuses to administer medical cannabis.

E. As used in this section:

(1) "certifying practitioner" means a health care practitioner who issues a written certification to a qualified student;

(2) "designated school personnel" means a school employee whom a public school, charter school or school district authorizes to possess, store and administer medical cannabis to a qualified student in accordance with the provisions of this section;



(3) "medical cannabis" means cannabis that is:

(a) authorized for use by qualified patients in accordance with the provisions of the Lynn and Erin Compassionate Use Act; and

(b) in a form that is not an aerosol and cannot be smoked or inhaled in particulate form as a vapor or by burning;

(4) "qualified student" means a student who demonstrates evidence to the school district that the student is authorized as a qualified patient pursuant to the Lynn and Erin Compassionate Use Act to carry and use medical cannabis in accordance with the provisions of that act;

(5) "school" means a public school or a charter school;

(6) "school setting" means any of the following locations during a school day:

(a) a school building;

(b) a school bus used within the state during, in transit to or in transit from a school-sponsored activity;

(c) a public vehicle used within the state during, in transit to or in transit from a school-sponsored activity in the state; or

(d) a public site in the state where a school-sponsored activity takes place; and

(7) "written certification" means a statement in a qualified student's medical records or a statement signed by a qualified student's certifying practitioner that, in the certifying practitioner's professional opinion, the qualified student has a debilitating medical condition and the certifying practitioner believes that the potential health benefits of the medical use of cannabis would likely outweigh the health risks for the qualified student. A written certification is not valid for more than one year from the date of issuance."

**History:** Laws 2019, ch. 247, § 1; 2019, ch. 261, § 1.

**Compiler's notes.** — Laws 2019, ch. 247, § 1 and Laws 2019, ch. 261, § 1, enacted almost identical new sections, both effective June 14, 2019. Pursuant to 12-1-8 NMSA 1978, Laws 2019, ch. 261, § 1, as the last act signed by the governor, was compiled as 22-33-5 NMSA 1978, and is set out above, and Laws 2019, ch. 247, § 1, while not compiled pursuant to 12-1-8 NMSA 1978, is set out below.

"Medical cannabis; possession; storage; administration; restriction; exemptions.

A. Except as provided pursuant to Subsection C of this section, local school boards and the governing bodies of charter schools shall authorize by rule the possession, storage and administration of medical cannabis by parents and legal guardians, or by designated school personnel, to qualified students for use in school settings; provided that:

(1) a student shall not possess, store or self-administer medical cannabis in a school setting;

(2) a parent, legal guardian or designated school personnel shall not administer medical cannabis in a manner that creates disruption to the educational environment or causes other students to be exposed to medical cannabis;

(3) a written treatment plan for the administration of the medical cannabis is agreed to and signed by the principal or the principal's designee of the qualified student's school and the qualified student's parent or legal guardian; and

(4) before the first administration of medical cannabis in a school setting, the qualified student's parent or legal guardian completes and submits documentation as required by local school board or charter school rules that includes a:

(a) copy of the qualified student's written certification for use of medical cannabis pursuant to the Lynn and Erin Compassionate Use Act; and

(b) written statement from the qualified student's parent or legal guardian releasing the school and school personnel from liability, except in cases of willful or wanton misconduct or disregard of the qualified student's treatment plan.

B. A local school board or the governing body of a charter school may adopt policies that:

(1) restrict the types of designated school personnel who may administer medical cannabis to qualified students;

(2) establish reasonable parameters regarding the administration and use of medical cannabis and the school settings in which administration and use are authorized; and

(3) ban student possession, use, distribution, sale or being under the influence of a cannabis product in a manner that is inconsistent with the provisions of this subsection.

C. The provisions of Subsection A of this section shall not apply to a charter school or school district if:

(1) the charter school or school district reasonably determines that it would lose, or has lost, federal funding as a result of implementing the provisions of Subsection A of this section; and

(2) the determination is appealable by any parent to the secretary, based on rules established by the department.

D. A public school, charter school or school district shall not:

(1) discipline a student who is a qualified student on the basis that the student requires medical cannabis as a reasonable accommodation necessary for the student to attend school;

(2) deny eligibility to attend school to a qualified student on the basis that the qualified student requires medical cannabis as a reasonable accommodation necessary for the student to attend school or a school-sponsored activity; or

(3) discipline a school employee who refuses to administer medical cannabis.

E. As used in this section:

(1) "certifying practitioner" means a health care practitioner who issues a written certification to a qualified student;

(2) "designated school personnel" means a school employee whom a public school, charter school or school district authorizes to possess, store and administer medical cannabis to a qualified student in accordance with the provisions of this section;

- (3) "medical cannabis" means cannabis that is:
- (a) authorized for use by qualified patients in accordance with the provisions of the Lynn and Erin Compassionate Use Act; and
  - (b) is in a form that is not an aerosol and cannot be smoked or inhaled in particulate form as a vapor or by burning;
- (4) "qualified student" means a student who demonstrates evidence to the school district that the student is authorized as a qualified patient pursuant to the Lynn and Erin Compassionate Use Act to carry and use medical cannabis in accordance with the provisions of that act;
- (5) "school" means a public school or a charter school;
- (6) "school setting" means any of the following locations during a school day:
- (a) a school building;

- (b) a school bus used within the state during, in transit to or in transit from a school-sponsored activity;
  - (c) a public vehicle used within the state during, in transit to or in transit from a school-sponsored activity in the state; or
  - (d) a public site in the state where a school-sponsored activity takes place; and
- (7) "written certification" means a statement in a qualified student's medical records or a statement signed by a qualified student's certifying practitioner that, in the certifying practitioner's professional opinion, the qualified student has a debilitating medical condition and the certifying practitioner believes that the potential health benefits of the medical use of cannabis would likely outweigh the health risks for the qualified student. A written certification is not valid for more than one year from the date of issuance."

## ARTICLE 34

### Student Diabetes Management

Sec.

- 22-34-1. Short title.
- 22-34-2. Definitions.
- 22-34-3. Diabetes care; diabetes care personnel; training; immunity.
- 22-34-4. Diabetes medical management plan.

Sec.

- 22-34-5. School diabetes care.
- 22-34-6. Application of other laws.
- 22-34-7. School assignment; diabetes care provision.
- 22-34-8. Diabetes self-management.
- 22-34-9. Enforcement.

#### 22-34-1. Short title.

This act [22-34-1 through 22-34-9 NMSA 1978] may be cited as the "Student Diabetes Management Act".

**History:** Laws 2019, ch. 22, § 1.

**Effective dates.** — Laws 2019, ch. 22 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

#### 22-34-2. Definitions.

As used in the Student Diabetes Management Act:

- A. "diabetes" means type one or type two diabetes mellitus; complications related to diabetes mellitus; or prediabetes;
- B. "diabetes care personnel" means a school employee who volunteers to be trained and is trained in accordance with Section 3 [22-34-3 NMSA 1978] of the Student Diabetes Management Act;
- C. "diabetes medical management plan" means a document that a student's personal health care practitioner and parent or guardian develops that sets out the health services that the student needs at school and that is signed by the student's health care practitioner and parent or guardian;
- D. "governing body" means:
  - (1) the school board of a school district;
  - (2) the entity that governs a state-chartered or locally chartered charter school; or
  - (3) the entity that governs a private school;
- E. "health care practitioner" means a person licensed to provide health care in the ordinary course of business;
- F. "school" means an elementary, secondary, middle, junior high or high school or any combination of those, including a public school, state-chartered or locally chartered charter school or private school that students attend in person;



G. "school employee" means a person employed by a school, a person employed by the department of health or a local health department or by the public education department who is assigned to a school or a contractor designated to provide diabetes management services at a school pursuant to the Student Diabetes Management Act; and

H. "school nurse" means a person who:

- (1) is a nurse who is authorized pursuant to the Nursing Practice Act to practice as a professional registered nurse;
- (2) is licensed by the public education department and the board of nursing as a school nurse; and
- (3) provides services as a school nurse at a school.

**History:** Laws 2019, ch. 22, § 2.

**Effective dates.** — Laws 2019, ch. 22 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

### **22-34-3. Diabetes care; diabetes care personnel; training; immunity.**

A. By December 31, 2019 and in consultation with the American diabetes association, the department of health, the New Mexico school nurse's association and the juvenile diabetes research foundation, the secretary of public education shall adopt and promulgate rules for the training of school employees for the care of students with diabetes. These rules shall require each governing body to ensure that annual diabetes training programs are provided for all school nurses and diabetes care personnel. At a minimum, the training guidelines shall address:

- (1) recognition and treatment of hypoglycemia and hyperglycemia;
- (2) understanding the appropriate actions to take when blood glucose levels are outside of the target ranges indicated by a student's diabetes medical management plan;
- (3) understanding health care practitioner instructions regarding diabetes medication drug dosage, frequency and manner of administration;
- (4) performance of finger stick blood glucose testing and ketone testing and recording of results;
- (5) the administration of glucagon and insulin and the recording of results;
- (6) understanding how to administer glucagon and insulin through the insulin delivery system;
- (7) recognizing diabetes-related complications that require emergency assistance; and
- (8) as relates to students with diabetes, understanding recommended schedules and food intake for meals and snacks, the effect of physical activity upon blood glucose levels and actions to be implemented in the case of schedule disruption.

B. A governing body shall not require that diabetes care personnel be health care practitioners.

C. Each governing body shall ensure that the training established pursuant to Subsection A of this section is provided to a minimum of two school employees at each school attended by a student with diabetes. If at any time fewer than two school employees are available to be trained at a school, the principal or other school administrator shall distribute to all staff a written notice stating that the school is seeking volunteers to serve as diabetes care personnel. The notice shall inform staff of the following:

- (1) the school is required to provide diabetes care to one or more students with diabetes and is seeking personnel willing to be trained to provide that care;
- (2) the tasks to be performed by diabetes care personnel;
- (3) that participation is voluntary and no school, school district or governing body will take action against any staff member who does not volunteer to be designated;
- (4) that training will be provided to employees who volunteer to provide care; and
- (5) the identity of the person whom staff should contact in order to volunteer to be diabetes care personnel.

D. The training required pursuant to Subsection A of this section shall be provided by:

- (1) a school nurse if the school has a school nurse; or
- (2) a health care practitioner with expertise in diabetes.

E. Each governing body shall ensure that the following training is provided on an annual basis to all school personnel who have primary responsibility for supervising a student with diabetes during some portion of the school day and to bus drivers responsible for the transportation of a student with diabetes:

- (1) recognition of hypoglycemia;
- (2) recognition of hyperglycemia; and
- (3) actions to take in response to diabetes related emergency situations.

**History:** Laws 2019, ch. 22, § 3.

**Effective dates.** — Laws 2019, ch. 22 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

#### **22-34-4. Diabetes medical management plan.**

A. The parent or guardian of each student with diabetes who seeks diabetes care while at school shall submit to the school a diabetes medical management plan.

B. Each school that receives a diabetes medical management plan shall review and implement the diabetes medical management plan.

**History:** Laws 2019, ch. 22, § 4.

**Effective dates.** — Laws 2019, ch. 22 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

#### **22-34-5. School diabetes care.**

A. A governing body shall ensure that all students with diabetes receive appropriate and needed diabetes care as specified in students' diabetes medical management plans. In accordance with the request of a parent or guardian of a student with diabetes and the student's diabetes medical management plan, a school nurse or, in the absence of a school nurse, diabetes care personnel shall perform diabetes care functions that shall include, at a minimum:

- (1) checking and recording the student's blood glucose levels and ketone levels or assisting the student with checking and recording these levels;
- (2) responding to blood glucose levels that are outside of the student's target range;
- (3) administering glucagon and other emergency treatments as prescribed;
- (4) administering insulin or assisting a student in administering insulin through the insulin delivery system that the student uses;
- (5) providing oral diabetes medications; and
- (6) following instructions regarding meals, snacks and physical activity.

B. A school nurse or at least one diabetes care personnel shall be at each school where a student with diabetes is attending and shall be available to provide care to each student with diabetes as provided pursuant to Subsection A of this section during regular school hours and during all school-sponsored activities, trips, extended offsite excursions and extracurricular activities in which a student with diabetes is a participant and on buses where the bus driver has not been trained in diabetes care and a student with diabetes is a passenger.

**History:** Laws 2019, ch. 22, § 5.

**Effective dates.** — Laws 2019, ch. 22 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

#### **22-34-6. Application of other laws.**

A. The provisions of Subsection A of Section 5 [22-34-5 NMSA 1978] of the Student Diabetes Management Act shall not constitute the practice of nursing and shall be exempted from all applicable statutory or regulatory provisions that restrict what activities can be delegated to or performed by a person who is not a health care practitioner.



B. Nothing in the Student Diabetes Management Act shall diminish the rights of eligible students or the obligations of school districts under the federal Individuals with Disabilities Education Act, Section 504 of the federal Rehabilitation Act or the federal Americans with Disabilities Act of 1990.

**History:** Laws 2019, ch. 22, § 6.

**Cross references.** — For the federal Americans with Disabilities Act of 1990, see titles 29, 42 and 47 of the U.S. Code.

**Effective dates.** — Laws 2019, ch. 22 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## 22-34-7. School assignment; diabetes care provision.

A. Students with diabetes shall attend the school they would otherwise attend if they did not have diabetes, and the diabetes care specified in Subsection A of Section 5 [22-34-5 NMSA 1978] of the Student Diabetes Management Act shall be provided at the student's school. A governing body shall not restrict a student who has diabetes from attending any school on the basis that the student has diabetes, that the school does not have a full-time school nurse or that the school does not have trained diabetes care personnel.

B. A school shall not require or pressure parents or guardians to provide diabetes care for a student with diabetes at school or school-related activities.

**History:** Laws 2019, ch. 22, § 7.

**Effective dates.** — Laws 2019, ch. 22 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## 22-34-8. Diabetes self-management.

Upon the written request of a parent or guardian of a student with diabetes and authorization by the student's diabetes medical management plan, a student with diabetes shall be permitted to perform blood glucose checks, administer insulin through the insulin delivery system that the student uses, treat hypoglycemia and hyperglycemia and otherwise attend to the care and management of the student's diabetes in the classroom, in any area of the school or school grounds and at any school-related activity. A student with diabetes shall be permitted to possess on the student's person at all times all necessary supplies and equipment to perform these monitoring and treatment functions. If the student's parent or guardian or the student requests, the student shall have access to a private area for performing diabetes care tasks.

**History:** Laws 2019, ch. 22, § 8.

**Effective dates.** — Laws 2019, ch. 22 contained no effective date provision, but, pursuant to N.M. Const., art.

IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## 22-34-9. Enforcement.

A. Governing bodies shall provide a report to the public education department by October 15, 2020 and by each October 15 thereafter. The report shall:

- (1) state how many students with diabetes are attending schools in each school district; and
- (2) provide documentation regarding the compliance of the school district with the provisions of the Student Diabetes Management Act.

B. By December 31, 2019, the secretary of public education shall establish by rule the format of the report required pursuant to Subsection A of this section and the criteria for documentation.

C. The public education department shall publish each report required pursuant to Subsection A of this section on its website by November 15, 2020 and by each November 15 thereafter.

D. Students with diabetes and their parents or guardians may bring an administrative complaint with the public education department against any school or governing body that fails to meet its obligations to train school personnel to provide diabetes care as provided in Section 3 [22-34-3 NMSA 1978] of the Student Diabetes Management Act, to provide the diabetes care described

in Section 5 [22-34-5 NMSA 1978] of the Student Diabetes Management Act or to permit self-management of diabetes as outlined in Section 8 [22-34-8 NMSA 1978] of the Student Diabetes Management Act. This right of action shall not alter or limit the remedies available under any other state or federal law, including Section 504 of the federal Rehabilitation Act, the federal Americans with Disabilities Act of 1990 and the federal Individuals with Disabilities Education Act.

**History:** Laws 2019, ch. 22, § 9.

**Cross references.** — For the federal Americans with Disabilities Act of 1990, see titles 29, 42 and 47 of the U.S. Code.

**Effective dates.** — Laws 2019, ch. 22 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## ARTICLE 35

### Safe Schools for All Students

Sec. 22-35-1. Short title.

22-35-2. Definitions.

22-35-3. Bullying prevention policies; adoption and enforcement.

Sec.

22-35-4. Bullying prevention programs establishment.

22-35-5. Department duties; school district and charter school report cards.

#### 22-35-1. Short title.

This act [22-35-1 through 22-35-5 NMSA 1978] may be cited as the "Safe Schools for All Students Act".

**History:** Laws 2019, ch. 181, § 1.

**Effective dates.** — Laws 2019, ch. 181, § 7 made Laws 2019, ch. 181, § 1 effective July 1, 2019.

#### 22-35-2. Definitions.

As used in the Safe Schools for All Students Act:

A. "bullying" means any severe, pervasive or persistent act or conduct that targets a student, whether physically, electronically or verbally, and that:

(1) may be based on a student's actual or perceived race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation, physical or cognitive disability or any other distinguishing characteristic; or on an association with a person, or group with any person, with one or more of the actual or perceived distinguishing characteristics; and

(2) can be reasonably predicted to:

(a) place a student in reasonable fear of physical harm to the student's person or property;

(b) cause a substantial detrimental effect on a student's physical or mental health;

(c) substantially interfere with a student's academic performance or attendance; or

(d) substantially interfere with a student's ability to participate in or benefit from the services, activities or privileges provided by an agency, educational institution or grantee;

B. "cyberbullying" means any bullying that takes place through electronic communication;

C. "electronic communication" means a communication transmitted by means of an electronic device, including a telephone, cellular phone, computer, electronic tablet, pager or video or audio recording;

D. "gender identity" means a student's self-perception, or perception of that student by another, of the student's identity as a male or female based upon the student's appearance, behavior or physical characteristics that are in accord with or opposed to the student's physical anatomy, chromosomal sex or sex at birth;

E. "local school board" includes the governing body of a charter school;

F. "physical or cognitive disability" means a physical or cognitive impairment that substantially limits one or more of a student's major life activities;



G. "progressive discipline" means disciplinary action other than suspension or expulsion from school that is designed to correct and address the basic causes of a student's specific misbehavior while retaining the student in class or in school, or restorative school practices to repair the harm done to relationships and other students from the student's misbehavior, and may include:

- (1) meeting with the student and the student's parents;
- (2) reflective activities, such as requiring the student to write an essay about the student's misbehavior;
- (3) counseling;
- (4) anger management;
- (5) health counseling or intervention;
- (6) mental health counseling;
- (7) participation in skill-building and resolution activities, such as social-emotional cognitive skills building, resolution circles and restorative conferencing;
- (8) community service; and
- (9) in-school detention or suspension, which may take place during lunchtime, after school or during weekends; and

H. "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived.

**History:** Laws 2019, ch. 181, § 2.

**Effective dates.** — Laws 2019, ch. 181, § 7 made Laws 2019, ch. 181, § 2 effective July 1, 2019.

### 22-35-3. Bullying prevention policies; adoption and enforcement.

A. By January 1, 2020, each local school board shall adopt and enforce policies to:

- (1) prevent bullying:
  - (a) on its property, including electronic communication on or with the use of its property;
  - (b) at sponsored functions; and
  - (c) on its to-and-from-school transportation or any school-sponsored transportation; and

(2) prohibit electronic communication directed at a student, that is published with the intent that it be seen by or disclosed to that student and that substantially interferes with the student's ability to participate in or benefit from the services, activities or privileges provided by the public school.

B. Each local school board shall control the content of its policy; provided that the policy includes:

- (1) the definitions as set forth in the Safe Schools for All Students Act;
- (2) a statement prohibiting bullying;
- (3) a statement prohibiting retaliation against persons who report or witness incidents of bullying;
- (4) a list of consequences, including progressive discipline approaches that can result from an identified incident of bullying that are designed to:

- (a) appropriately correct the bullying behavior;
- (b) prevent another occurrence of bullying or retaliation;
- (c) protect the target of the bullying;
- (d) be flexible so that, in application, the consequences can be unique to the individual incident and varied in method and severity based on: 1) the nature of the incident; 2) the developmental age of the student who is bullying; and 3) any history of problem behavior from the student who is bullying; and

(e) for cyberbullying incidents, use the least restrictive means necessary to address the interference with the student's ability to participate in or benefit from the services, activities or privileges provided by the school;

- (5) a procedure for reporting bullying or retaliation for reporting an act of bullying, including:

(a) a flexible reporting system that allows for reporting orally and in the student's preferred language;

(b) a method for reporting bullying anonymously; provided that no formal disciplinary measures shall be taken solely on the basis of an anonymous report; and

(c) a method for parents to file written reports of suspected bullying; and

(6) a procedure for prompt investigation of reports of violations of the policy and of complaints of bullying or retaliation, including:

(a) designation of a school administrator to investigate or supervise the investigation of all reports of bullying and to ensure that such investigation is completed promptly after the receipt of any report made under the Safe Schools for All Students Act;

(b) a procedure for notification of the parents of the student alleged to have committed an act of bullying and the parents of the students targeted by the alleged act; provided that if the administrator believes, in the administrator's professional capacity, that notifying the parents would endanger the health or well-being of a student, the administrator may delay such notification as appropriate;

(c) a benchmark that school employees who witness acts of bullying or receive reports of bullying notify the designated administrator not later than two days after the school employee witnesses or receives a report of bullying;

(d) an appeal process for a student accused of bullying or a student who is the target of bullying who is not satisfied with the outcome of the initial investigation; and

(e) development of a student safety support plan for students who are targets of bullying that addresses safety measures the school will take to protect targeted students against further acts of bullying.

C. Each local school board shall include bullying prevention policies and procedures for reporting bullying in student handbooks using developmentally and culturally appropriate language. Policies shall be produced and disseminated in appropriate languages for any school district in which a substantial portion of the student population speaks a language other than English at home.

D. Each public school shall document reports and investigations of bullying and shall maintain those records for no less than four years.

E. Each local school board shall establish procedures for public schools to report aggregate incidents of bullying and incidents of harassment under any applicable federal or state law, along with responses to these incidents, and report this information annually to the department.

**History:** Laws 2019, ch. 181, § 3.

**Effective dates.** — Laws 2019, ch. 181, § 7 made Laws 2019, ch. 181, § 3 effective July 1, 2019.

#### **22-35-4. Bullying prevention programs establishment.**

A. Following adoption of a bullying prevention policy, each public school shall:

(1) establish an annual bullying prevention program for students included in New Mexico's health education content standards with benchmarks and performance standards;

(2) provide annual training on bullying prevention to all employees and volunteers who have significant contact with students; and

(3) incorporate information on the bullying prevention policy into new employee training.

B. Each school district and public school shall develop a plan for the way in which the policy is to be publicized, including:

(1) making each school district's anti-bullying policy, and developmentally, culturally and linguistically appropriate variants of the policy, available on public websites;

(2) identifying a point of contact for bullying-related concerns; and

(3) informing parents and students about the policy at least annually through student handbooks and other resources.

**History:** Laws 2019, ch. 181, § 4.

**Effective dates.** — Laws 2019, ch. 181, § 7 made Laws 2019, ch. 181, § 4 effective July 1, 2019.



## **22-35-5. Department duties; school district and charter school report cards.**

### **A. The department shall:**

(1) issue guidance for bullying prevention programs and policies in accordance with the Safe Schools for All Students Act; and

(2) within one hundred twenty days of the effective date of the Safe Schools for All Students Act:

(a) promulgate rules for a model policy for local school boards on bullying prevention in accordance with that act, as well as any developmentally, culturally or linguistically appropriate variants of the policy;

(b) provide guidance to local school boards relating to effective forms of progressive discipline to reduce bullying and school violence; and

(c) provide guidance to local school boards on effective bullying prevention programs to reduce bullying and school violence.

B. At the same time as or as part of the annual accountability report, each school district and charter school shall report on the status of its implementation of the provisions of the Safe Schools for All Students Act, including the aggregate number of incidents of bullying in the state, the aggregate number of incidents of harassment under any applicable federal or state laws, the aggregate number of responsive actions taken by public schools by type of action, a tabulation of the number of incidents associated with each distinguishing characteristic defined in the Safe Schools for All Students Act, the department's evaluation of the sufficiency of funding for bullying prevention programs and any recommendations for policy or programmatic change to improve the addressing of bullying issues in the state.

**History:** Laws 2019, ch. 181, § 5.

**Effective dates.** — Laws 2019, ch. 181, § 7 made Laws 2019, ch. 181, § 5 effective July 1, 2019.





# CHAPTER 22A

## Other Public School Laws

Art.

### 1. Literacy for Children at Risk, Recompiled

## ARTICLE 1

### Literacy for Children at Risk

Sec.

22A-1-1. Recompiled.

22A-1-2. Recompiled.

22A-1-3. Recompiled.

Sec.

22A-1-4. Recompiled.

22A-1-5. Recompiled.

#### 22A-1-1. Recompiled.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22A-1-1 NMSA 1978 as 22-13-3.3 NMSA 1978,

effective April 4, 1978 relating to literacy for children at risk.

#### 22A-1-2. Recompiled.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22A-1-2 NMSA 1978 as 22-13-3.4 NMSA 1978, effective April 4, 1978.

#### 22A-1-3. Recompiled.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22A-1-3 NMSA 1978 as 22-13-3.5 NMSA 1978, effective April 4, 1978.

#### 22A-1-4. Recompiled.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22A-1-4 NMSA 1978 as 22-13-3.6 NMSA 1978, effective April 4, 2003.

#### 22A-1-5. Recompiled.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22A-1-5 NMSA 1978 as 22-13-3.7 NMSA 1978, effective April 4, 2003.















